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Sixty-eighth
Legislative Assembly
of North Dakota

SECOND ENGROSSMENT
with House Amendments
REENGROSSED SENATE BILL NO. 2107

Introduced by

Judiciary Committee

(At the request of the Attorney General)

A BILL for an Act to amend and reenact sections 12.1-17-03, 12.1-32-02.1, and 12.1-32-07.4 of the North Dakota Century Code, relating to reckless endangerment, mandatory prison terms for armed offenders, and presumptive probation; to provide for a legislative management study; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-17-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-03. Reckless endangerment.

A person is guilty of an offense if ~~he~~the person creates a substantial risk of serious bodily injury or death to another. The offense is a class B felony if the offense is committed by intentionally or knowingly discharging a firearm. The offense is a C felony if the circumstances manifest ~~his~~the person's extreme indifference to the value of human life. Otherwise it is a class A misdemeanor. There is risk within the meaning of this section if the potential for harm exists, whether or not a particular person's safety is actually jeopardized.

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:
   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, destructive device, or firearm; or

b. The offender possesses or has within immediate reach and control a dangerous weapon, explosive, 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, 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.

c. If the court finds the offender is a special dangerous or habitual offender under subdivision a, b, c, or d of subsection 1 of section 12.1-32-09 and the offender violates subsection 1 of this section, the court shall impose a minimum sentence of ten years' imprisonment, if the offense is a class AA, class A, or class B felony. If the offense is a class C felony, the court shall impose a minimum sentence of seven years' imprisonment. An offender sentenced under this subdivision is not eligible for parole any earlier than eighteen months before the expiration of the mandatory sentence.

3. This section applies even when being armed is an element of the offense for which the offender is convicted.

4. ~~An~~Unless the offender is sentenced under subdivision c of subsection 2, 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 12.1-32-07.4 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, section 12.1-17-03, 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 4. LEGISLATIVE MANAGEMENT STUDY - FIREARM POSSESSION. During the 2023-24 interim, the legislative management shall consider studying those provisions of the North Dakota Century Code that prohibit certain individuals from possessing a firearm. The study may include an examination of the state's firearm and weapon possession prohibitions as compared to the federal regulations. The study must include an examination of whether the category of individuals prohibited from possessing a firearm by statute should be maintained as is, narrowed, or expanded. The study must include input from the attorney general, the supreme court, the association of counties, the league of cities, the state's attorney association, the association of criminal defense lawyers, the peace officers association, and the national rifle association. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.