

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 12.1-32 of the North Dakota
2 Century Code, relating to presumptive probation; to amend and reenact sections 12-44.1-32,
3 12-54.1-01, 12-59-08, 12-60-16.4, 12.1-17-13, and 12.1-23-05, subsection 4 of section
4 12.1-23-08, section 12.1-32-01, subsection 2 of section 12.1-32-02, sections 12.1-32-03.1 and
5 12.1-32-06.1, subsection 1 of section 12.1-32-07, subsection 1 of section 12.1-32-09.1, section
6 19-03.1-22.3, subsection 1 of section 19-03.1-22.5, sections 19-03.1-23, 19-03.1-23.1,
7 19-03.4-03, and 29-03-22, subdivision f of subsection 5 of section 39-08-01, sections
8 39-24.1-07 and 43-45-06, and subsection 17 of section 50-06-05.1 of the North Dakota Century
9 Code, relating to sentence reduction credit, medical paroles, domestic violence offender
10 treatment, grading of theft offenses, classification of offenses, credit for time spent in custody,
11 trials of infractions, terms and conditions of probation, commuting of sentences, controlled
12 substances and controlled substance paraphernalia, drug court and probation for driving under
13 the influence offenses, addiction counseling services, and the supplemental nutrition assistance
14 program; to provide a penalty; to provide for the creation of a pretrial services program pilot
15 project within the department of corrections and rehabilitation; and to provide for a report to the
16 legislative assembly.

17 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

18 **SECTION 1. AMENDMENT.** Section 12-44.1-32 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **12-44.1-32. ~~Performance-based sentence~~Sentence reduction credit.**

21 ~~The presiding judge of a judicial district in which a correctional facility is located, after~~
22 ~~consultation with the other judges in the district, may authorize the facility administrator to~~
23 ~~provide for~~An inmate sentenced to at least sixty days at a correctional facility under this chapter
24 is eligible to earn sentence reductions based upon performance criteria established throughby

1 the administrator ~~except that sentence reductions may not be given to offenders sentenced~~
2 ~~under section 12.1-32-09.1, including sentence reduction for good conduct.~~ While incarcerated
3 in a correctional facility, an offender may earn no more than a one-day sentence reduction per
4 six days served.

5 **SECTION 2. AMENDMENT.** Section 12-54.1-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12-54.1-01. ~~Performance-based sentence~~Sentence reduction.**

8 Except as provided under section 12.1-32-09.1, ~~offenders~~an offender committed to the legal
9 and physical custody of the department of corrections and rehabilitation ~~are~~is eligible to earn
10 sentence reductions based upon performance criteria established through department and
11 penitentiary rules. Performance criteria includes participation in court-ordered or
12 staff-recommended treatment and education programs and good work performance. The
13 department may credit an offender committed to the legal and physical custody of the
14 department who is eligible for sentence reduction five days good time per month for each month
15 of the sentence imposed. The department may ~~not~~ credit an offender with any sentence
16 reduction for time spent in custody ~~prior to~~before sentence and commitment, ~~for time under~~
17 ~~supervised probation, or~~ and for any sentence ~~where~~for which the incarceration time is six
18 months or less. The department may not credit an offender with any sentence reduction for time
19 spent on probation under the supervision and management of the department.

20 **SECTION 3. AMENDMENT.** Section 12-59-08 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **12-59-08. ~~Emergency~~Medical paroles.**

23 ~~The~~If an inmate, including an inmate whose sentence is subject to section 12.1-32-02.1 and
24 an inmate sentenced under subsection 1 of section 12.1-32-01, has a serious or terminal
25 medical condition, the parole board may consider whether to ~~grant the~~ inmate may receive an
26 emergency ~~a~~ medical parole at a meeting scheduled by the chairman. The board may request
27 ~~the inmate to personally appear before the board before the board makes a decision whether to~~
28 ~~grant the inmate an emergency parole. The board may grant or deny an emergency parole, or~~
29 ~~grant a conditional emergency parole, or continue its consideration to another meeting. Two~~
30 ~~members of the parole board may grant emergency parole, subject to terms and conditions of~~
31 ~~emergency parole that may be established by the two members of the parole board, or by the~~

1 ~~department of corrections and rehabilitation with the approval of the parole board.~~ An inmate
2 who receives an emergency medical parole remains under the jurisdiction of the parole board
3 until the expiration of the maximum term or terms of imprisonment for which the inmate was
4 sentenced, less any sentence reduction the inmate has received.

5 **SECTION 4. AMENDMENT.** Section 12-60-16.4 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12-60-16.4. Criminal history record information - Reportable offenses.**

8 Criminal justice agencies shall report to the bureau reportable events for each felony and
9 for each of the following offenses:

- 10 1. Class A and B misdemeanor offenses in sections 6-08-16 and 6-08-16.1.
- 11 2. Class A misdemeanor offenses included in title 12.1.
- 12 3. Class A and B misdemeanor offenses in chapters 19-03.1, 19-03.2, and 19-03.4 and
13 in sections 12-47-21 and 20.1-01-18.
- 14 4. Class B misdemeanor offenses in sections 12.1-17-01, 12.1-20-12.1, 12.1-21-05,
15 12.1-21-06, 12.1-22-03, 12.1-23-05, and 12.1-29-03.
- 16 5. Class A misdemeanor offenses in chapter 14-07.1 and sections 43-15.1-02,
17 51-16.1-04, and 53-06.1-16.
- 18 6. Class A misdemeanor offenses in title 62.1.
- 19 7. Municipal ordinance violations that are equivalent to misdemeanors listed in
20 subsections 1 through 6.
- 21 8. Infractions and misdemeanor violations of subdivision c of subsection 5 of section
22 39-24-09 and chapter 39-24.1.
- 23 9. Class AA misdemeanor offenses in section 12.1-23-05 and chapters 19-03.1 and
24 19-03.4.

25 **SECTION 5. AMENDMENT.** Section 12.1-17-13 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **12.1-17-13. Mandated treatment of domestic violence offenders.**

28 The sentence for an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-02,
29 12.1-17-03, 12.1-17-04, or 12.1-17-05 against an actor's family or household member, as
30 defined in subsection 4 of section 14-07.1-01, must include an order to complete a domestic
31 violence offender treatment program. ~~A court may not order the offender to attend anger~~

1 ~~management classes or individual counseling unless a domestic violence offender treatment~~
2 ~~program is not reasonably available to the defendant and the court makes findings for the~~
3 ~~record explaining why an order to complete a domestic violence offender treatment program~~
4 ~~would be inappropriate.~~ As a condition of parole, the court shall require the offender to complete
5 a domestic violence offender treatment program while the offender is incarcerated or under the
6 supervision and management of the department of corrections and rehabilitation.

7 **SECTION 6. AMENDMENT.** Section 12.1-23-05 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **12.1-23-05. Grading of theft offenses.**

- 10 1. Notwithstanding subsection 3, theft under this chapter is a class A felony if the
11 property or services stolen exceed fifty thousand dollars in value.
- 12 2. Notwithstanding the provisions of subsection 3, theft under this chapter is a class B
13 felony if the property or services stolen exceed ten thousand dollars in value but do
14 not exceed fifty thousand dollars or are acquired or retained by a threat to commit a
15 felony.
- 16 3. Theft under this chapter is a class C felony if:
- 17 a. The property or services stolen exceed ~~one~~two thousand five hundred dollars in
18 value;
- 19 b. The property or services stolen are acquired or retained by threat and (1) are
20 acquired or retained by a public servant by a threat to take or withhold official
21 action, or (2) exceed one hundred dollars in value;
- 22 c. The property or services stolen exceed one hundred dollars in value and are
23 acquired or retained by a public servant in the course of official duties;
- 24 d. The property stolen is a firearm, ammunition, explosive or destructive device, or
25 an automobile, aircraft, or other motor-propelled vehicle;
- 26 e. The property consists of any government file, record, document, or other
27 government paper stolen from any government office or from any public servant;
- 28 f. The defendant is in the business of buying or selling stolen property and the
29 defendant receives, retains, or disposes of the property in the course of that
30 business;

- 1 g. The property stolen consists of any implement, paper, or other thing uniquely
2 associated with the preparation of any money, stamp, bond, or other document,
3 instrument, or obligation of this state;
- 4 h. The property stolen consists of livestock taken from the premises of the owner;
- 5 i. The property stolen consists of a key or other implement uniquely suited to
6 provide access to property the theft of which would be a felony and it was stolen
7 to gain such access;
- 8 j. The property stolen is a card, plate, or other credit device existing for the purpose
9 of obtaining money, property, labor, or services on credit, or is a debit card,
10 electronic fund transfer card, code, or other means of access to an account for
11 the purposes of initiating electronic fund transfers; or
- 12 k. The property stolen is a prescription drug as defined in section 43-15.3-01.
- 13 4. Theft under this chapter is a class AA misdemeanor if the property or services stolen
14 exceed one thousand dollars in value but do not exceed two thousand five hundred
15 dollars in value.
- 16 5. All other theft under this chapter is a class A misdemeanor, unless the requirements of
17 subsection 56 are met.
- 18 5-6. Theft under this chapter of property or services of a value not exceeding five hundred
19 dollars is a class B misdemeanor if:
- 20 a. The theft was not committed by threat;
- 21 b. The theft was not committed by deception by one who stood in a confidential or
22 fiduciary relationship to the victim of the theft; and
- 23 c. The defendant was not a public servant or an officer or employee of a financial
24 institution who committed the theft in the course of official duties.
- 25 The special classification provided in this subsection applies if the offense is classified
26 under this subsection in the charge or if, at sentencing, the required factors are
27 established by a preponderance of the evidence.
- 28 6-7. Notwithstanding subsection 3 of section 12.1-06-01, an attempt to commit a theft
29 under this chapter is punishable equally with the completed offense when the actor
30 has completed all of the conduct which the actor believes necessary on the actor's
31 part to complete the theft except receipt of the property.

1 ~~7.8.~~ For purposes of grading, the amount involved in a theft under this chapter is the
2 highest value by any reasonable standard, regardless of the actor's knowledge of such
3 value, of the property or services which were stolen by the actor, or which the actor
4 believed that the actor was stealing, or which the actor could reasonably have
5 anticipated to have been the property or services involved. Thefts committed pursuant
6 to one scheme or course of conduct, whether from the same person or several
7 persons, may be charged as one offense and the amounts proved to have been stolen
8 may be aggregated in determining the grade of the offense.

9 **SECTION 7. AMENDMENT.** Subsection 4 of section 12.1-23-08 of the North Dakota
10 Century Code is amended and reenacted as follows:

11 4. A violation of subsection 2 or 3 must be prosecuted as theft under section 12.1-23-02
12 or 12.1-23-04. Violation of subsection 2 or 3 is a class C felony if the property has a
13 value of more than one thousand dollars, as determined under subsection ~~7~~8 of
14 section 12.1-23-05. In all other cases, violation of this section is a class A
15 misdemeanor.

16 **SECTION 8. AMENDMENT.** Section 12.1-32-01 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **12.1-32-01. Classification of offenses - Penalties.**

19 Offenses are divided into ~~seven~~eight classes, which are denominated and subject to
20 maximum penalties, as follows:

- 21 1. Class AA felony, for which a maximum penalty of life imprisonment without parole may
22 be imposed. The court must designate whether the life imprisonment sentence
23 imposed is with or without an opportunity for parole. Notwithstanding the provisions of
24 section 12-59-05, a person found guilty of a class AA felony and who receives a
25 sentence of life imprisonment with parole, shall not be eligible to have that person's
26 sentence considered by the parole board for thirty years, less sentence reduction
27 earned for good conduct, after that person's admission to the penitentiary.
- 28 2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of
29 twenty thousand dollars, or both, may be imposed.
- 30 3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of
31 twenty thousand dollars, or both, may be imposed.

1 4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of ten
2 thousand dollars, or both, may be imposed.

3 5. Class AA misdemeanor, for which a maximum penalty of two years' imprisonment, a
4 fine of five thousand dollars, or both may be imposed.

5 6. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a
6 fine of three thousand dollars, or both, may be imposed.

7 ~~6-7.~~ Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a
8 fine of one thousand five hundred dollars, or both, may be imposed.

9 ~~7-8.~~ Infraction, for which a maximum fine of one thousand dollars may be imposed. Any
10 person convicted of an infraction who has, within one year prior to commission of the
11 infraction of which the person was convicted, been previously convicted of an offense
12 classified as an infraction may be sentenced as though convicted of a class B
13 misdemeanor. If the prosecution contends that the infraction is punishable as a class B
14 misdemeanor, the complaint ~~shall~~must specify that the offense is a misdemeanor.

15 This section ~~shall not be construed to~~does not forbid sentencing under section 12.1-32-09,
16 relating to extended sentences.

17 **SECTION 9. AMENDMENT.** Subsection 2 of section 12.1-32-02 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 2. Credit against any sentence to a term of imprisonment must be given by the court to a
20 defendant for all time spent in custody as a result of the criminal charge for which the
21 sentence was imposed or as a result of the conduct on which such charge was based.
22 "Time spent in custody" includes time spent in custody in a jail or mental institution for
23 the offense charged, whether that time is spent prior to trial, during trial, pending
24 sentence, or pending appeal. The total amount of credit the defendant is entitled to for
25 time spent in custody and any credit for sentence reduction under section 12-44.1-32
26 or 12-54.1-01 the defendant is entitled to must be stated in the criminal judgment.

27 **SECTION 10. AMENDMENT.** Section 12.1-32-03.1 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **12.1-32-03.1. Procedure for trial of infraction - Incidents.**

30 1. Except as provided in this subsection, all procedural provisions relating to the trial of
31 criminal cases as provided in the statutes or rules relating to criminal procedure shall

1 apply to the trial of a person charged with an infraction. A person charged with an
2 infraction is not entitled to be furnished counsel at public expense nor to have a trial by
3 jury unless the person may be subject to a sentence of imprisonment under
4 subsection 78 of section 12.1-32-01.

5 2. Except as provided in this title, all provisions of law and rules of criminal procedure
6 relating to misdemeanors shall apply to infractions, including, but not limited to, the
7 powers of law enforcement officers, the jurisdiction of courts, the periods for
8 commencing action and bringing a case to trial, and the burden of proof.

9 3. Following conviction of an infraction, the offender may be sentenced in accordance
10 with subsection 1 of section 12.1-32-02, except that a term of imprisonment may not
11 be imposed except in accordance with subsection 3 of section 12.1-32-05, or
12 subsection 78 of section 12.1-32-01.

13 4. If a statute provides that conduct is an infraction without specifically including a
14 requirement of culpability, no culpability is required.

15 **SECTION 11. AMENDMENT.** Section 12.1-32-06.1 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **12.1-32-06.1. Length and termination of probation - Additional probation for violation**
18 **of conditions - Penalty.**

19 1. Except as provided in this section, the length of unsupervised probation imposed in
20 conjunction with a sentence to probation or a suspended execution or deferred
21 imposition of sentence may not extend for more than five years for a felony, three
22 years for a class AA misdemeanor, and two years for a class A or class B
23 misdemeanor or infraction from the later of the date of:

- 24 a. The order imposing probation;
25 b. The defendant's release from incarceration; or
26 c. Termination of the defendant's parole.

27 2. Except as provided in this section, the length of supervised probation imposed in
28 conjunction with a sentence of probation or a suspended execution or deferred
29 imposition of sentence may not extend for more than five years for a felony offense
30 subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1,
31 which involves the use of a firearm or dangerous weapon, a second or subsequent

- 1 violation of section 12.1-17-07.1, a second or subsequent violation of any domestic
2 violence protection order, a violation of chapter 12.1-41, or a violation of section
3 14-09-22; three years for any other felony offense or for a class AA misdemeanor; two
4 years for a class A misdemeanor; and three hundred sixty days for a class B
5 misdemeanor offense from the later of the date of:
- 6 a. The order imposing probation;
 - 7 b. The defendant's release from incarceration; or
 - 8 c. Termination of the defendant's parole.
- 9 3. If the defendant has pled or been found guilty of an offense for which the court
10 imposes a sentence of restitution or reparation for damages resulting from the
11 commission of the offense, the court may, following a restitution hearing pursuant to
12 section 12.1-32-08, impose additional periods of unsupervised probation not to exceed
13 five years for each additional period imposed.
- 14 4. If the defendant has pled or been found guilty of a felony sexual offense in violation of
15 chapter 12.1-20, the court shall impose at least five years but not more than ten years
16 of supervised probation to be served after sentencing or incarceration. If the defendant
17 has pled or been found guilty of a class AA felony sexual offense in violation of section
18 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime supervised probation on the
19 defendant. If the defendant has pled or been found guilty of a misdemeanor sexual
20 offense in violation of chapter 12.1-20, the court may impose additional periods of
21 probation not to exceed two years for each additional period imposed. If the unserved
22 portion of the defendant's maximum period of incarceration is less than one year, a
23 violation of the probation imposed under this subsection is a class A misdemeanor.
- 24 5. If the defendant has pled or been found guilty of abandonment or nonsupport of
25 spouse or children, the period of probation may be continued for as long as
26 responsibility for support continues.
- 27 6. In felony and misdemeanor cases, in consequence of violation of probation conditions,
28 the court may impose additional probation if the defendant has not served the
29 maximum sentence of imprisonment available to the court at the time of initial
30 sentencing or deferment or the total time on probation authorized under this section.

- 1 a. For class B and greater felony offenses, an offense subject to section
2 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the
3 use of a firearm or dangerous weapon, a second or subsequent violation of
4 section 12.1-17-07.1, a second or subsequent violation of any domestic violence
5 protection order, a violation of chapter 12.1-41, or a violation of section 14-09-22,
6 the total time on probation may not exceed ten years.
- 7 b. For all other felony offenses, the total time on probation may not exceed five
8 years.
- 9 c. For misdemeanor cases, the total time on probation may not exceed four years
10 for a class AA misdemeanor and three years for a class A or class B
11 misdemeanor.
- 12 d. The court shall allow the defendant credit for a sentence of probation from the
13 date the defendant began probation until the date a petition to revoke probation
14 was filed with the court. If the defendant is on supervised probation, the
15 defendant is not entitled to credit for a sentence of probation for any period the
16 defendant has absconded from supervision. The total amount of credit a
17 defendant is entitled to for time spent on probation must be stated in the criminal
18 judgment or order of revocation of probation.
- 19 7. The court may terminate a period of probation and discharge the defendant at any
20 time earlier than that provided in subsection 1 if warranted by the conduct of the
21 defendant and the ends of justice.
- 22 8. Notwithstanding the fact that a sentence to probation subsequently can be modified or
23 revoked, a judgment that includes such a sentence constitutes a final judgment for all
24 other purposes.

25 **SECTION 12. AMENDMENT.** Subsection 1 of section 12.1-32-07 of the North Dakota
26 Century Code is amended and reenacted as follows:

- 27 1. When the court imposes probation upon conviction for a felony offense subject to
28 section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section
29 12.1-17-07.1, a second or subsequent violation of any domestic violence protection
30 order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony
31 offense under chapter 39-08, the court shall place the defendant under the supervision

1 and management of the department of corrections and rehabilitation. When the court
2 imposes probation upon conviction or order of disposition in all other felony cases, the
3 court may place the defendant under the supervision and management of the
4 department of corrections and rehabilitation. In class AA and class A misdemeanor
5 cases, the court may place the defendant under the supervision and management of
6 the department of corrections and rehabilitation or other responsible party. In all other
7 cases, the court may place the defendant under the supervision and management of a
8 community corrections program other than the department of corrections and
9 rehabilitation. A community corrections program means a program for the supervision
10 of a defendant, including monitoring and enforcement of terms and conditions of
11 probation set by the court.

12 **SECTION 13.** A new section to chapter 12.1-32 of the North Dakota Century Code is
13 created and enacted as follows:

14 **Presumptive probation.**

15 Except as provided under section 12.1-32-09.1, the court shall sentence an individual
16 convicted of a class AA misdemeanor offense or a class C felony offense to a term of probation
17 if the individual has never plead guilty to, or been found guilty of, a class AA misdemeanor
18 offense or a felony offense before the date of the commission of the offense charged in the
19 complaint, information, or indictment. The court may impose a sentence of imprisonment if the
20 court finds aggravating factors to justify a departure and states the aggravating factors on the
21 record at the time of sentencing.

22 **SECTION 14. AMENDMENT.** Subsection 1 of section 12.1-32-09.1 of the North Dakota
23 Century Code is amended and reenacted as follows:

- 24 1. Except as provided under section 12-48.1-02 and pursuant to rules adopted by the
25 department of corrections and rehabilitation, an offender who is convicted of a crime in
26 violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section
27 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section
28 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or
29 an attempt to commit the offenses, and who receives a sentence of imprisonment is
30 not eligible for release from confinement on any basis until ~~eighty-five~~seventy percent
31 of the sentence imposed by the court has been served or the sentence is commuted.

1 **SECTION 15. AMENDMENT.** Section 19-03.1-22.3 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.**

4 A person who intentionally ingests, inhales, or otherwise takes into the body a controlled
5 substance, unless the substance was obtained directly from a practitioner or pursuant to a valid
6 prescription or order of a practitioner while acting in the course of the practitioner's professional
7 practice, is guilty of ~~a class A misdemeanor~~ an infraction. The venue for a violation of this section
8 exists in either the jurisdiction in which the controlled substance was ingested, inhaled, or
9 otherwise taken into the body or the jurisdiction in which the controlled substance was detected
10 in the body of the accused.

11 **SECTION 16. AMENDMENT.** Subsection 1 of section 19-03.1-22.5 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 1. The use of controlled substance analog includes the ingestion, inhalation, absorption,
14 or any other method of taking the controlled substance analog into the body. An
15 individual who intentionally uses a controlled substance analog is guilty of ~~a class C~~
16 ~~felony~~ class AA misdemeanor, unless the individual obtains the analog directly from a
17 practitioner or pursuant to a valid prescription or order of a practitioner.

18 **SECTION 17. AMENDMENT.** Section 19-03.1-23 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **19-03.1-23. Prohibited acts A - ~~Mandatory terms of imprisonment and fines~~**
21 **~~Unclassified offenses~~ - Penalties.**

22 1. Except as authorized by this chapter, it is unlawful for any person to willfully, as
23 defined in section 12.1-02-02, manufacture, deliver, or possess with intent to
24 manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a
25 controlled substance by means of the internet, but any person who violates section
26 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who
27 violates this subsection with respect to:

28 a. A controlled substance classified in schedule I or II which is a narcotic drug, or
29 methamphetamine, is guilty of a class A felony ~~and must be sentenced:~~

30 (1) ~~For a second offense, to imprisonment for at least five years.~~

31 (2) ~~For a third or subsequent offense, to imprisonment for twenty years.~~

- 1 b. Any other controlled substance classified in schedule I, II, or III, or a controlled
2 substance analog is guilty of a class B felony. ~~Except for a person who~~
3 ~~manufactures, delivers, or possesses with the intent to manufacture or deliver~~
4 ~~marijuana, any person found guilty under this subdivision must be sentenced:~~
5 (1) ~~For a second offense, to imprisonment for at least three years.~~
6 (2) ~~For a third or subsequent offense, to imprisonment for ten years.~~
7 c. A substance classified in schedule IV, is guilty of a class C felony ~~and must be~~
8 ~~sentenced:~~
9 (1) ~~For a second offense, to imprisonment for at least six months.~~
10 (2) ~~For a third offense, to imprisonment for at least one year.~~
11 (3) ~~For a fourth or subsequent offense, to imprisonment for five years.~~
12 d. A substance classified in schedule V, is guilty of a class A misdemeanor.
13 2. Except as authorized by this chapter, it is unlawful for any person to willfully, as
14 defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit
15 substance by means of the internet or any other means, or possess with intent to
16 deliver, a counterfeit substance by means of the internet or any other means, but any
17 person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this
18 subsection. Any person who violates this subsection with respect to:
19 a. A counterfeit substance classified in schedule I or II which is a narcotic drug, is
20 guilty of a class A felony.
21 b. Any other counterfeit substance classified in schedule I, II, or III, is guilty of a
22 class B felony.
23 c. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
24 d. A counterfeit substance classified in schedule V, is guilty of a class A
25 misdemeanor.
26 3. For second or subsequent offenders, ~~in addition to any other penalty imposed under~~
27 ~~this section,~~ a person who violates this chapter, except a person who manufactures,
28 delivers, or possesses with the intent to manufacture or deliver marijuana, is subject
29 to, and the court ~~shall~~may impose, the following penalties to run consecutively to any
30 other sentence imposed:

- 1 a. Any person, eighteen years of age or older, who violates this section by willfully
2 manufacturing, delivering, or possessing with intent to manufacture or deliver a
3 controlled substance in or on, or within one thousand feet [300.48 meters] of the
4 real property comprising a public or private elementary or secondary school or a
5 public career and technical education school is subject to ~~an eight-year~~ term of
6 imprisonment not to exceed eight years.
- 7 b. If the defendant was at least twenty-one years of age at the time of the offense,
8 and delivered a controlled substance to a person under the age of eighteen, the
9 defendant ~~must be sentenced~~ is subject to a term of imprisonment for at least
10 to exceed eight years. It is not a defense that the defendant did not know the age
11 of a person protected under this subdivision.
- 12 4. A person at least eighteen years of age who solicits, induces, intimidates, employs,
13 hires, or uses a person under eighteen years of age to aid or assist in the
14 manufacture, delivery, or possession with intent to manufacture or deliver a controlled
15 substance for the purpose of receiving consideration or payment for the manufacture
16 or delivery of any controlled substance is guilty of a class B felony ~~and must be~~
17 sentenced:
- 18 a. ~~For a second or subsequent offense, to imprisonment for at least five years.~~
19 b. It is not a defense to a violation of this subsection that the defendant did not
20 know the age of a person protected under this subsection.
- 21 5. A violation of this chapter or a law of another state or the federal government which is
22 equivalent to an offense under this chapter committed while the offender was an adult
23 and which resulted in a plea or finding of guilt must be considered a prior offense
24 under ~~subsections 1, 3, and 4~~ this section. The prior offense must be alleged in the
25 complaint, information, or indictment. The plea or finding of guilt for the prior offense
26 must have occurred before the date of the commission of the offense or offenses
27 charged in the complaint, information, or indictment.
- 28 6. It is unlawful for a person to willfully, as defined in section 12.1-02-02:
- 29 a. Serve as an agent, intermediary, or other entity that causes the internet to be
30 used to bring together a buyer and seller to engage in the delivery, distribution, or

1 dispensing of a controlled substance in a manner not authorized by this chapter;
2 or

3 b. Offer to fill or refill a prescription for a controlled substance based solely on a
4 consumer's completion of an online medical questionnaire.

5 A person who violates this subsection is guilty of a class C felony.

6 7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess
7 a controlled substance or a controlled substance analog unless the substance
8 was obtained directly from, or pursuant to, a valid prescription or order of a
9 practitioner while acting in the course of the practitioner's professional practice, or
10 except as otherwise authorized by this chapter, but any person who violates
11 section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.
12 Except as otherwise provided in this subsection, any person who violates this
13 subsection is guilty of a ~~class C felony~~class AA misdemeanor. If, at the time of
14 the offense the person is in or on, or within ~~one thousand~~three hundred feet
15 [~~300.48~~91.44 meters] of the real property comprising a public or private
16 elementary or secondary school or a public career and technical education
17 school, the person is guilty of a class B felony, unless the offense involves one
18 ounce [28.35 grams] or less of marijuana. Any person who violates this
19 subsection regarding possession of one ounce [28.35 grams] or less of marijuana
20 is guilty of a class B misdemeanor.

21 b. If an individual is sentenced to the legal and physical custody of the department
22 of corrections and rehabilitation under this subsection, the department may place
23 the individual in a drug and alcohol treatment program designated by the
24 department. Upon the successful completion of the drug and alcohol treatment
25 program, the department shall release the individual from imprisonment to begin
26 any court-ordered period of probation.

27 c. If the individual is not subject to any court-ordered probation, the court shall order
28 the individual to serve the remainder of the sentence of imprisonment on
29 supervised probation subject to the terms and conditions imposed by the court.

30 d. Probation under this subsection may include placement in another facility,
31 treatment program, or drug court. If an individual is placed in another facility or

- 1 treatment program upon release from imprisonment, the remainder of the
2 sentence must be considered as time spent in custody.
3 e. An individual incarcerated under this subsection as a result of a second probation
4 revocation is not eligible for release from imprisonment upon the successful
5 completion of treatment.
- 6 8. Except as provided by section 19-03.1-45, a court may order a person who violates
7 this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed
8 addiction counselor. The evaluation must indicate the prospects for rehabilitation and
9 whether addiction treatment is required. If ordered, the evaluation must be submitted
10 to the court before imposing punishment for a felony violation or a misdemeanor
11 violation.
- 12 9. If a person pleads guilty or is found guilty of a first offense regarding possession of
13 one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a
14 court, upon motion, shall seal the court record of that conviction if the person is not
15 subsequently convicted within two years of a further violation of this chapter. Once
16 sealed, the court record may not be opened even by order of the court.

17 **SECTION 18. AMENDMENT.** Section 19-03.1-23.1 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **19-03.1-23.1. Increased penalties for aggravating factors in drug offenses.**

- 20 1. A person who violates section 19-03.1-23 is subject to the penalties provided in
21 subsection 2 if:
- 22 a. The offense involved the manufacture, delivery, or possession, with intent to
23 manufacture or deliver a controlled substance in or on, or within ~~one-~~
24 ~~thousand~~three hundred feet [~~300.48~~91.44 meters] of, the real property
25 comprising a child care or preschool facility, public or private elementary or
26 secondary school, public career and technical education school, or a public or
27 private college or university;
- 28 b. The defendant was at least sixteen years of age at the time of the offense and
29 the offense involved the delivery of a controlled substance to a minor;
- 30 c. The offense involved:

- 1 (1) Fifty grams or more of a mixture or substance containing a detectable
2 amount of heroin;
- 3 (2) Fifty grams or more of a mixture or substance containing a detectable
4 amount of:
 - 5 (a) Coca leaves, except coca leaves and extracts of coca leaves from
6 which cocaine, ecgonine, and derivatives of ecgonine or their salts
7 have been removed;
 - 8 (b) Cocaine, its salts, optical and geometric isomers, and salts of
9 isomers;
 - 10 (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
11 (d) Any compound, mixture, or preparation that contains any quantity of
12 any of the substance referred to in subparagraphs a through c;
- 13 (3) Five grams or more of a mixture or substance described in paragraph 2
14 which contains cocaine base;
- 15 (4) Ten grams or more of phencyclidine or one hundred grams or more of a
16 mixture or substance containing a detectable amount of phencyclidine;
- 17 (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a
18 mixture or substance containing a detectable amount of lysergic acid
19 diethylamide;
- 20 (6) Forty grams or more of a mixture or substance containing a detectable
21 amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide or ten
22 grams or more of a mixture or substance containing a detectable amount of
23 any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide;
- 24 (7) Fifty grams or more of a mixture or substance containing a detectable
25 amount of methamphetamine;
- 26 (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a
27 mixture or substance containing a detectable amount of
28 3,4-methylenedioxy-N-methylamphetamine, C₁₁H₁₅NO₂;
- 29 (9) One hundred dosage units or one-half liquid ounce of a mixture or
30 substance containing a detectable amount of gamma-hydroxybutyrate or

1 gamma-butyrolactone or 1,4 butanediol or any substance that is an analog
2 of gamma-hydroxybutyrate;

3 (10) One hundred dosage units or one-half liquid ounce of a mixture or
4 substance containing a detectable amount of flunitrazepam; or

5 (11) Five hundred grams or more of marijuana; or

6 d. The defendant had a firearm in the defendant's actual possession at the time of
7 the offense.

8 2. The offense is:

9 a. A class AA felony if the violation of section 19-03.1-23 is designated as a class A
10 felony.

11 b. A class A felony if the violation of section 19-03.1-23 is designated as a class B
12 felony.

13 c. A class B felony if the violation of section 19-03.1-23 is designated as a class C
14 felony.

15 d. A class C felony if the violation of section 19-03.1-23 is designated as a class AA
16 or class A misdemeanor.

17 **SECTION 19. AMENDMENT.** Section 19-03.4-03 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **19-03.4-03. Unlawful possession of drug paraphernalia - Penalty.**

20 1. A person may not use or possess with intent to use drug paraphernalia to plant,
21 propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,
22 process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled
23 substance in violation of chapter 19-03.1. Any person violating this subsection is guilty
24 of a class C felony if the drug paraphernalia is used, or possessed with intent to be
25 used, to manufacture, compound, convert, produce, process, prepare, test, or analyze
26 a controlled substance, other than marijuana, classified in schedule I, II, or III of
27 chapter 19-03.1.

28 2. A person may not use or possess with the intent to use drug paraphernalia to inject,
29 ingest, inhale, or otherwise induce into the human body a controlled substance, other
30 than marijuana, classified in schedule I, II, or III of chapter 19-03.1. A person violating
31 this subsection is guilty of a ~~class A~~class B misdemeanor. If a person previously has

1 been convicted of an offense under this title, other than an offense related to
2 marijuana, or an equivalent offense from another court in the United States, a violation
3 of this subsection is a ~~class C felony~~class AA misdemeanor.

4 3. A person may not use or possess with intent to use drug paraphernalia to plant,
5 propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,
6 process, prepare, test, analyze, pack, repack, store, contain, or conceal marijuana in
7 violation of chapter 19-03.1. A person violating this subsection is guilty of a class A
8 misdemeanor.

9 4. A person may not use or possess with the intent to use drug paraphernalia to ingest,
10 inhale, or otherwise introduce into the human body marijuana in violation of
11 chapter 19-03.1. A person violating this subsection is guilty of a ~~class B~~
12 misdemeanoran infraction.

13 **SECTION 20. AMENDMENT.** Section 29-03-22 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **29-03-22. Venue of multiple theft offenses involving credit cards.**

16 If any of a series of thefts can be charged as one offense for purposes of grading under
17 subsection ~~7~~8 of section 12.1-23-05, if each of those thefts involved the use of a credit card,
18 and if the total value of the property or services stolen is at least fifty dollars, venue for the
19 criminal action, in which the series of thefts is charged as one offense, is in any county where
20 any of the thefts was committed.

21 **SECTION 21. AMENDMENT.** Subdivision f of subsection 5 of section 39-08-01 of the North
22 Dakota Century Code is amended and reenacted as follows:

23 f. If the offense is subject to subdivision a or b, a municipal court or district court
24 may not suspend a sentence, but may convert each day of a term of
25 imprisonment to ten hours of community service for an offense subject to
26 paragraph 2 of subdivision a. If the offense is subject to subdivision c, the district
27 court may suspend a sentence, except for sixty days' imprisonment, under
28 subsection 3 of section 12.1-32-02 on the condition that the defendant first
29 undergo and complete an evaluation for alcohol and substance abuse treatment
30 and rehabilitation. If the offense is subject to subdivision d, the district court may
31 suspend a sentence, except for one year's imprisonment, under subsection 3 of

1 section 12.1-32-02 on the condition that the defendant first undergo and
2 complete an evaluation for alcohol and substance abuse treatment and
3 rehabilitation. If the defendant is found to be in need of alcohol and substance
4 abuse treatment and rehabilitation, the district court may order the defendant
5 placed under the supervision and management of the department of corrections
6 and rehabilitation and is subject to the conditions of probation under section
7 12.1-32-07. The district court may require the defendant to complete alcohol and
8 substance abuse treatment and rehabilitation under the direction of the drug
9 court program as a condition of probation in accordance with rules adopted by
10 the supreme court. The district court may terminate probation under this section
11 when the defendant completes the drug treatment program. If the district court
12 finds that a defendant has failed to undergo an evaluation or complete treatment
13 or has violated any condition of probation, the district court shall revoke the
14 defendant's probation and shall sentence the defendant in accordance with this
15 subsection.

16 **SECTION 22. AMENDMENT.** Section 39-24.1-07 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **39-24.1-07. Criminal penalties for operating snowmobile while having alcohol or drug**
19 **concentrations.**

20 Upon conviction of a violation of subdivision c of subsection 5 of section 39-24-09, the court
21 shall impose the following minimum penalties:

- 22 1. Notwithstanding subsection ~~7~~8 of section 12.1-32-01, if the ~~person's~~individual's record
23 indicates that, within the five years preceding the date of the offense, the ~~person has~~
24 ~~not violated subdivision c of subsection 5 of section 39-24-09 or the person~~
25 ~~has~~individual not been prohibited from operating a snowmobile under this chapter, the
26 offense is an infraction. The court shall impose a minimum fine of two hundred fifty
27 dollars and, as a condition of that ~~person's~~individual's probation, shall prohibit that
28 ~~person~~individual from operating a snowmobile on all public land or private land with
29 public access for sixty days within the snowmobile season that runs from December
30 first through April first.

- 1 2. If the ~~person's~~individual's record indicates that, within the five years preceding the date
2 of the offense, the ~~person~~individual has one violation of subdivision c of subsection 5
3 of section 39-24-09 or the ~~person~~individual has once been prohibited from operating a
4 snowmobile under this chapter, the offense is a class B misdemeanor. The court shall
5 impose a minimum fine of three hundred fifty dollars and, as a condition of that
6 ~~person's~~individual's probation, shall prohibit that ~~person~~individual from operating a
7 snowmobile on all public land or private land with public access for one year from the
8 date of the sentence.
- 9 3. If the ~~person's~~individual's record indicates that, within the five years preceding the date
10 of the offense, the ~~person~~individual has had at least two violations of subdivision c of
11 subsection 5 of section 39-24-09 or the ~~person~~individual has at least twice been
12 prohibited from operating a snowmobile under this chapter, the offense is a class B
13 misdemeanor. The court shall impose a minimum fine of four hundred fifty dollars and,
14 as a condition of that ~~person's~~individual's probation, shall prohibit that ~~person~~individual
15 from operating a snowmobile on all public land or private land with public access for
16 two years from the date of the sentence.

17 **SECTION 23. AMENDMENT.** Section 43-45-06 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **43-45-06. Addiction counseling practice - Exemptions.**

- 20 1. ~~Nothing in this~~This chapter may be construed to~~does not~~ prevent any ~~person~~individual
21 from doing work within the standards and ethics of that ~~person's~~individual's profession
22 and calling, ~~provided that~~if the ~~person~~individual does not represent to the public, by
23 title or by use of the initials L.A.C., that the ~~person~~individual is engaging in addiction
24 counseling. A licensed clinical psychologist, a doctoral candidate in psychology, or an
25 individual with a master's degree in social work may provide addiction counseling
26 services.
- 27 2. ~~Nothing in this~~This chapter may be construed to~~does not~~ prevent addiction counseling
28 trainees or interns in board-approved programs from engaging in addiction counseling
29 related to training.

30 **SECTION 24. AMENDMENT.** Subsection 17 of section 50-06-05.1 of the North Dakota
31 Century Code is amended and reenacted as follows:

1 17. To act as the official agency of the state in the administration of the supplemental
2 nutrition assistance program and to direct and supervise county administration of that
3 program. Provided, however, that the department with the consent of the budget
4 section of the legislative management may terminate the program if the rate of federal
5 financial participation in administrative costs provided under Public Law 93-347 is
6 decreased or limited, or if the state or counties become financially responsible for all or
7 a portion of the coupon bonus payments under the Food Stamp Act. ~~Unless at least~~
8 ~~seven years has elapsed since the most recent felony conviction that has as an~~
9 ~~element the possession, use, or distribution of a controlled substance, the department~~
10 ~~shall deny assistance under the supplemental nutrition assistance program to any~~
11 ~~individual who has been convicted of a felony offense that has as an element the~~
12 ~~possession, use, or distribution of a controlled substance as defined in section 102(6)~~
13 ~~of the Controlled Substances Act [21 U.S.C. 802(6)].~~

14 **SECTION 25. PRETRIAL SERVICES DIVISION PILOT PROJECT - REPORT TO**

15 **LEGISLATIVE ASSEMBLY.** The department of corrections and rehabilitation may establish a
16 pretrial services program as a pilot project in one or more judicial districts during the biennium
17 beginning July 1, 2017, and ending June 30, 2019. The pretrial services pilot project must
18 involve coordination among the department, the judicial branch, and state and local law
19 enforcement agencies for the provision of pretrial services by the department for the district
20 courts to individuals charged with felony offenses. Pretrial services include risk assessments,
21 background and criminal history background investigations, recommendations for conditions of
22 pretrial release, monitoring and supervision of individuals on pretrial release for compliance with
23 pretrial conditions to assure the individual's appearance at all court proceedings, and reporting
24 violations of pretrial release conditions to the district court. The department and the judicial
25 branch shall provide a report of the process and outcome measures of the pretrial services
26 program and recommendations, together with any legislation required to implement the
27 recommendations, to the sixty-sixth legislative assembly.