

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE BILL NO. 1028
(Legislative Management)
(Commission on Alternatives to Incarceration)

AN ACT to amend and reenact sections 12-48.1-02, 12.1-32-02.1, and 12.1-32-09.1 of the North Dakota Century Code, relating to offender eligibility for release programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-48.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-02. Conditions of eligibility for release programs.

1. An offender, except an offender sentenced to a penalty of life imprisonment without the opportunity for parole as the result of conviction of a class AA felony under section 12.1-20-03 or of murder under section 12.1-16-01, may be eligible for programs outside facilities under the control of the department of corrections and rehabilitation when the department determines the offender is not a high security risk, not likely to commit a crime of violence, and is likely to be rehabilitated by such program. An offender may apply to the director of the department for permission to participate in such programs.
2. The director of the department may authorize participation in outside programs for an offender who has been committed to ten years or less to the legal and physical custody of the department. The parole board, with the approval of the director of the department, may authorize participation in outside programs for offenders who have been committed to the legal and physical custody of the department for more than ten years.
3. The offender shall submit a signed application which must include a statement that the offender agrees to abide by all terms and conditions of the particular plan adopted for the offender, and must include such other information as the parole board or the director of the department may require.
4. The parole board may approve, disapprove, or defer action on an application approved by the director of the department. The director of the department or the parole board may revoke approval of the application at any time after granting the application. The department shall prescribe rules of conduct and treatment for all offenders on release programs.
5. The director of the department may grant short leaves, not to exceed seventy-two hours, to offenders who have been committed to the legal and physical custody of the department for ten years or less. The parole board, upon the approval of the director of the department, may grant short leaves, not to exceed seventy-two hours, to offenders committed to the legal and physical custody of the department for more than ten years.
6. All rules adopted by the parole board and the director of the department relating to release programs and short leaves must conform, to the extent allowable by law, with executive order no. 11755 issued by the President of the United States.

SECTION 2. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when, in the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm, or possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing an offense under subsection 1, 2, or, except for the simple possession of marijuana, 6 of section 19-03.1-23. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:
 4. a. If the offense for which the offender is convicted is a class A or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
 2. b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.
2. This section applies even when being armed is an element of the offense for which the offender is convicted.
3. An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence.

SECTION 3. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. Sentencing of violent offenders.

AnyExcept as provided under section 12-48.1-02 and pursuant to rules adopted by the department of corrections and rehabilitation, an offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, 12.1-17-02, 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1028.

House Vote: Yeas 92 Nays 0 Absent 2

Senate Vote: Yeas 44 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2011.

Approved at _____ M. on _____, 2011.

Governor

Filed in this office this _____ day of _____, 2011,

at _____ o'clock _____ M.

Secretary of State