

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

ENGROSSED SENATE BILL NO. 2128

Introduced by

Judiciary Committee

(At the request of the Attorney General)

1 A BILL for an Act to amend and reenact sections 12-44.1-01, 12-47-18.1, 12-48.1-01,
2 12-48.1-02, 12-54.1-01, 12-54.1-03, 12.1-08-02, 12.1-17-01, 12.1-32-02.1, 12.1-32-09.1, and
3 39-10-71 of the North Dakota Century Code, relating to transparent sentencing of criminal
4 offenders, transfer of persons between correctional facilities, work release eligibility and
5 conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement
6 officers, and sentences for preventing arrest; to provide a legislative management report; ~~and to~~
7 provide a penalty; and to provide for application.

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

9 **SECTION 1. AMENDMENT.** Section 12-44.1-01 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **12-44.1-01. Definitions.**

12 As used in this chapter:

- 13 1. "Administrator" means the sheriff, chief of police, administrator, superintendent,
14 director, or other individual serving as the chief executive officer of a correctional
15 facility.
- 16 2. "Adult lockup" means a secure temporary-hold nonresidential facility that does not
17 hold individuals overnight and includes a facility with cuffing rails or cuffing benches.
- 18 3. "Correctional facility" means a city or county jail or detention center, regional
19 corrections center, or juvenile detention center for the detention or confinement of
20 persons in accordance with law. The use of the term does not imply and may not be

1 used to require the provision of services including treatment, counseling, career and
2 technical education, or other educational services, except as may otherwise be
3 required or provided for under this chapter. The term does not include transitional
4 facilities.

5 4. "Correctional facility staff" means correctional personnel with titles such as jailer,
6 deputy, counselor, correctional officer, or any other title, whose duties include the
7 ongoing supervision of inmates in a correctional facility.

8 5. "Court holding facility" means a secure facility, other than an adult correctional facility
9 or adult lockup, used to temporarily detain individuals before or after a detention
10 hearing or other court proceedings, and is not used to detain individuals overnight.

11 6. "Individual justice planning" means a process to identify, accommodate, and develop
12 appropriate consequences for behaviors caused by or related to an individual's mental
13 or cognitive impairment.

14 7. "Inmate" means any individual, whether sentenced or unsentenced, who is detained or
15 confined in a correctional facility. The term does not include an individual who is under
16 the supervision of the correctional facility and is supervised under home detention,
17 electronic monitoring, or a similar program that does not involve physical detention or
18 confinement in the facility.

19 8. "Jail" means a correctional facility, including a county or city jail or a regional
20 corrections center.

21 9. "Juvenile detention center" means a publicly maintained correctional facility for the
22 detention of juveniles. The term does not include the North Dakota youth correctional
23 center.

24 10. "Regional corrections center" means a correctional facility established and maintained
25 by more than one county or city, or a combination of counties and cities, for the
26 confinement of inmates.

27 11. "Trained correctional facility staff" means correctional personnel who have completed
28 a course of training approved by the peace officer standards and training board.

29 12. "Transitional facility" means an organization or facility, operating under contract, in
30 partnership with, or under the direction of the department of corrections and

1 rehabilitation or a correctional facility, which offers education, counseling, or other
2 programs, with minimum security housing, for offenders.

3 **SECTION 2. AMENDMENT.** Section 12-47-18.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **12-47-18.1. Transfer of persons between correctional facilities.**

6 ~~The~~Subject to statutory limitations, the director of the department of corrections and
7 rehabilitation may transfer an offender to any facility under the department's control or contract
8 to transfer an offender to another correctional facility for purposes of safety, security, discipline,
9 or medical care, or when the director determines it may be in the best interests of the public, the
10 ~~offender, or the department.~~

11 **SECTION 3. AMENDMENT.** Section 12-48.1-01 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 ~~12-48.1-01. Director may provide certain~~**12-48.1-01. Work release and education or rehabilitation**
14 **services for offenders.**

15 1. The director of the department of corrections and rehabilitation may participate in
16 programs in which eligible offenders committed to the legal and physical custody of
17 the department may be gainfully employed or participate in an educational or other
18 rehabilitation program either in or outside facilities under the control of the department.
19 ~~The~~For eligible offenders, the director may obtain or contract with separate facilities
20 with minimum security for housing offenders granted release privileges. In areas
21 where facilities are not within reasonable proximity of the place of employment or
22 training of an offender so released, the director may arrange for the housing of the
23 offender in local confinement facilities.

24 2. For purposes of this chapter, an "eligible offender" means an offender who:

25 a. In accordance with section 12.1-32-09.1, has served eighty-five percent of the
26 offender's sentence of imprisonment or had the offender's sentences commuted;
27 or

28 b. Is serving a sentence only for one or more violations of section 12.1-06.1-08,
29 12.1-11-01, 12.1-11-07, 12.1-15-02, or 12.1-15-03; subdivision c of subsection 1
30 of section 12.1-21-02; section 12.1-21-03.1; subdivision b of subsection 1 of
31 section 12.1-21-05; section 12.1-21-06.1, 12.1-22-05, 12.1-23-02, 12.1-23-04,

12.1-23-07, 12.1-23-08, or 12.1-24-01; subsection 7 of section 19-03.1-23; or
section 19-03.4-03 or 39-08-01.

3. The department of corrections and rehabilitation shall provide to the attorney general and the legislative council each quarter a report, including the names, locations, and sentences of each individual who meets the criteria in subdivision b of subsection 2.

SECTION 4. AMENDMENT. Section 12-48.1-02 of the North Dakota Century Code is amended and reenacted as follows:

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

1. An eligible offender, except an offender sentenced to a penalty of life imprisonment without the opportunity for parole as the result of conviction of a class AA felony under section 12.1-20-03 or of murder under section 12.1-16-01, ~~may be eligible for~~ programs participate in a program outside ~~facilities~~ a facility under the control of the department of corrections and rehabilitation when the department determines, with a high degree of reliability, the eligible offender is not a high security risk, not likely to commit a crime of violence, not likely to escape, and is likely to be rehabilitated by such program. An eligible offender may apply to the director of the department for permission to participate in such programs.
2. The director of the department may authorize participation in outside programs for an eligible offender who has ten years or less remaining on a sentence and has been committed to the legal and physical custody of the department. The parole board, with the approval of the director of the department, may authorize participation in outside programs for eligible offenders who have more than ten years remaining on a sentence and have been committed to the legal and physical custody of the department.
3. The offender shall submit a signed application which must include a statement that the eligible offender agrees to abide by all terms and conditions of the particular plan adopted for the eligible offender, and must include such other information as the parole board or the director of the department may require.
4. The parole board may approve, disapprove, or defer action on an application approved by the director of the department. The director of the department or the parole board may revoke approval of the application at any time after granting the

1 application. The department shall prescribe rules of conduct and treatment for all
2 eligible offenders on release programs and shall prescribe objective and subjective
3 criteria for which revocation of approval to participate in release programs is
4 mandatory. A rule violation indicating the eligible offender likely will commit a crime of
5 violence or is likely to attempt to escape must result in revocation of approval to
6 participate in release programs. The department shall document all violations of the
7 rules of conduct and treatment.

8 5. The director of the department may grant short leaves, not to exceed seventy-two
9 hours, to eligible offenders who have been committed to the legal and physical
10 custody of the department for ten years or less. The parole board, upon the approval
11 of the director of the department, may grant short leaves, not to exceed seventy-two
12 hours, to offenders committed to the legal and physical custody of the department for
13 more than ten years. Short leaves granted under this subsection may not be granted
14 consecutively to the same individual.

15 6. All rules adopted by the parole board and the director of the department relating to
16 release programs and short leaves must conform, to the extent allowable by law, with
17 executive order no. 11755 issued by the President of the United States.

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

20 **12-54.1-01. Sentence reduction for good time.**

21 ~~Except as provided under~~ Subject to the requirements of section 12.1-32-09.1, an offender
22 committed to the legal and physical custody of the department of corrections and rehabilitation
23 is eligible to earn sentence reductions based upon satisfactory fulfillment of performance criteria
24 established through department and penitentiary rules. Performance criteria ~~includes~~ must
25 include participation in court-ordered or staff-recommended treatment and education programs
26 and good work performance. The department may credit an offender committed to the legal and
27 physical custody of the department who is eligible for sentence reduction up to five days good
28 time per month for each month of the sentence ~~imposed~~ served, up to a maximum of fifteen
29 percent of the offender's sentence. Sentence reductions may not be awarded before they are
30 earned. The department may credit an offender with sentence reduction for time spent in
31 custody before sentencing and commitment to the legal and physical custody of the

1 department. The department may not credit an offender with any sentence reduction for time
2 spent on probation under the supervision and management of the department.

3 **SECTION 6. AMENDMENT.** Section 12-54.1-03 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **12-54.1-03. Meritorious conduct sentence reduction.**

6 ~~Except as provided under section 12-1-32-09.1, offenders~~Offenders committed to the legal
7 and physical custody of the department of corrections and rehabilitation may receive a lump
8 sum or a monthly rate of meritorious conduct sentence reduction for outstanding performance
9 or heroic acts ~~or as a special control and security measure~~, as provided by penitentiary and
10 department rules and upon written recommendation of a department multidisciplinary team.
11 Meritorious sentence reductions are in addition to sentence reductions under section
12 12-54.1-01 and may be made only after a written recommendation is made by the warden and
13 approved by the director of the department. Any sentence reduction ~~for special control or~~
14 ~~security measures~~under this section may not exceed ~~two days~~one day good time per month per
15 offender.

16 **SECTION 7. AMENDMENT.** Section 12.1-08-02 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **12.1-08-02. Preventing arrest or discharge of other duties.**

19 ~~4.~~ A person is guilty of a class A misdemeanor if, with intent to prevent a public servant
20 from effecting an arrest of himself or another for a misdemeanor or infraction, or from
21 discharging any other official duty, he creates a substantial risk of bodily injury to the public
22 servant or to anyone except himself, or employs means justifying or requiring substantial force
23 to overcome resistance to effecting the arrest or the discharge of the duty. A person is guilty of a
24 class C felony if, with intent to prevent a public servant from effecting an arrest of himself or
25 another for a class A, B, or C felony, he creates a substantial risk of bodily injury to the public
26 servant or to anyone except himself, or employs means justifying or requiring substantial force
27 to overcome resistance to effecting such an arrest.

28 ~~2-1.~~ It is a defense to a prosecution under this section that the public servant was not
29 acting lawfully, but it is no defense that the defendant mistakenly believed that the
30 public servant was not acting lawfully. A public servant executing a warrant or other
31 process in good faith and under color of law shall be deemed to be acting lawfully.

- 1 2. A conviction under this section carries a penalty of at least fourteen days'
2 imprisonment and, if there is an underlying conviction, the imprisonment must be
3 consecutive to any sentence of imprisonment for the underlying conviction.

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

6 **12.1-17-01. Simple assault.**

- 7 1. A person is guilty of an offense if that person:
8 a. Willfully causes bodily injury to another human being; or
9 b. Negligently causes bodily injury to another human being by means of a firearm,
10 destructive device, or other weapon, the use of which against a human being is
11 likely to cause death or serious bodily injury.
12 2. The offense is:
13 a. A class C felony when the victim is a peace officer or correctional institution
14 employee acting in an official capacity, which the actor knows to be a fact; an
15 employee of the state hospital acting in the course and scope of employment,
16 which the actor knows to be a fact, and the actor is an individual committed to or
17 detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a
18 judicial proceeding; or a member of a municipal or volunteer fire department or
19 emergency medical services personnel unit or emergency department worker in
20 the performance of the member's duties.
21 b. A class B misdemeanor except as provided in subdivision a.
22 c. A conviction under subdivision a carries a penalty of at least thirty days'
23 imprisonment and, if there is an underlying conviction, the imprisonment must be
24 consecutive to any sentence of imprisonment for the underlying conviction.

25 **SECTION 9. AMENDMENT.** Section 12.1-32-02.1 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **12.1-32-02.1. Mandatory prison terms for armed offenders.**

- 28 1. Notwithstanding any other provision of this title, a term of imprisonment must be
29 imposed upon an offender and served without benefit of parole when:

- 1 a. In the course of committing an offense, the offender inflicts or attempts to inflict
- 2 bodily injury upon another, threatens or menaces another with imminent bodily
- 3 injury with a dangerous weapon, explosive, destructive device, or firearm; or
- 4 b. An offender prohibited from possessing a firearm under section 62.1-02-01
- 5 possesses a firearm while in the course of committing any felony offense under
- 6 subsection 1; or 3; or 7 of section 19-03.1-23.
- 7 2. This requirement applies only when possession of a dangerous weapon, explosive,
- 8 destructive device, or firearm has been charged and admitted or found to be true in
- 9 the manner provided by law, and must be imposed as follows:
- 10 a. If the offense for which the offender is convicted is a class AA, class A, or class B
- 11 felony, the court shall impose a minimum sentence of four years' imprisonment.
- 12 b. If the offense for which the offender is convicted is a class C felony, the court
- 13 shall impose a minimum sentence of two years' imprisonment.
- 14 3. This section applies even when being armed is an element of the offense for which the
- 15 offender is convicted.
- 16 4. This section applies even if the offender is prosecuted for a violation of section
- 17 62.1-02-01 for the same conduct.
- 18 5. An offender serving a sentence subject to this section ~~may be eligible to participate in~~
- 19 ~~a release program under section 12-48.1-02 during the last six months of the~~
- 20 ~~offender's sentence~~ is not an eligible offender under subdivision b of subsection 2 of
- 21 section 12-48.1-01.

22 **SECTION 10. AMENDMENT.** Section 12.1-32-09.1 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **12.1-32-09.1. ~~Sentencing of violent offenders~~ Truth in sentencing.**

- 25 1. Except as provided under ~~section~~ sections 12-48.1-01 and 12-48.1-02 and pursuant to
- 26 ~~rules adopted by the department of corrections and rehabilitation~~, an offender who is
- 27 sentenced as a dangerous special offender or habitual offender under section
- 28 12.1-32-09, or is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02,
- 29 subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1
- 30 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01,
- 31 subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the

1 offenses, and who receives a sentence of imprisonment is not eligible for release from
2 confinement on any basis until eighty-five percent of the sentence imposed by the
3 court has been served or the sentence is commuted. All other offenders are not
4 eligible for release from confinement on any basis until:

5 a. Fifty percent of the sentence imposed by the court is served, not including any
6 time credited under section 12-54.1-01, and the offender is paroled;

7 b. The offender's sentence is commuted and the offender served the commuted
8 sentence;

9 c. Eighty-five percent of the sentence imposed by the court is served; or

10 d. The offender is pardoned.

11 2. In the case of an offender who is sentenced to a term of life imprisonment with
12 opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence
13 imposed" means the remaining life expectancy of the offender on the date of
14 sentencing. The remaining life expectancy of the offender must be calculated on the
15 date of sentencing, computed by reference to a recognized mortality table as
16 established by rule by the supreme court.

17 3. Notwithstanding this section, an offender sentenced under subsection 1 of section
18 12.1-32-01 may not be eligible for parole until the requirements of that subsection
19 have been met.

20 4. ~~An offender who is convicted of a class C felony in violation of section 12.1-17-02, or~~
21 ~~an attempt to commit the offense, and who has received a sentence of imprisonment~~
22 ~~or a sentence of imprisonment upon revocation of probation before August 1, 2015, is~~
23 ~~eligible to have the offender's sentence considered by the parole board.~~

24 5. ~~Notwithstanding subsection 4, this section does not apply to a sentence imposed upon~~
25 ~~revocation of probation.~~ For purposes of this section "confinement" does not include
26 placement or residence in a transitional facility, halfway house, or other organization or
27 facility, operating under contract, in partnership with, or under the direction of the
28 department of corrections and rehabilitation or other correctional facility, that offers
29 education, counseling, or other programs, with minimum security housing, for
30 offenders.