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Sixty-eighth
Legislative Assembly
of North Dakota

SECOND ENGROSSMENT
with Conference Committee Amendments
REENGROSSED 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, 12.1-17-03, 12.1-32-02.1, 12.1-32-07.4, 12.1-32-09.1, and 39-10-71 of the North Dakota Century Code, relating to sentences for crimes committed with firearms and for fleeing law enforcement, reckless endangerment, simple assault, 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 12.1-08-02 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 sentence of incarceration of at least fourteen days and, if there is an underlying conviction, the presumed sentence of incarceration may not be served concurrently to any sentence of incarceration for the underlying conviction. If the sentencing court, in the exercise of the court's discretion does not impose at least the presumed minimum term of incarceration, the court shall justify the reason for a departure from the presumptive 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 carries a presumption of a sentence of incarceration of at least thirty days and if there is an underlying conviction the presumption may not be served concurrently to any sentence of incarceration for the underlying conviction. If the sentencing court, in the exercise of the court's discretion, does not impose at least the presumptive minimum term of incarceration, the court

shall justify the reasoning for a departure from the presumptive 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 reckless endangerment as provided in section 12.1-17-03. As used in this section, "inhabited" means currently used for dwelling purposes, whether occupied or not.

SECTION 4. 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 class 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 5. 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.
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.
5. This section does not apply to an offender convicted under section 62.1-02-15.

SECTION 6. 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 7. 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.

1. Except 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, subsection 2 of section 12.1-17-02, section 12.1-17-14, section 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~~incarceration is not eligible for release from ~~confinement~~incarceration on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted.
2. 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.
3. 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.
4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment

or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.

5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation.

SECTION 8. 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 sentence of incarceration of at least thirty days and, if there is an underlying conviction, the presumed sentence of incarceration may not be served concurrently to any sentence of incarceration for the underlying conviction. If the sentencing court, in the exercise of the court's discretion, does not impose at least the presumptive minimum term of incarceration, the court

shall justify the reason for a departure from the presumptive sentence within the judgment.

SECTION 9. 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, knowingly possesses, within the person's proximity, or uses a firearm during or in relation to any felony crime of violence or drug trafficking crime, is guilty of a class B felony. A conviction under this section carries a presumptive minimum term of incarceration which may not run concurrently to the punishment provided for the underlying felony crime of violence or drug trafficking crime. The presumptive minimum term of incarceration is:
   a. Not less than three years if the firearm is possessed within the person's proximity;
   b. Not less than five years if the firearm is brandished; or
   c. 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, the presumptive minimum term of incarceration 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 the presumptive minimum term of incarceration is not less than ten years.
4. Notwithstanding any other provision of law:
   a. An offender who is convicted of a crime under this section is not eligible for release from incarceration on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted. Incarceration does not include placement in a halfway house, treatment facility, or other community placement; and
   b. If the sentencing court, in the exercise of the court's discretion, does not impose at least the presumptive minimum term of incarceration 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 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.

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.

SECTION 10. LEGISLATIVE MANAGEMENT STUDY - FIREARM POSSESSION. During the 2023-24 interim, the legislative management shall consider studying those provisions of the North Dakota Century Code which 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 in its current form, narrowed, or expanded. The study must include input from the attorney general, the supreme court, the North Dakota association of counties, the North Dakota league of cities, the North Dakota state's attorneys' association, the North Dakota association of criminal defense lawyers, the North Dakota 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.