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Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2107

Introduced by

Judiciary Committee

(At the request of the Attorney General)

A BILL for an Act to create and enact sections 12.1-17-14 and 62.1-02-15 of the North Dakota Century Code, relating to shooting offenses and drug trafficking; to amend and reenact sections 12.1-08-02, 12.1-17-01, 12.1-32-02.1, 12.1-32-07.4, 39-10-71, and 62.1-02-01 of the North Dakota Century Code, relating to sentences for crimes committed with firearms and for fleeing law enforcement; ~~to repeal section 12.1-23-02.1 of the North Dakota Century Code, relating to mandatory prison terms for certain offenses;~~ and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-02. Preventing arrest or discharge of other duties.

1. A person is guilty of a class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another for a misdemeanor or infraction, or from discharging any other official duty, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty. A person is guilty of a class C felony if, with intent to prevent a public servant from effecting an arrest of himself or another for a class A, B, or C felony, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting such an arrest.
2. It is a defense to a prosecution under this section that the public servant was not acting lawfully, but it is no defense that the defendant mistakenly believed that the public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully.

3. A conviction under this section carries a presumption of a jail sentence of at least fourteen days and, if there is an underlying conviction, the presumed jail sentence ~~must be consecutive~~may not be served concurrently to any jail sentence for the underlying conviction. If the sentencing court does not impose ~~a~~at least the presumed minimum term of imprisonment, the court shall justify the reason for a departure from the presumptive jail sentence within the judgment.

SECTION 2. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
   a. Willfully causes bodily injury to another human being; or
   b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
   a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.
   b. A class B misdemeanor except as provided in subdivision a.
3. A conviction under subdivision a of subsection 2 of this section carries a presumption of a jail sentence of at least thirty days and if there is an underlying conviction the presumption ~~must be consecutive~~may not be served concurrently to any jail sentence for the underlying conviction. If the sentencing court does not impose ~~a~~at least the presumptive minimum term of imprisonment, the court shall justify the reasoning for a departure from the presumptive jail sentence within the judgment.

SECTION 3. Section 12.1-17-14 of the North Dakota Century Code is created and enacted as follows:

12.1-17-14. Shooting at inhabited dwelling or camper; or occupied structure, vehicle, or aircraft - Penalty.

Any person who willfully discharges a firearm at an inhabited dwelling, occupied structure, occupied motor vehicle, occupied aircraft, or inhabited camper is guilty of a class B felony. As used in this section, "inhabited" means currently used for dwelling purposes, whether occupied or not.

SECTION 4. 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:
   a. 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, or destructive device~~, or firearm~~; or
   b. The offender possesses or has within immediate reach and control a dangerous weapon, explosive, or destructive device~~, or firearm~~ while in the course of committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.
2. This requirement applies only when possession of a dangerous weapon, explosive, or 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:
   a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
   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.
3. This section applies even when being armed is an element of the offense for which the offender is convicted.
4. 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 5. AMENDMENT. Section 12.1-32-07.4 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-07.4. Presumptive probation.

1. The sentencing court shall sentence an individual who has pled guilty to, or has been found guilty of, a class C felony offense or class A misdemeanor offense to a term of probation at the time of initial sentencing, except for an offense involving domestic violence; an offense subject to registration under section 12.1-32-15; an offense involving a firearm or dangerous weapon, explosive, or incendiary device; an offense in violation of section 12.1-08-02, subdivision a of subsection 2 of section 12.1-17-01, or section 39-10-71; or if a mandatory term of incarceration is required by law.
2. The sentencing court may impose a sentence of imprisonment if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. Aggravating factors include:
   a. That the individual has plead guilty to, or has been found guilty of, a felony offense or class A misdemeanor offense prior to the date of the commission of the offense or offenses charged in the complaint, information, or indictment;
   b. The age and vulnerability of the victim, whether the individual was in a position of responsibility or trust over the victim, or whether the individual abused a public position of responsibility or trust; or
   c. If the individual used threats or coercion in the commission of the offense.
3. This section does not preclude the sentencing court from deferring imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an individual to a term of incarceration with credit for time spent in custody if execution of the sentence is suspended.

SECTION 6. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

39-10-71. Fleeing or attempting to elude a peace officer - Penalty.

1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a:

a. Class A misdemeanor for a first offense and a class C felony for a subsequent offense within three years;

b. Class C felony if the driver violates this section while willfully fleeing during or after the commission of a felony; or

c. Class C felony if, at any time during the flight or pursuit, the driver willfully operates the vehicle in a manner constituting an inherent risk of death or serious bodily injury to a third person.

2. A signal complies with this section if the signal is perceptible to the driver and:

a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or

b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.

3. A conviction under this section carries a presumption of a jail sentence of at least thirty days and, if there is an underlying conviction, the presumed jail sentence ~~must be consecutive~~may not be served concurrently to any jail sentence for the underlying conviction. If the sentencing court does not impose ~~a~~at least the presumptive minimum term of imprisonment, the court shall justify the reason for a departure from the presumptive jail sentence within the judgment.

SECTION 7. AMENDMENT. Section 62.1-02-01 of the North Dakota Century Code is amended and reenacted as follows:

62.1-02-01. Persons who are not to possess firearms - Penalty.

1. a. A person who has been convicted anywhere of a felony offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent felony offense of another state or the federal government is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of ten years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.

b. A person who has been convicted anywhere of a felony offense of this or another state or the federal government not provided for in subdivision a or who has been

convicted of a class A misdemeanor offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another state or the federal government and the offense was committed while using or possessing a firearm, a dangerous weapon, or, as defined in section 12.1-01-04, a destructive device or an explosive, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of five years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.

c. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in this state or elsewhere by a court of competent jurisdiction, other than a person who has had the petition that provided the basis for the diagnosis, confinement, or commitment dismissed under section 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or as a mentally deficient individual, is prohibited from purchasing a firearm or having one in possession or under control. This limitation does not apply to a person who has not suffered from the disability for the previous three years or who has successfully petitioned for relief under section 62.1-02-01.2.

d. A person under the age of eighteen years may not possess a handgun except that such a person, while under the direct supervision of an adult, may possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

e. A person who is a fugitive from justice is prohibited from owning a firearm or having a firearm in possession or under control.

f. ~~A person who is an unlawful user of or addicted to any controlled substance as defined in sections 19-03.1-05, 19-03.1-07, 19-03.1-09, or 19-03.1-11.~~

~~g.~~ A person who, being an alien, is illegally or unlawfully in the United States is prohibited from owning a firearm or having a firearm in possession or under control.

~~h.~~g. A person who has been convicted in any court of a misdemeanor crime of domestic violence is prohibited from owning a firearm or having a firearm in possession or under control. For the purposes of this section a "misdemeanor

crime of domestic violence" means the willful infliction of bodily injury against an individual who:

(1) Is a current or former spouse or intimate partner of the victim, or individual similarly situated to a spouse of the victim;

(2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; or

(3) Shares a child in common with the victim.

~~i.~~h. A person who has been discharged from the armed forces under dishonorable conditions is prohibited from owning a firearm or having a firearm in possession or under control.

~~j.~~i. A person ~~who~~is prohibited from owning a firearm or having a firearm in possession or under control if that person is subject to a court order that:

(1) Was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(2) Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(3) (a) Includes a finding the person represents a credible threat to the physical safety of the intimate partner or child; or

(b) By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

2. A person who violates subdivision~~subdivisions~~ a ~~or~~, b, e, f, g, h, or i~~, or j~~ of subsection 1 is guilty of a class C felony, and a person who violates subdivision c or d of subsection 1 is guilty of a class A misdemeanor.

3. A person who violates subdivision a or b of subsection 1 and has three or more prior felony convictions on separate occasions under any provisions in chapter 12.1-16, 12.1-17, 12.1-18, ~~12.1-19,~~or 12.1-20, ~~12.1-21~~section 12.1-21-01, chapter 12.1-22, ~~12.1-23, 12.1-24, 12.1-25, or~~ subsection 1 of 19-03.1-23, or a similar offense from another court in North Dakota~~,~~ or a court of record in the United States~~, or a tribal~~

~~court~~, is guilty of a class B felony, and the court shall impose a minimum sentence of five years' imprisonment.

~~2.~~4. For the purposes of this section, "conviction" means a determination that the person committed one of the above-mentioned crimes upon a verdict of guilt, a plea of guilty, or a plea of nolo contendere even though:

a. The court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02;

b. The court deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02;

c. The court placed the person on probation;

d. The person's conviction has been reduced in accordance with subsection 9 of section 12.1-32-02 or section 12.1-32-07.1;

e. Sentence dispositions, sentence reductions, or offense determinations equivalent to this section were imposed or granted by a court, board, agency, or law of another state or the federal government; or

f. The person committed an offense equivalent to an offense described in subdivision a or b of subsection 1 when that person was subject to juvenile adjudication or proceedings and a determination of a court under chapter 27-20.4 or of a court of another state or the federal government was made that the person committed the delinquent act or offense.

~~3.~~5. For purposes of subsection 1, unless the pardon, expungement, or restoration of civil rights expressly provides that a person may not ship, transport, possess, or receive firearms, a person is not considered to have been convicted of a crime under subdivision a, b, or g of subsection 1 if:

a. The conviction has been expunged or set aside; or

b. The conviction is for an offense for which the person has been pardoned or has had civil rights restored if the law of the applicable jurisdiction provides for the loss of civil rights for the offense.

6. A felon who is not sentenced under section 12.1-32-09.1 may possess a rifle that has a barrel sixteen inches [40.72 centimeters] or longer or a shotgun that has a barrel eighteen inches [45.72 centimeters] or longer and which is one of the following:

a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured before 1899.

b. A replica of any firearm described in subdivision a, if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

c. A muzzleloading rifle or muzzleloading shotgun designed to use black powder or a black powder substitute and which cannot use fixed ammunition.

SECTION 8. Section 62.1-02-15 of the North Dakota Century Code is created and enacted as follows:

62.1-02-15. Possession of a firearm in furtherance of a felony crime of violence or drug trafficking crime.

1. Any person who, during and in relation to any felony crime of violence or drug trafficking crime, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, is guilty of a class B felony ~~and, consecutive~~. A conviction under this section carries a presumptive minimum term of imprisonment which may not run concurrently to the punishment provided for the felony crime of violence or drug trafficking crime. The presumptive minimum term of imprisonment is:
   a. ~~Must be sentenced to a term of imprisonment of not~~Not less than three years;
   b. ~~Must be sentenced to a term of imprisonment of not~~Not less than five years if the firearm is brandished; or
   c. ~~Must be sentenced to a term of imprisonment of not~~Not less than seven years if the firearm is discharged.
2. If the firearm possessed by a person convicted of a violation of this section is a short-barreled rifle, short-barreled shotgun, machine gun, submachine gun, or fully automatic rifle, ~~or is equipped with a silencer,~~ the ~~person must be sentenced to a~~presumptive minimum term of imprisonment ~~of~~is not less than seven years.
3. For a violation of this section which occurs after a previous conviction under this section has become final, the person is guilty of a class A felony and ~~must be~~

~~sentenced to a~~the presumptive minimum term of imprisonment ~~of~~is not less than ten years.

4. Notwithstanding any other provision of law:

a. A term of imprisonment imposed on a person under this section may not run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the felony crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed; ~~and~~

b. An offender who is convicted of a crime under this section 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. For purposes of this subsection, confinement does not include placement in a halfway house, treatment facility, or other community placement; and

c. If the sentencing court does not impose at least the presumptive minimum term of imprisonment for an offense under this section, the court shall justify the reasoning for a departure from the presumptive minimum sentence within the judgment.

5. For purposes of this ~~subsection, the term "drug~~section:

a. "Brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another individual, in order to intimidate that individual, regardless of whether the firearm is directly visible to that individual.

b. "Drug trafficking crime" means a violation of subsection 1 or 3 of section 19-03.1-23.

~~6. For the purpose of this subsection, the term "felony~~

c. "Felony crime of violence" means a felony violation of section 12.1-16-01, 12.1-16-02, 12.1-16-03, 12.1-17-01.2, 12.1-17-02, 12.1-17-03, 12.1-17-04, 12.1-17-12, 12.1-18-01, 12.1-18-02, 12.1-20-03, 12.1-20-04, 12.1-20-07, 12.1-20-12.3, 12.1-21-01, 12.1-21-02, 12.1-22-01, or 12.1-22-02~~, 12.1-22-03, 12.1-22-04, 12.1-23-02, or 12.1-23-06~~.

~~**SECTION 8. REPEAL.** Section 12.1-23-02.1 of the North Dakota Century Code is repealed.~~