

2025 HOUSE JUDICIARY

HB 1225

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Room JW327B, State Capitol

HB 1225
1/27/2025

A BILL for an Act to amend and reenact sections 12.1-17-03 and 12.1-32-09 of the North Dakota Century Code, relating to reckless endangerment and habitual offenders; and to provide a penalty.

9:40 a.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Hoverson, Johnston, McLeod, Olson, Satrom, Tveit, VanWinkle, Wolff, Schneider

Members Absent: Representative Henderson

Discussion Topics:

- Application to non-firearm related crimes
- Maximum penalty for habitual offenders

9:42 a.m. Rozanna Larson, Ward County State's Attorney, testified in favor and provided testimony #31819.

9:48 a.m. Jonathan Byers, representing the North Dakota State's Attorneys, testified in favor.

9:50 a.m. Representative Vetter moved amendment LC: 25.0996.01001, testimony #31704, and further amend by inserting on line 10 "or used another dangerous weapon."

9:51 a.m. Representative Tveit seconded the motion.

| Representatives | Vote |
|-----------------------------------|------|
| Representative Lawrence R. Klemin | Y |
| Representative Karen Karls | Y |
| Representative Steve Vetter | Y |
| Representative Nels Christianson | Y |
| Representative Donna Henderson | A |
| Representative Jeff Hoverson | Y |
| Representative Daniel Johnston | Y |
| Representative Carrie McLeod | Y |
| Representative SuAnn Olson | Y |
| Representative Bernie Satrom | Y |
| Representative Mary Schneider | Y |
| Representative Bill Tveit | Y |
| Representative Lori VanWinkle | Y |
| Representative Christina Wolff | Y |

9:52 a.m. Motion Passed 13-0-1

9:53 a.m. Representative Wolff moved a Do Pass as Amended.

9:53 a.m. Representative Schneider seconded the motion.

| Representatives | Vote |
|-----------------------------------|-------------|
| Representative Lawrence R. Klemin | Y |
| Representative Karen Karls | Y |
| Representative Steve Vetter | N |
| Representative Nels Christianson | Y |
| Representative Donna Henderson | A |
| Representative Jeff Hoverson | N |
| Representative Daniel Johnston | N |
| Representative Carrie McLeod | Y |
| Representative SuAnn Olson | Y |
| Representative Bernie Satrom | N |
| Representative Mary Schneider | Y |
| Representative Bill Tveit | N |
| Representative Lori VanWinkle | N |
| Representative Christina Wolff | Y |

9:59 a.m. Motion passed 7-6-1 and was rereferred to appropriations.

10:00 a.m. Representative Christianson will carry the bill.

Additional written testimony:

Lawrence Klemin, North Dakota Representative for District 47, submitted testimony in favor #31704.

10:00 a.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk

January 27, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1225

Introduced by

Representatives Klemin, Karls, Lefor, Vetter

Senators Myrdal, Sickler, Larson

1 A BILL for an Act to amend and reenact sections 12.1-17-03 and 12.1-32-09 of the North
2 Dakota Century Code, relating to reckless endangerment and habitual offenders; and to provide
3 a penalty.

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

7 **12.1-17-03. Reckless endangerment.**

8 ~~A person~~An individual is guilty of an offense if ~~he~~the individual creates a substantial risk of
9 serious bodily injury or death to another. The offense is a class ~~C felony~~B felony if the individual
10 uses a firearm or other dangerous weapon. The offense is a class C felony if the circumstances
11 manifest ~~his~~the individual's extreme indifference to the value of human life. Otherwise it is a
12 class A misdemeanor. There is risk within the meaning of this section if the potential for harm
13 exists, whether or not a particular person's safety is actually jeopardized.

14 **SECTION 2. AMENDMENT.** Section 12.1-32-09 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **12.1-32-09. Dangerous special offenders - Habitual offenders - Extended sentences -** 17 **Procedure.**

18 1. A court may sentence a convicted offender to an extended sentence as a dangerous
19 special offender or a habitual offender in accordance with this section upon a finding of
20 any one or more of the following:

- a. The convicted offender is a dangerous, mentally abnormal person whose conduct has been characterized by persistent aggressive behavior and the behavior makes the offender a serious danger to other persons.
- b. The convicted offender is a professional criminal who has substantial income or resources derived from criminal activity.
- c. The convicted offender is a habitual offender. The court may not make such a finding unless the offender is an adult and has previously been convicted in any state or states or by the United States of two felonies ~~of class C or above~~ committed at different times when the offender was an adult. For the purposes of this subdivision, a ~~felony~~ conviction in another state or under the laws of the United States is considered a felony ~~of class C or above~~ if it is punishable by a maximum term of imprisonment of five years or more than three hundred sixty days of imprisonment.
- d. The offender was convicted of an offense that seriously endangered the life of another person and the offender had previously been convicted of a similar offense.
- e. The offender is especially dangerous because the offender used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the offender has been pardoned on the ground of innocence must be disregarded for purposes of subdivision c. In support of findings under subdivision b, it may be shown that the offender has had control of income or property not explained as derived from a source other than criminal activity. For purposes of subdivision b, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the offender's declared adjusted gross income under chapter 57-38.

RS
3.8.4

- 1 2. The extended sentence may be imposed in the following manner:
 - 2 a. If the offense for which the offender is convicted is a class A felony, the court may
 - 3 impose a sentence up to a maximum of life imprisonment.
 - 4 b. If the offense for which the offender is convicted is a class B felony, the court may
 - 5 impose a sentence up to a maximum of imprisonment for twenty years.
 - 6 c. If the offense for which the offender is convicted is a class C felony, the court may
 - 7 impose a sentence up to a maximum of imprisonment for ten years.
- 8 3. Whenever an attorney charged with the prosecution of a defendant in a court of this
- 9 state for an alleged felony committed when the defendant was over the age of
- 10 eighteen years has reason to believe that the defendant is a dangerous special
- 11 offender or a habitual offender, the attorney, at a reasonable time before trial or
- 12 acceptance by the court of a plea of guilty, may sign and file with the court, and may
- 13 amend, a notice specifying that the defendant is a dangerous special offender or a
- 14 habitual offender who upon conviction for the felony is subject to the imposition of a
- 15 sentence under subsection 2, and setting out with particularity the reasons why the
- 16 attorney believes the defendant to be a dangerous special offender or a habitual
- 17 offender. In no case may the fact that the prosecuting attorney is seeking sentencing
- 18 of the defendant as a dangerous special offender or a habitual offender be disclosed
- 19 to the jury before a verdict. If the court finds that the filing of the notice as a public
- 20 record may prejudice fair consideration of a pending criminal matter, the court may
- 21 order the notice sealed and the notice is not subject to subpoena or public inspection
- 22 during the pendency of the criminal matter, except on order of the court, but is subject
- 23 to inspection by the defendant alleged to be a dangerous special offender or a habitual
- 24 offender and the offender's counsel.
- 25 4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a
- 26 hearing must be held, before sentence is imposed, in accordance with this subsection
- 27 as follows:
 - 28 a. By a jury, or the court if a jury is waived by the defendant, if the notice alleges
 - 29 that the defendant is a dangerous special offender under subdivision a, b, d, or e
 - 30 of subsection 1. The jury, or the court if a jury is waived, must find that the
 - 31 defendant is a dangerous special offender under one or more of these

1 subdivisions by proof beyond a reasonable doubt. However, in the case of a
2 notice alleging only subdivision e of subsection 1, the trial jury, or the trial court if
3 a jury is waived, may make a special finding of proof of this subdivision without
4 an additional hearing subsequent to a verdict or finding of guilt.

5 b. By the court if the notice alleges that the defendant is a habitual offender under
6 subdivision c of subsection 1. The court must find that the defendant is a habitual
7 offender by a preponderance of the evidence.

8 5. Except in the most extraordinary cases, the court shall obtain a presentence report
9 and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02
10 before holding a hearing under this subsection. The court shall fix a time for the
11 hearing and notice thereof must be given to the defendant and the prosecution at least
12 five days prior thereto. The court shall permit the prosecution and counsel for the
13 defendant, or the defendant if the defendant is not represented by counsel, to inspect
14 the presentence report sufficiently before the hearing as to afford a reasonable
15 opportunity for verification. In extraordinary cases, the court may withhold material not
16 relevant to a proper sentence, diagnostic opinion that might seriously disrupt a
17 program of rehabilitation, any source of information obtained on a promise of
18 confidentiality, and material previously disclosed in open court. A court withholding all
19 or part of a presentence report shall inform the parties of its action and place in the
20 record the reasons therefor. The court may require parties inspecting all or part of a
21 presentence report to give notice of any part thereof intended to be controverted. In
22 connection with the hearing, the defendant is entitled to compulsory process and
23 cross-examination of such witnesses as appear at the hearing. A duly authenticated
24 copy of a former judgment or commitment is prima facie evidence of such former
25 judgment or commitment. If the jury or the court finds, after hearing, one or more of the
26 grounds set forth in subsection 1, that the defendant is a dangerous special offender
27 or a habitual offender, the court shall sentence the defendant to imprisonment for an
28 appropriate term within the limits specified in subsection 2.

**REPORT OF STANDING COMMITTEE
HB 1225**

Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS** ([25.0996.01002](#)) and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). HB 1225 was placed on the Sixth order on the calendar.

25.0996.01001
Title.

Prepared by the Legislative Council
staff for Representative Klemin
January 21, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1225

Introduced by

Representatives Klemin, Karls, Lefor, Vetter

Senators Myrdal, Sickler, Larson

1 A BILL for an Act to amend and reenact sections 12.1-17-03 and 12.1-32-09 of the North
2 Dakota Century Code, relating to reckless endangerment and habitual offenders; and to provide
3 a penalty.

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

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

7 **12.1-17-03. Reckless endangerment.**

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

14 **SECTION 2. AMENDMENT.** Section 12.1-32-09 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **12.1-32-09. Dangerous special offenders - Habitual offenders - Extended sentences -** 17 **Procedure.**

18 1. A court may sentence a convicted offender to an extended sentence as a dangerous
19 special offender or a habitual offender in accordance with this section upon a finding of
20 any one or more of the following:

- a. The convicted offender is a dangerous, mentally abnormal person whose conduct has been characterized by persistent aggressive behavior and the behavior makes the offender a serious danger to other persons.
- b. The convicted offender is a professional criminal who has substantial income or resources derived from criminal activity.
- c. The convicted offender is a habitual offender. The court may not make such a finding unless the offender is an adult and has previously been convicted in any state or states or by the United States of two felonies ~~of class C or above~~ committed at different times when the offender was an adult. For the purposes of this subdivision, a ~~felony~~ conviction in another state or under the laws of the United States is considered a felony ~~of class C or above~~ if it is punishable by a ~~maximum term of imprisonment of five years or more~~ than three hundred sixty days of imprisonment.
- d. The offender was convicted of an offense that seriously endangered the life of another person and the offender had previously been convicted of a similar offense.
- e. The offender is especially dangerous because the offender used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the offender has been pardoned on the ground of innocence must be disregarded for purposes of subdivision c. In support of findings under subdivision b, it may be shown that the offender has had control of income or property not explained as derived from a source other than criminal activity. For purposes of subdivision b, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the offender's declared adjusted gross income under chapter 57-38.

- 1 2. The extended sentence may be imposed in the following manner:
 - 2 a. If the offense for which the offender is convicted is a class A felony, the court may
 - 3 impose a sentence up to a maximum of life imprisonment.
 - 4 b. If the offense for which the offender is convicted is a class B felony, the court may
 - 5 impose a sentence up to a maximum of imprisonment for twenty years.
 - 6 c. If the offense for which the offender is convicted is a class C felony, the court may
 - 7 impose a sentence up to a maximum of imprisonment for ten years.
- 8 3. Whenever an attorney charged with the prosecution of a defendant in a court of this
- 9 state for an alleged felony committed when the defendant was over the age of
- 10 eighteen years has reason to believe that the defendant is a dangerous special
- 11 offender or a habitual offender, the attorney, at a reasonable time before trial or
- 12 acceptance by the court of a plea of guilty, may sign and file with the court, and may
- 13 amend, a notice specifying that the defendant is a dangerous special offender or a
- 14 habitual offender who upon conviction for the felony is subject to the imposition of a
- 15 sentence under subsection 2, and setting out with particularity the reasons why the
- 16 attorney believes the defendant to be a dangerous special offender or a habitual
- 17 offender. In no case may the fact that the prosecuting attorney is seeking sentencing
- 18 of the defendant as a dangerous special offender or a habitual offender be disclosed
- 19 to the jury before a verdict. If the court finds that the filing of the notice as a public
- 20 record may prejudice fair consideration of a pending criminal matter, the court may
- 21 order the notice sealed and the notice is not subject to subpoena or public inspection
- 22 during the pendency of the criminal matter, except on order of the court, but is subject
- 23 to inspection by the defendant alleged to be a dangerous special offender or a habitual
- 24 offender and the offender's counsel.
- 25 4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a
- 26 hearing must be held, before sentence is imposed, in accordance with this subsection
- 27 as follows:
 - 28 a. By a jury, or the court if a jury is waived by the defendant, if the notice alleges
 - 29 that the defendant is a dangerous special offender under subdivision a, b, d, or e
 - 30 of subsection 1. The jury, or the court if a jury is waived, must find that the
 - 31 defendant is a dangerous special offender under one or more of these

1 subdivisions by proof beyond a reasonable doubt. However, in the case of a
2 notice alleging only subdivision e of subsection 1, the trial jury, or the trial court if
3 a jury is waived, may make a special finding of proof of this subdivision without
4 an additional hearing subsequent to a verdict or finding of guilt.

5 b. By the court if the notice alleges that the defendant is a habitual offender under
6 subdivision c of subsection 1. The court must find that the defendant is a habitual
7 offender by a preponderance of the evidence.

8 5. Except in the most extraordinary cases, the court shall obtain a presentence report
9 and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02
10 before holding a hearing under this subsection. The court shall fix a time for the
11 hearing and notice thereof must be given to the defendant and the prosecution at least
12 five days prior thereto. The court shall permit the prosecution and counsel for the
13 defendant, or the defendant if the defendant is not represented by counsel, to inspect
14 the presentence report sufficiently before the hearing as to afford a reasonable
15 opportunity for verification. In extraordinary cases, the court may withhold material not
16 relevant to a proper sentence, diagnostic opinion that might seriously disrupt a
17 program of rehabilitation, any source of information obtained on a promise of
18 confidentiality, and material previously disclosed in open court. A court withholding all
19 or part of a presentence report shall inform the parties of its action and place in the
20 record the reasons therefor. The court may require parties inspecting all or part of a
21 presentence report to give notice of any part thereof intended to be controverted. In
22 connection with the hearing, the defendant is entitled to compulsory process and
23 cross-examination of such witnesses as appear at the hearing. A duly authenticated
24 copy of a former judgment or commitment is prima facie evidence of such former
25 judgment or commitment. If the jury or the court finds, after hearing, one or more of the
26 grounds set forth in subsection 1, that the defendant is a dangerous special offender
27 or a habitual offender, the court shall sentence the defendant to imprisonment for an
28 appropriate term within the limits specified in subsection 2.

Hearing date: January 27, 2025

House Judiciary Committee
2025 ND Legislature

Chairperson Lawrence Klemin
Committee Members

From: Rozanna C Larson
Ward County State's Attorney

RE: House Bill 1225

Chairperson Klemin and Members of the Committee,

This is my written testimony in favor of House Bill 1225 and ask the committee submits a DO PASS vote. I am the State's Attorney for Ward County and have been a prosecutor for 27 years.

House Bill 1225 has two amended sections for current statutes.

Section 1 Amendment amends the current Reckless Endangerment statute.

Currently the statute has two levels of offense, a class C felony if is proven the offender acted with extreme indifference to the value of human life, otherwise it is a class A misdemeanor. The NDSAA proposal is to elevate the offense to a Class B felony if a firearm is used in the commission of the offense. The State would still have to prove the element of extreme indifference to the value of human life, as well as prove beyond a reasonable doubt a firearm was used in the commission of the offense. These would be specific finding made by the fact finder.

The reason for this amendment is frankly due to the rise in offenses involving guns.

In Ward County we have had instances of guns being shot inside crowded bars, people shooting at each other inside hotels, and guns being fired on the streets with innocent people standing or milling about. There have also been instances of drive by shootings, where in the offender shoots into residences, apartment buildings, etc. This includes juvenile offenders as well as adult.

The question you may have, why can't we simply charge Attempted Murder in these cases. This is due to the legal culpability requirements for Attempted Murder. Any time "Attempted" is charged the culpability is intentional. The "intentional" culpability attaches to the elements of murder, not the act of shooting. In addition, to charge Attempted Murder there has to be a specific identified person the offender intended to murder. In most of these situations, the culpability of the offender is "willful." The offender is acting with extreme indifference to the value of any of the lives placed in danger.

Examples of Reckless Endangerment with a firearm include: shooting into a crowd, or inside a hotel room where bullets can go through walls of guests can be distinguish to other scenarios. Example without a firearm – driving 50 mph through town, blowing through traffic lights with others on the road, perhaps even causing collisions of other drivers.

This amendment would implicate another sentencing statute, NDCC 12.1-32-02.1. Specifically, if the offender is found guilty of the class B felony, there would be a mandatory minimum sentence of 4 years.

Section 2 Amendment relates to Dangerous/Habitual offender statute. NDCC 12.1-32-09. This is within the sentencing sections of the criminal code.

Currently prosecutors can file habitual offender on a defendant if they have two or more felony convictions in any state or states or the Federal Government. The statute specifically defines felony as being at least a class C felony or equivalent wherein the offense was punishable by a maximum term of five years. This is consistent with ND law because the lowest level felony we have is a class C felony and the maximum punishment is five years.

As prosecutors we are dealing with offenders who may have a long criminal history of out-of-state felony convictions, but the maximum penalty may be less than five years. Essentially this limitation is allowing other states to define (and limit) what a habitual offender is when they come into our state and commit new felonies.

Example : I had an offender convicted of Robbery in the state of California, but the maximum punishment for that conviction was 3 years. I couldn't use that to allege habitual offender. We have that same scenario with convictions next door in Minnesota. Many states have different levels of offenses, including different maximum punishment including felonies. I don't know the reason for this expect for the possibility of different, more specific offender statutes. The other possibility may be in their efforts to control prison populations. Making this change treats all felons, lifetime ND residents and newcomers the same.

We are living in a time where people are more transient. This includes people with criminal records.

According to West Law, this particular section of 12.1-32-09 was last amended in 1995. Prior law only allowed for filing habitual offender if there were two class B felony or above convictions, or one class B felony and two other offenses. The maximum term of imprisonment until 1995 was ten years. For thirty years this has remained as a maximum punishment of 5 years. It does not consider what other States determine for maximum punishment. By amending it to "punishable by more than three hundred sixty days" it tracks with our state law for what is a felony, sentences over 360 days. Class A misdemeanor has a maximum punishment of 360 days. This amendment would then address other State's felonies but protect those with convictions deemed misdemeanors in our state.

This amendment does not implicate any other sentencing statutes. It does not create a minimum mandatory sentence. This statute does allow the court to sentence above the maximum sentence.

A person charge with a class C felony could be sentence up to 10 years. For a class B felony a maximum of 20 years may be imposed and for a class A felony a maximum of life imprisonment may be imposed. Often there is a term of imprisonment along with a suspended portion of the sentence where in the defendant is on supervised probation.

Introduced by

Representatives Klemin, Karls, Lefor, Vetter

Senators Myrdal, Sickler, Larson

1 A BILL for an Act to amend and reenact sections 12.1-17-03 and 12.1-32-09 of the North
2 Dakota Century Code, relating to reckless endangerment and habitual offenders; and to provide
3 a penalty.

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

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

7 **12.1-17-03. Reckless endangerment.**

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

13 **SECTION 2. AMENDMENT.** Section 12.1-32-09 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **12.1-32-09. Dangerous special offenders - Habitual offenders - Extended sentences -**
16 **Procedure.**

- 17 1. A court may sentence a convicted offender to an extended sentence as a dangerous
18 special offender or a habitual offender in accordance with this section upon a finding of
19 any one or more of the following:
- 20 a. The convicted offender is a dangerous, mentally abnormal person whose conduct
21 has been characterized by persistent aggressive behavior and the behavior
22 makes the offender a serious danger to other persons.
- 23 b. The convicted offender is a professional criminal who has substantial income or
24 resources derived from criminal activity.

- 1 c. The convicted offender is a habitual offender. The court may not make such a
2 finding unless the offender is an adult and has previously been convicted in any
3 state or states or by the United States of two felonies ~~of class C or above~~
4 committed at different times when the offender was an adult. For the purposes of
5 this subdivision, a ~~felony~~ conviction in another state or under the laws of the
6 United States is considered a felony ~~of class C or above~~ if it is punishable by a
7 ~~maximum term of imprisonment of five years or more~~ than three hundred sixty
8 days of imprisonment.
- 9 d. The offender was convicted of an offense that seriously endangered the life of
10 another person and the offender had previously been convicted of a similar
11 offense.
- 12 e. The offender is especially dangerous because the offender used a firearm,
13 dangerous weapon, or destructive device in the commission of the offense or
14 during the flight therefrom.
- 15 A conviction shown on direct or collateral review or at the hearing to be invalid or for
16 which the offender has been pardoned on the ground of innocence must be
17 disregarded for purposes of subdivision c. In support of findings under subdivision b, it
18 may be shown that the offender has had control of income or property not explained
19 as derived from a source other than criminal activity. For purposes of subdivision b, a
20 substantial source of income means a source of income which for any period of one
21 year or more exceeds the minimum wage, determined on the basis of a forty-hour
22 week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of
23 the Fair Labor Standards Act of 1938, as amended, for an employee engaged in
24 commerce or in the production of goods for commerce, and which for the same period
25 exceeds fifty percent of the offender's declared adjusted gross income under chapter
26 57-38.
- 27 2. The extended sentence may be imposed in the following manner:
- 28 a. If the offense for which the offender is convicted is a class A felony, the court may
29 impose a sentence up to a maximum of life imprisonment.
- 30 b. If the offense for which the offender is convicted is a class B felony, the court may
31 impose a sentence up to a maximum of imprisonment for twenty years.

- 1 c. If the offense for which the offender is convicted is a class C felony, the court may
- 2 impose a sentence up to a maximum of imprisonment for ten years.
- 3 3. Whenever an attorney charged with the prosecution of a defendant in a court of this
- 4 state for an alleged felony committed when the defendant was over the age of
- 5 eighteen years has reason to believe that the defendant is a dangerous special
- 6 offender or a habitual offender, the attorney, at a reasonable time before trial or
- 7 acceptance by the court of a plea of guilty, may sign and file with the court, and may
- 8 amend, a notice specifying that the defendant is a dangerous special offender or a
- 9 habitual offender who upon conviction for the felony is subject to the imposition of a
- 10 sentence under subsection 2, and setting out with particularity the reasons why the
- 11 attorney believes the defendant to be a dangerous special offender or a habitual
- 12 offender. In no case may the fact that the prosecuting attorney is seeking sentencing
- 13 of the defendant as a dangerous special offender or a habitual offender be disclosed
- 14 to the jury before a verdict. If the court finds that the filing of the notice as a public
- 15 record may prejudice fair consideration of a pending criminal matter, the court may
- 16 order the notice sealed and the notice is not subject to subpoena or public inspection
- 17 during the pendency of the criminal matter, except on order of the court, but is subject
- 18 to inspection by the defendant alleged to be a dangerous special offender or a habitual
- 19 offender and the offender's counsel.
- 20 4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a
- 21 hearing must be held, before sentence is imposed, in accordance with this subsection
- 22 as follows:
- 23 a. By a jury, or the court if a jury is waived by the defendant, if the notice alleges
- 24 that the defendant is a dangerous special offender under subdivision a, b, d, or e
- 25 of subsection 1. The jury, or the court if a jury is waived, must find that the
- 26 defendant is a dangerous special offender under one or more of these
- 27 subdivisions by proof beyond a reasonable doubt. However, in the case of a
- 28 notice alleging only subdivision e of subsection 1, the trial jury, or the trial court if
- 29 a jury is waived, may make a special finding of proof of this subdivision without
- 30 an additional hearing subsequent to a verdict or finding of guilt.

- 1 b. By the court if the notice alleges that the defendant is a habitual offender under
2 subdivision c of subsection 1. The court must find that the defendant is a habitual
3 offender by a preponderance of the evidence.
- 4 5. Except in the most extraordinary cases, the court shall obtain a presentence report
5 and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02
6 before holding a hearing under this subsection. The court shall fix a time for the
7 hearing and notice thereof must be given to the defendant and the prosecution at least
8 five days prior thereto. The court shall permit the prosecution and counsel for the
9 defendant, or the defendant if the defendant is not represented by counsel, to inspect
10 the presentence report sufficiently before the hearing as to afford a reasonable
11 opportunity for verification. In extraordinary cases, the court may withhold material not
12 relevant to a proper sentence, diagnostic opinion that might seriously disrupt a
13 program of rehabilitation, any source of information obtained on a promise of
14 confidentiality, and material previously disclosed in open court. A court withholding all
15 or part of a presentence report shall inform the parties of its action and place in the
16 record the reasons therefor. The court may require parties inspecting all or part of a
17 presentence report to give notice of any part thereof intended to be controverted. In
18 connection with the hearing, the defendant is entitled to compulsory process and
19 cross-examination of such witnesses as appear at the hearing. A duly authenticated
20 copy of a former judgment or commitment is prima facie evidence of such former
21 judgment or commitment. If the jury or the court finds, after hearing, one or more of the
22 grounds set forth in subsection 1, that the defendant is a dangerous special offender
23 or a habitual offender, the court shall sentence the defendant to imprisonment for an
24 appropriate term within the limits specified in subsection 2.

FISCAL NOTE
HOUSE BILL NO. 1225
LC# 25.0996.01000
01/17/2025

1 - State Fiscal Effect

Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

| | 2023-2025 Biennium | | 2025-2027 Biennium | | 2027-2029 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | | | |
| Expenditures | | | | | \$13,618,039 | |
| Appropriations | | | | | \$13,618,039 | |

2 - County, City, School District, and Township Fiscal Effect

Identify the fiscal effect on the appropriate political subdivision.

| | 2023-2025 Biennium | 2025-2027 Biennium | 2027-2029 Biennium |
|------------------|--------------------|--------------------|--------------------|
| Counties | | | |
| Cities | | | |
| School Districts | | | |
| Townships | | | |

3 - Bill and Fiscal Impact Summary

Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).

HB 1225 proposes increasing the penalty for Reckless Endangerment, elevating it from a Class C Felony to Class B Felony. Additionally the bill expands the range of offenses eligible for habitual offender designation allowing courts to include any felony punishable by imprisonment exceeding 360 days.

4 - Fiscal Impact Sections Detail

Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.

HB1225 may have an impact on the length of sentence imposed by the court for 12.1-17-03 Reckless Endangerment. Currently the average sentence for a class C felony is 3.83 years and the average sentence for a Class B felony is 5.49 years. We have an annual average of 188 inmates sentenced to the DOC for Reckless Endangerment. There is no fiscal impact in the upcoming biennium. Assuming the courts will increase the sentence

length to that of average Class B felony we would anticipate and offenders serving a sentence for Reckless Endangerment to serve an additional 1.66 years increasing the cost. Due to the delayed nature of the impact of this bill, the fiscal impact will begin in FY2028 at \$1.7 million and will increase to an annual expense of \$16.8 million in FY 2030.

On average, the DOCR processes 59 offenders sentenced under the 12.1-32-09 Habitual Offender statute annually. Expanding the scope to encompass all felonies carrying sentences exceeding 360 days, as applied in other 49 states, introduces significant uncertainty. It is challenging to predict how courts will interpret and implement these changes or how they might affect sentence durations. Consequently, we are unable to accurately estimate the fiscal impact of this proposed modification.

5 - Revenues Detail

For information shown under state fiscal effect in 1 or 2, please explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

The DOCR will not expect any revenues from the changes proposed in HB 1225.

6 - Expenditures Detail

For information shown under state fiscal effect in 1 or 2, please explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

HB 1225 is expected to increase the length of incarceration, resulting in a corresponding rise in the overall inmate population. As a result, additional housing capacity will likely be required to accommodate inmates in county jails, regional correctional facilities, and out-of-state correctional facilities. Due to the delayed nature of the impact of this bill, the fiscal impact will begin in FY2028 at \$1.7 million and will increase to an annual expense of \$16.8 million in FY 2030.

7 - Appropriations Detail

For information shown under state fiscal effect in 1 or 2, please explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.

HB 1225 is expected to increase the length of incarceration, resulting in a corresponding rise in the overall inmate population. As a result, additional housing capacity will likely be required to accommodate inmates in county jails, regional correctional facilities, and out-of-state correctional facilities. Due to the delayed nature of the impact of this bill, the fiscal impact will begin in FY2028 at \$1.7 million and will increase to an annual expense of \$16.8 million in FY 2030.

Contact Information

Name: Michele Zander

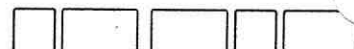
Agency: Corrections & Rehabilitation

Telephone: 7013286656

Date Prepared: 01/17/2025

VIOLENT OFFENDER SENTENCES—CONDUCT REDUCING SENTENCES...

1995 North Dakota Laws Ch. 136 (H.B. 1218) (Approx. 4 pages)



1995 North Dakota Laws Ch. 136 (H.B. 1218)

NORTH DAKOTA 1995 SESSION LAW SERVICE
REGULAR SESSION OF THE 54TH LEGISLATIVE ASSEMBLYAdditions are indicated by <<+ Text +>>; deletions by
<<- Text ->>. Changes in tables are made but not highlighted.

CH. 136 (H.B. 1218)

West's No. 339

VIOLENT OFFENDER SENTENCES—CONDUCT REDUCING SENTENCES—HABITUAL OFFENDER EXTENDED SENTENCES

AN ACT to create and enact a new section to chapter 12.1–32 of the North Dakota Century Code, relating to sentencing of violent offenders; and to amend and reenact sections 12–54.1–01, 12–54.1–03, subsection 12 of section 12.1–32–02, and section 12.1–32–09 of the North Dakota Century Code, relating to sentence reductions for good or meritorious conduct, presentence investigations, and extended sentences for special dangerous or habitual offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12–54.1–01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

<< ND ST 12–54.1–01 >>

§ 12–54.1–01. Performance based sentence reduction

<<-Offenders->> <<+Except as provided under section 5 of this Act, offenders+>> sentenced to the penitentiary or any of its affiliated facilities are eligible to earn sentence reductions based upon performance criteria established through penitentiary rules. Performance criteria includes participation in court-ordered or staff-recommended treatment and education programs and good work performance. While incarcerated in the penitentiary or any of its affiliated facilities, an inmate may earn five days good time per month except for any sentence where the incarceration time is six months or less.

SECTION 2. AMENDMENT. Section 12–54.1–03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

<< ND ST 12–54.1–03 >>

§ 12–54.1–03. Meritorious conduct sentence reduction

<<-In addition to sentence reductions under section 12–54.1–01->> <<+ Except as provided under section 5 of this Act,+>> offenders sentenced to the state penitentiary or any of its affiliated facilities may be awarded, as provided by penitentiary rules <<-and regulations->> upon written recommendation of a penitentiary multidisciplinary team, lump-sum or a monthly rate of meritorious conduct sentence reductions for outstanding performance or heroic act or as a special control and security measure. Such sentence reductions <<+are in addition to sentence reductions

Back to top

under section 12-54.1-01 and+>> may be made only after a written recommendation is made by the warden, and approved by the director of the department of corrections and rehabilitation. Any sentence reduction for special control or security measures may not exceed two days good time per month per inmate.

SECTION 3. AMENDMENT. Subsection 12 of section 12.1-32-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

<< ND ST 12.1-32-02 >>

12. Before sentencing a defendant on a felony charge under section 12.1-20-03, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report. <<+In all felony or class A misdemeanor offenses, in which force, as defined in section 12.1-01-04, or threat of force is an element of the offense or in violation of section 12.1-22-02, or an attempt to commit the offenses, a court, unless a presentence investigation has been ordered, must receive a criminal record report before the sentencing of the defendant. Unless otherwise ordered by the court, the criminal record report must be conducted by the department of corrections and rehabilitation after consulting with the prosecuting attorney regarding the defendant's criminal record. The criminal record report must be in writing, filed with the court before sentencing, and made a part of the court's record of the sentencing proceeding.+>>

SECTION 4. AMENDMENT. Section 12.1-32-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

<< ND ST 12.1-32-09 >>

§ 12.1-32-09. Dangerous special offenders, <<-extended->><<+—Habitual offenders—Extended+>> sentences—Procedure

1. A court may sentence a convicted offender to an extended sentence as a dangerous special offender <<+or a habitual offender+>> in accordance with the provisions of this section upon a finding of any one or more of the following:
 - a. The convicted offender is a dangerous, mentally abnormal person. The court <<-shall->> <<+may+>> not make such a finding unless the presentence report, including a psychiatric examination, concludes that the offender's conduct has been characterized by persistent aggressive behavior, and that such behavior makes <<-him->> <<+the offender+>> a serious danger to other persons.
 - b. The convicted offender is a professional criminal. The court <<- shall->> <<+may+>> not make such a finding unless the offender is an adult and the presentence report shows that the offender has substantial income or resources derived from criminal activity.
 - c. The convicted offender is a <<-persistent->> <<+habitual+>> offender. The court <<-shall->> <<+may+>> not make such a finding unless the offender is an adult and has previously been convicted in any state or states or by the United States of two felonies of class <<- B->> <<+C+>> or above<<-, or of one class B felony or above plus two offenses potentially punishable by imprisonment classified below class B felony,->> committed at different times when the offender was an adult. For the purposes of this subdivision, a felony conviction in another state or under the laws of the United States shall be considered a felony of class <<-B->> <<+C+>> or above if it is punishable by a maximum term of imprisonment of <<-ten->> <<+five+>> years or more.
 - d. The offender was convicted of an offense which seriously endangered the life of another person, and the offender had previously been convicted of a similar offense.
 - e. The offender is especially dangerous because <<-he->> <<+the offender+>> used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the offender has been pardoned on the ground of innocence <<-shall->> <<+must+>> be disregarded for purposes of subdivision c. In support of findings under subdivision b, it may be shown that the offender has had <<-in his own name or under his->> control <<+of+>> income or property not explained as derived from a source other than criminal activity. For

purposes of subdivision b, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the offender's declared adjusted gross income under chapter 57-38.

2. The extended sentence may be imposed in the following manner:

- a. If the offense for which the offender is convicted is a class A felony, the court may impose a sentence up to a maximum of life imprisonment.
- b. If the offense for which the offender is convicted is a class B felony, the court may impose a sentence up to a maximum of imprisonment for twenty years.
- c. If the offense for which the offender is convicted is a class C felony, the court may impose a sentence up to a maximum of imprisonment for ten years.

3. Whenever an attorney charged with the prosecution of a defendant in a court of this state for an alleged felony committed when the defendant was over the age of eighteen years has reason to believe that the defendant is a dangerous special offender <<+or a habitual offender+>>, <<-such->> <<+ the+>> attorney, at a reasonable time before trial or acceptance by the court of a plea of guilty, may sign and file with the court, and may amend, a notice specifying that the defendant is a dangerous special offender <<+or a habitual offender+>> who upon conviction for <<-such->> <<+the+>> felony is subject to the imposition of a sentence under subsection 2, and setting out with particularity the reasons why <<-such->> <<+the+>> attorney believes the defendant to be a dangerous special offender <<+or a habitual offender+>>. In no case <<-shall->> <<+may+>> the fact that the prosecuting attorney is seeking sentencing of the defendant as a dangerous special offender <<+or a habitual offender+>> be disclosed to the jury. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, it may order the notice sealed and the notice shall not be subject to subpoena or public inspection during the pendency of such criminal matter, except on order of the court, but shall be subject to inspection by the defendant alleged to be a dangerous special offender <<+or a habitual offender+>> and <<- his->> <<+the offender's+>> counsel.

4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a hearing must be held, before sentence is imposed, by the court sitting without a jury. Except in the most extraordinary cases, the court shall obtain a presentence report and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02 before holding a hearing under this subsection. The court shall fix a time for the hearing, and notice thereof must be given to the defendant and the prosecution at least five days prior thereto. The court shall permit the prosecution and counsel for the defendant, or the defendant if the defendant is not represented by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant is entitled to compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment is prima facie evidence of such former judgment or commitment. If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special offender <<+or a habitual offender+>>, the court shall sentence the defendant to imprisonment for an appropriate term within the limits specified in subsection 2. The court shall place in the record its findings including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

SECTION 5. A new section to chapter 12.1-32 of the North Dakota Century Code is created and enacted as follows:

<<+Sentencing of violent offenders+>>

Back to top

<<+Any offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, 12.1-17-02, 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 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.+>>

Approved March 24, 1995. Filed March 27, 1995.

ND LEGIS 136 (1995)

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.

[Contact us](#) • [Live chat](#) • [Training and support](#) • [Improve Westlaw Edge/Report an error](#) • [Transfer My Data](#) • [Pricing guide](#) • [Sign out](#)



THOMSON REUTERS

1-800-REF-ATTY (1-800-733-2889)

Westlaw Edge. © 2025 Thomson Reuters [Accessibility](#) • [Privacy](#) • [Supplier terms](#)

Thomson Reuters is not providing professional advice

[Back to top](#)

2025 HOUSE APPROPRIATIONS

HB 1225

2025 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

HB 1225
2/13/2025

A BILL for an Act to amend and reenact sections 12.1-17-03 and 12.1-32-09 of the North Dakota Century Code, relating to reckless endangerment and habitual offenders; and to provide a penalty.

10:36 a.m. Chairman Vigesaa called the meeting to order.

Members Present: Chairman Vigesaa, Vice Chairman Kempenich, Representatives Anderson, Berg, Bosch, Brandenburg, Fisher, Hanson, Louser, Martinson, Meier, Mitskog, Monson, Murphy, Nathe, Nelson, O'Brien, Pyle, Richter, Sanford, Stemen, Swiontek, Wagner

Discussion Topics:

- Reckless Endangerment
- Penalties
- Offenders
- Firearms

10:36 a.m. Representative Klemin introduced the Bill.

10:45 a.m. Representative Murphy moved a Do Pass.

10:45 a.m. Representative Meier seconded.

10:47 a.m. Roll Call Vote

| Representatives | Vote |
|----------------------------------|------|
| Representative Don Vigesaa | Y |
| Representative Keith Kempenich | Y |
| Representative Bert Anderson | Y |
| Representative Mike Berg | Y |
| Representative Glen Bosch | Y |
| Representative Mike Brandenburg | Y |
| Representative Jay Fisher | Y |
| Representative Karla Rose Hanson | Y |
| Representative Scott Louser | Y |
| Representative Bob Martinson | Y |
| Representative Lisa Meier | Y |
| Representative Alisa Mitskog | Y |
| Representative David Monson | A |
| Representative Eric J. Murphy | Y |
| Representative Mike Nathe | Y |
| Representative Jon O. Nelson | A |

| | |
|-------------------------------|---|
| Representative Emily O'Brien | Y |
| Representative Brandy L. Pyle | Y |
| Representative David Richter | A |
| Representative Mark Sanford | Y |
| Representative Gregory Stemen | Y |
| Representative Steve Swiontek | A |
| Representative Scott Wagner | Y |

10:48 a.m. Motion passed 19-0-4.

10:48 a.m. Representative Christianson will carry the Bill.

10:49 a.m. Chairman Vigesaa closed the meeting.

Sierra Schartz, Committee Clerk

**REPORT OF STANDING COMMITTEE
ENGROSSED HB 1225 ([25.0996.02000](#))**

Appropriations Committee (Rep. Vigesaa, Chairman) recommends **DO PASS** (19 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). HB 1225 was placed on the Eleventh order on the calendar.

2025 SENATE JUDICIARY

HB 1225

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1225
3/12/2025

A BILL for an Act to amend and reenact sections 12.1-17-03 and 12.1-32-09 of the North Dakota Century Code, relating to reckless endangerment and habitual offenders; and to provide a penalty.

10:32 a.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

Discussion Topics:

- Reckless endangerment penalties
- Habitual offender classification
- Use of dangerous weapons
- State versus out-of-state convictions

10:32 a.m. Rozanna C. Larson, Ward County State's Attorney, submitted testimony in favor #40100.

10:49 a.m. Travis Finck, Executive Director, ND Commission on Legal Counsel for Indigents, testified in opposition and submitted testimony #40792.

11:09 a.m. Chair Larson closed the hearing.

11:11 a.m. Senator Myrdal introduced proposed amendment and submitted testimony #41051.

11:14 a.m. Senator Myrdal moved amendment LC# 25.0996.02001.

11:14 a.m. Senator Castaneda seconded.

11:14 a.m. Voice Vote - Motion Passed.

11:15 a.m. Senator Myrdal moved a Do Pass as amended and rerefer to Appropriation committee.

11:15 a.m. Senator Castaneda seconded the motion.

| Senators | Vote |
|---------------------------|-------------|
| Senator Diane Larson | Y |
| Senator Bob Paulson | A |
| Senator Ryan Braunberger | A |
| Senator Jose L. Casteneda | Y |
| Senator Claire Cory | Y |
| Senator Larry Luick | Y |
| Senator Janne Myrdal | Y |

Motion Passed 5-0-2.

11:15 a.m. Senator Myrdal will carry the bill.

11:16 a.m. Chair Larson adjourned the meeting.

Kendra McCann, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

ENGROSSED HOUSE BILL NO. 1225

Introduced by

Representatives Klemin, Karls, Lefor, Vetter

Senators Myrdal, Sickler, Larson

1 A BILL for an Act to amend and reenact sections 12.1-17-03 and 12.1-32-09 of the North
2 Dakota Century Code, relating to reckless endangerment and habitual offenders; and to provide
3 a penalty.

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

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

7 **12.1-17-03. Reckless endangerment.**

8 ~~A person~~An individual is guilty of an offense if he~~the~~the individual creates a substantial risk of
9 serious bodily injury or death to another. The offense is a class ~~C felony~~B felony if the individual
10 uses a firearm or other dangerous weapon. The offense is a class C felony if the circumstances
11 manifest ~~his~~the individual's extreme indifference to the value of human life. Otherwise it is a
12 class A misdemeanor. There is risk within the meaning of this section if the potential for harm
13 exists, whether or not a particular person's safety is actually jeopardized.

14 **SECTION 2. AMENDMENT.** Section 12.1-32-09 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **12.1-32-09. Dangerous special offenders - Habitual offenders - Extended sentences -**
17 **Procedure.**

18 1. A court may sentence a convicted offender to an extended sentence as a dangerous
19 special offender or a habitual offender in accordance with this section upon a finding of
20 any one or more of the following:

- a. The convicted offender is a dangerous, mentally abnormal person whose conduct has been characterized by persistent aggressive behavior and the behavior makes the offender a serious danger to other persons.
- b. The convicted offender is a professional criminal who has substantial income or resources derived from criminal activity.
- c. The convicted offender is a habitual offender. The court may not make such a finding unless the offender is an adult and has previously been convicted in any state or states or by the United States of two felonies of class C or above committed at different times when the offender was an adult. For the purposes of this subdivision, a felony conviction in another state or under the laws of the United States is considered a felony of class C or above if it is punishable by a maximum term of imprisonment of five years or more than three hundred sixty days of imprisonment.
- d. The offender was convicted of an offense that seriously endangered the life of another person and the offender had previously been convicted of a similar offense.
- e. The offender is especially dangerous because the offender used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the offender has been pardoned on the ground of innocence must be disregarded for purposes of subdivision c. In support of findings under subdivision b, it may be shown that the offender has had control of income or property not explained as derived from a source other than criminal activity. For purposes of subdivision b, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the offender's declared adjusted gross income under chapter 57-38.

- 1 2. The extended sentence may be imposed in the following manner:
 - 2 a. If the offense for which the offender is convicted is a class A felony, the court may
 - 3 impose a sentence up to a maximum of life imprisonment.
 - 4 b. If the offense for which the offender is convicted is a class B felony, the court may
 - 5 impose a sentence up to a maximum of imprisonment for twenty years.
 - 6 c. If the offense for which the offender is convicted is a class C felony, the court may
 - 7 impose a sentence up to a maximum of imprisonment for ten years.
- 8 3. Whenever an attorney charged with the prosecution of a defendant in a court of this
- 9 state for an alleged felony committed when the defendant was over the age of
- 10 eighteen years has reason to believe that the defendant is a dangerous special
- 11 offender or a habitual offender, the attorney, at a reasonable time before trial or
- 12 acceptance by the court of a plea of guilty, may sign and file with the court, and may
- 13 amend, a notice specifying that the defendant is a dangerous special offender or a
- 14 habitual offender who upon conviction for the felony is subject to the imposition of a
- 15 sentence under subsection 2, and setting out with particularity the reasons why the
- 16 attorney believes the defendant to be a dangerous special offender or a habitual
- 17 offender. In no case may the fact that the prosecuting attorney is seeking sentencing
- 18 of the defendant as a dangerous special offender or a habitual offender be disclosed
- 19 to the jury before a verdict. If the court finds that the filing of the notice as a public
- 20 record may prejudice fair consideration of a pending criminal matter, the court may
- 21 order the notice sealed and the notice is not subject to subpoena or public inspection
- 22 during the pendency of the criminal matter, except on order of the court, but is subject
- 23 to inspection by the defendant alleged to be a dangerous special offender or a habitual
- 24 offender and the offender's counsel.
- 25 4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a
- 26 hearing must be held, before sentence is imposed, in accordance with this subsection
- 27 as follows:
 - 28 a. By a jury, or the court if a jury is waived by the defendant, if the notice alleges
 - 29 that the defendant is a dangerous special offender under subdivision a, b, d, or e
 - 30 of subsection 1. The jury, or the court if a jury is waived, must find that the
 - 31 defendant is a dangerous special offender under one or more of these

subdivisions by proof beyond a reasonable doubt. However, in the case of a notice alleging only subdivision e of subsection 1, the trial jury, or the trial court if a jury is waived, may make a special finding of proof of this subdivision without an additional hearing subsequent to a verdict or finding of guilt.

b. By the court if the notice alleges that the defendant is a habitual offender under subdivision c of subsection 1. The court must find that the defendant is a habitual offender by a preponderance of the evidence.

5. Except in the most extraordinary cases, the court shall obtain a presentence report and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02 before holding a hearing under this subsection. The court shall fix a time for the hearing and notice thereof must be given to the defendant and the prosecution at least five days prior thereto. The court shall permit the prosecution and counsel for the defendant, or the defendant if the defendant is not represented by counsel, to inspect the presentence report sufficiently before the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion that might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant is entitled to compulsory process and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment is prima facie evidence of such former judgment or commitment. If the jury or the court finds, after hearing, one or more of the grounds set forth in subsection 1, that the defendant is a dangerous special offender or a habitual offender, the court shall sentence the defendant to imprisonment for an appropriate term within the limits specified in subsection 2.

**REPORT OF STANDING COMMITTEE
ENGROSSED HB 1225**

Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS** ([25.0996.02001](#)) and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 0 NAYS, 2 ABSENT OR EXCUSED AND NOT VOTING). HB 1225 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Hearing date: March 12, 2025

Senate Judiciary Committee
2025 ND Legislature

Chairperson Diane Larson
Committee Members

From: Rozanna C Larson
Ward County State's Attorney

RE: House Bill 1225

Chairperson Larson and Members of the Committee,

This is my written testimony in favor of House Bill 1225 and ask the committee submits a DO PASS vote. I am the State's Attorney for Ward County and have been a prosecutor for 27 years.

House Bill 1225 has two amended sections for current statutes.

Section 1 Amendment amends the current Reckless Endangerment statute.

Currently the statute has two levels of offense, a class C felony if is proven the offender acted with extreme indifference to the value of human life, otherwise it is a class A misdemeanor. The NDSAA proposal is to elevate the offense to a Class B felony if a firearm is used in the commission of the offense. The State would still have to prove the element of extreme indifference to the value of human life, as well as prove beyond a reasonable doubt a firearm was used in the commission of the offense. These would be specific finding made by the fact finder.

The reason for this amendment is frankly due to the rise in offenses involving guns.

In Ward County we have had instances of guns being shot inside crowded bars, people shooting at each other inside hotels, and guns being fired on the streets with innocent people standing or milling about. There have also been instances of drive by shootings, where in the offender shoots into residences, apartment buildings, etc. This includes juvenile offenders as well as adult.

The question you may have, why can't we simply charge Attempted Murder in these cases. This is due to the legal culpability requirements for Attempted Murder. Any time "Attempted" is charged the culpability is intentional. The "intentional" culpability attaches to the elements of murder, not the act of shooting. In addition, to charge Attempted Murder there has to be a specific identified person the offender intended to murder. In most of these situations, the culpability of the offender is "willful." The offender is acting with extreme indifference to the value of any of the lives placed in danger.

Examples of Reckless Endangerment with a firearm include: shooting into a crowd, or inside a hotel room where bullets can go through walls of guests can be distinguish to other scenarios. Example without a firearm — driving 50 mph through town, blowing through traffic lights with others on the road, perhaps even causing collisions of other drivers.

This amendment would implicate another sentencing statute, NDCC 12.1-32-02.1. Specifically, if the offender is found guilty of the class B felony, there would be a mandatory minimum sentence of 4 years.

Section 2 Amendment relates to Dangerous/Habitual offender statute. NDCC 12.1-32-09. This is within the sentencing sections of the criminal code.

Currently prosecutors can file habitual offender on a defendant if they have two or more felony convictions in any state or states or the Federal Government. The statute specifically defines felony as being at least a class C felony or equivalent wherein the offense was punishable by a

maximum term of five years. This is consistent with ND law because the lowest level felony we have is a class C felony and the maximum punishment is five years.

As prosecutors we are dealing with offenders who may have a long criminal history of out-of-state felony convictions, but the maximum penalty may be less than five years. Essentially this limitation is allowing other states to define (and limit) what a habitual offender is when they come into our state and commit new felonies. Just as North Dakota has the right to determine the level of an offense, other States do as well. Factors that go into determining the level of the offense are numerous, such as: the type of offense, public outcry for stiffer (or lenient) sentences, and incarceration rates.

Currently, our statute treats North Dakota citizens differently (more harsh) than people who have committed offenses outside of North Dakota.

Example: I had an offender convicted of Robbery in the state of California, but the maximum punishment for that conviction was 3 years. I couldn't use that to allege habitual offender. We have that same scenario with convictions next door in Minnesota. Many states have different levels of offenses, including different maximum punishment including felonies. I don't know the reason for this expect for the possibility of different, more specific offender statutes. The other possibility may be in their efforts to control prison populations. Making this change treats all felons, lifetime ND residents and newcomers the same.

We are living in a time where people are more transient. This includes people with criminal records.

According to WestLaw, this particular section of 12.1-32-09 was last amended in 1995. Prior law only allowed filing habitual offender if there were two class B felony or above convictions, or one class B felony and two other offenses. The maximum term of imprisonment until 1995 was ten years. For thirty years this has remained as a maximum punishment of 5 years. It does not

consider what other States determine for maximum punishment. By amending it to "punishable by more than three hundred sixty days" it tracks with our state law for what is a felony, sentences over 360 days. Class A misdemeanor has a maximum punishment of 360 days. This amendment would then address other State's felonies but protect those with convictions deemed misdemeanors in our state.

This amendment does not implicate any other sentencing statutes. It does not create a minimum mandatory sentence. This statute does allow the court to sentence above the maximum sentence. A person charge with a class C felony could be sentence up to 10 years. For a class B felony, a maximum of 20 years may be imposed and for a class A felony a maximum of life imprisonment may be imposed. Often there is a term of imprisonment along with a suspended portion of the sentence where in the defendant is on supervised probation.

Fiscal Note

I see that this bill went through appropriations. It would appear DOCR (or somebody) has attached a 2.5-million-dollar appropriation to the bill. (I would note the original fiscal note was 13.6 million dollars.) I would question where this figure came from and ask to see the data that supports this appropriation. The bill, if passed, does increase the minimum mandatory sentence in 12.1-17-03, if a firearm or dangerous weapon is used, from 2 years to 4 years. (an additional 2 years of incarceration). I don't know if this appropriation considers only the additional 2 years, or if that amount is for the full 4 years. I would want to see how they predicted this impact and how many actual offenders they predicted would be impacted by this amendment to 12.1-17-03. That being said, if there are a significant number of offenders that would meet the new statute language, use of a firearm or dangerous weapon, then I ask you to continue to support the bill even if the appropriation can be justified, as public safety demands it. Further, I wonder if they are guessing at a cost for the "availability" of an increased penalty to habitual offenders, even though there is no mandatory sentence attached to the amendment in that regard.

HB 1225
69th Legislative Assembly
Senate Judiciary Committee
March 12, 2025
Testimony of Travis W. Finck, Executive Director, NDCLCI

Madam Chair Larson, members of the Senate Judiciary Committee, my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota. I rise today on behalf of the Commission to provide testimony in opposition of House Bill 1225 as it is currently written.

The Commission is not opposed to the bill original intention. Originally, this bill was intended to address the concern of a prosecutor in the state to deal with drive by shootings. The amendment in section 1 of the bill was to create a new level of reckless endangerment when a firearm is used. The House Judiciary Committee added or a dangerous weapon. The Commission has a concern this may cause a current C Felony reckless endangerment when someone is driving a vehicle recklessly would be elevated to a Class B felony.¹ I understand that is not the primary supporter's intention, but it is a reality under this bill. Furthermore, it could be considered a mandatory minimum four year prison sentence for a Class B felony with a weapon. We would respectfully request language removing a vehicle from being a dangerous weapon for purpose of this chapter.

The second concern the Commission has with this bill is the proposed change in section 2 as to what constitutes a felony for a dangerous/special offender. Currently, a crime in another state is only considered a felony in this state if it is punishable by up to five years in prison. This bill seeks to say anything over 360 day sentence is a felony for purposes of this section. However, this may cause due process concerns.

Several states still allow up to 1 year or 364 day sentences for a misdemeanor. Thus, essentially any person who is told they have a misdemeanor conviction in the state where the crime occurred would have that same crime be treated as a felony in North Dakota. To satisfy the concerns in the testimony in favor of the bill, the Commission would

¹ See Generally State v. Vetter, 2013 ND 4.

suggest simply any two felony convictions in any other state or the United States. This would satisfy the proponents concerns and protect due process of those alleged to have committed prior felonies.

For the reasons states herein, the Commission requests a DO NOT PASS in the current form of the bill but would be willing to work on amendments to satisfy the concerns of all the parties.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read 'Travis W. Finck', with a stylized flourish at the end.

Travis W. Finck
Executive Director, NDCLCI

25.0996.02001
Title.

Prepared by the Legislative Council
staff for Senator Myrdal
March 7, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1225

Introduced by

Representatives Klemin, Karls, Lefor, Vetter

Senators Myrdal, Sickler, Larson

1 A BILL for an Act to amend and reenact sections 12.1-17-03 and 12.1-32-09 of the North
2 Dakota Century Code, relating to reckless endangerment and habitual offenders; and to provide
3 a penalty.

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

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

7 **12.1-17-03. Reckless endangerment.**

8 ~~A person~~An individual is guilty of an offense if he~~the~~the individual creates a substantial risk of
9 serious bodily injury or death to another. The offense is a class ~~G~~B felony if the individual
10 uses a firearm~~-or other dangerous weapon~~. The offense is a class C felony if the circumstances
11 manifest his~~the individual's~~ extreme indifference to the value of human life. Otherwise it is a
12 class A misdemeanor. There is risk within the meaning of this section if the potential for harm
13 exists, whether or not a particular person's safety is actually jeopardized.

14 **SECTION 2. AMENDMENT.** Section 12.1-32-09 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **12.1-32-09. Dangerous special offenders - Habitual offenders - Extended sentences -**
17 **Procedure.**

18 1. A court may sentence a convicted offender to an extended sentence as a dangerous
19 special offender or a habitual offender in accordance with this section upon a finding of
20 any one or more of the following:

- 1 a. The convicted offender is a dangerous, mentally abnormal person whose conduct
2 has been characterized by persistent aggressive behavior and the behavior
3 makes the offender a serious danger to other persons.
- 4 b. The convicted offender is a professional criminal who has substantial income or
5 resources derived from criminal activity.
- 6 c. The convicted offender is a habitual offender. The court may not make such a
7 finding unless the offender is an adult and has previously been convicted in any
8 state or states or by the United States of two felonies ~~of class C or above~~
9 committed at different times when the offender was an adult. For the purposes of
10 this subdivision, a **felony** conviction in another state or under the laws of the
11 United States is considered a felony ~~of class C or above~~ ~~if it is punishable by a~~
12 ~~maximum term of imprisonment of five years or~~ ~~more than three hundred sixty~~
13 ~~days of imprisonment.~~
- 14 d. The offender was convicted of an offense that seriously endangered the life of
15 another person and the offender had previously been convicted of a similar
16 offense.
- 17 e. The offender is especially dangerous because the offender used a firearm,
18 dangerous weapon, or destructive device in the commission of the offense or
19 during the flight therefrom.

20 A conviction shown on direct or collateral review or at the hearing to be invalid or for
21 which the offender has been pardoned on the ground of innocence must be
22 disregarded for purposes of subdivision c. In support of findings under subdivision b, it
23 may be shown that the offender has had control of income or property not explained
24 as derived from a source other than criminal activity. For purposes of subdivision b, a
25 substantial source of income means a source of income which for any period of one
26 year or more exceeds the minimum wage, determined on the basis of a forty-hour
27 week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of
28 the Fair Labor Standards Act of 1938, as amended, for an employee engaged in
29 commerce or in the production of goods for commerce, and which for the same period
30 exceeds fifty percent of the offender's declared adjusted gross income under chapter
31 57-38.

- 1 2. The extended sentence may be imposed in the following manner:
 - 2 a. If the offense for which the offender is convicted is a class A felony, the court may
 - 3 impose a sentence up to a maximum of life imprisonment.
 - 4 b. If the offense for which the offender is convicted is a class B felony, the court may
 - 5 impose a sentence up to a maximum of imprisonment for twenty years.
 - 6 c. If the offense for which the offender is convicted is a class C felony, the court may
 - 7 impose a sentence up to a maximum of imprisonment for ten years.
- 8 3. Whenever an attorney charged with the prosecution of a defendant in a court of this
- 9 state for an alleged felony committed when the defendant was over the age of
- 10 eighteen years has reason to believe that the defendant is a dangerous special
- 11 offender or a habitual offender, the attorney, at a reasonable time before trial or
- 12 acceptance by the court of a plea of guilty, may sign and file with the court, and may
- 13 amend, a notice specifying that the defendant is a dangerous special offender or a
- 14 habitual offender who upon conviction for the felony is subject to the imposition of a
- 15 sentence under subsection 2, and setting out with particularity the reasons why the
- 16 attorney believes the defendant to be a dangerous special offender or a habitual
- 17 offender. In no case may the fact that the prosecuting attorney is seeking sentencing
- 18 of the defendant as a dangerous special offender or a habitual offender be disclosed
- 19 to the jury before a verdict. If the court finds that the filing of the notice as a public
- 20 record may prejudice fair consideration of a pending criminal matter, the court may
- 21 order the notice sealed and the notice is not subject to subpoena or public inspection
- 22 during the pendency of the criminal matter, except on order of the court, but is subject
- 23 to inspection by the defendant alleged to be a dangerous special offender or a habitual
- 24 offender and the offender's counsel.
- 25 4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a
- 26 hearing must be held, before sentence is imposed, in accordance with this subsection
- 27 as follows:
 - 28 a. By a jury, or the court if a jury is waived by the defendant, if the notice alleges
 - 29 that the defendant is a dangerous special offender under subdivision a, b, d, or e
 - 30 of subsection 1. The jury, or the court if a jury is waived, must find that the
 - 31 defendant is a dangerous special offender under one or more of these

1 subdivisions by proof beyond a reasonable doubt. However, in the case of a
2 notice alleging only subdivision e of subsection 1, the trial jury, or the trial court if
3 a jury is waived, may make a special finding of proof of this subdivision without
4 an additional hearing subsequent to a verdict or finding of guilt.

5 b. By the court if the notice alleges that the defendant is a habitual offender under
6 subdivision c of subsection 1. The court must find that the defendant is a habitual
7 offender by a preponderance of the evidence.

8 5. Except in the most extraordinary cases, the court shall obtain a presentence report
9 and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02
10 before holding a hearing under this subsection. The court shall fix a time for the
11 hearing and notice thereof must be given to the defendant and the prosecution at least
12 five days prior thereto. The court shall permit the prosecution and counsel for the
13 defendant, or the defendant if the defendant is not represented by counsel, to inspect
14 the presentence report sufficiently before the hearing as to afford a reasonable
15 opportunity for verification. In extraordinary cases, the court may withhold material not
16 relevant to a proper sentence, diagnostic opinion that might seriously disrupt a
17 program of rehabilitation, any source of information obtained on a promise of
18 confidentiality, and material previously disclosed in open court. A court withholding all
19 or part of a presentence report shall inform the parties of its action and place in the
20 record the reasons therefor. The court may require parties inspecting all or part of a
21 presentence report to give notice of any part thereof intended to be controverted. In
22 connection with the hearing, the defendant is entitled to compulsory process and
23 cross-examination of such witnesses as appear at the hearing. A duly authenticated
24 copy of a former judgment or commitment is prima facie evidence of such former
25 judgment or commitment. If the jury or the court finds, after hearing, one or more of the
26 grounds set forth in subsection 1, that the defendant is a dangerous special offender
27 or a habitual offender, the court shall sentence the defendant to imprisonment for an
28 appropriate term within the limits specified in subsection 2.

2025 SENATE APPROPRIATIONS

HB 1225

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations - Human Resources Division Harvest Room, State Capitol

HB 1225
3/31/2025

| |
|---|
| Relating to reckless endangerment and habitual offenders; and to provide a penalty. |
|---|

10:05 a.m. Chairman Dever opened the hearing.

Members present: Chairman Dever and Senators Cleary, Davison, Magrum and Mathern.

Discussion Topics:

- Fiscal Note
- Movement from Class C to Class B Felony.

10:09 a.m. Tom Erhardt, Chief Parole & Probation Officer, ND Department of Corrects & Rehabilitation (ND DOCR) testified neutral and answered questions concerning fiscal note.

10:20 a.m. Senator Cleary suggested setting bill aside.

10:20 a.m. Chairman Dever closed hearing.

Joan Bares, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations - Human Resources Division Harvest Room, State Capitol

HB 1225 8:30 a.m.
4/4/2025

| |
|--|
| Relating to reckless endangerment and habitual offender; and to provide a penalty. |
|--|

8:30 a.m. Chairman Dever opened the hearing.

Members present: Chairman Dever and Senators Cleary, Davison, Magrum and Mathern.

Discussion Topics:

- Penalty Change
- Committee Action

8:30 a.m. Representative Lawrence R. Klemin, District 47, introduced the bill, and submitted testimony #44661.

8:45 a.m. Senator Mathern moved amendment to remove section 1 of the bill.

8:46 a.m. Senator Cleary seconded the motion.

Voice vote: Motion failed.

8:47 a.m. Senator Cleary moved Do Pass.

8:48 a.m. Senator Mathern seconded the motion.

| Senators | Vote |
|---------------------------|------|
| Senator Dick Dever | y |
| Senator Sean Cleary | y |
| Senator Kyle Davison | a |
| Senator Jeffrey J. Magrum | n |
| Senator Tim Mathern | n |

Motion fails. 2-2-1

8:55 a.m. Senator Dever recessed.

9:10 a.m. Senator Dever reconvened.

9:13 a.m. Senator Davison Moved Do Not Pass.

9:14 a.m. Senator Cleary seconded the motion.

| Senators | Vote |
|---------------------------|-------------|
| Senator Dick Dever | N |
| Senator Sean Cleary | N |
| Senator Kyle Davison | Y |
| Senator Jeffrey J. Magrum | Y |
| Senator Tim Mathern | Y |

Motion passed: 3-2-0

Senator Mathern will carry the bill.

9:14 a.m. Chairman Dever closed the hearing.

Joan Bares, Committee Clerk

HB 1225
Senate Appropriations – Human Resources Division
Rep. Lawrence R. Klemin
April 4, 2025

Mr. Chairman and members of the Committee. I am Lawrence R. Klemin, Representative for District 47 in Bismarck. I introduced this bill at the request of the North Dakota State's Attorneys Association. HB 1225 was originally two bills but was combined into one bill at the suggestion of Legislative Council because both bills are a part of the criminal code in Title 12.1.

Section 1 relates to **reckless endangerment**. Currently there are two levels of penalty, a Class C felony if the offender acted with extreme indifference to human life, otherwise it is a Class A misdemeanor. The bill increases the penalty to a Class B felony if the individual used a firearm in committing the offense of reckless endangerment.

The reason for the increase in penalty is because of the rise in offenses using guns. There have been situations where guns are being shot inside crowded bars, inside hotels where bullets penetrate the walls into the next room and injure other guests, guns fired on the street with innocent people standing around, and guns being fired into crowds. There are also instances of drive by shootings into residences and apartment buildings without regard for possible injury to the people inside. This is extreme indifference to the value of human life while using a firearm. With this amendment in the bill, the penalty for reckless endangerment with the use of a firearm for a Class B felony would be a mandatory prison term of four years without parole.

Section 12.1-32-02.1 relates to mandatory prison terms for armed offenders and provides, in part, 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. An offender prohibited from possessing a firearm under section 62.1-02-01 [prior felony conviction involving violence] possesses a firearm while in the course of committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23 [drug dealer].

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.

Section 2 of the bill amends Section 12.1-32-09(1)(c) relating to **habitual offenders**. If the court finds that the individual is an habitual offender, the court can impose an extended sentence. An individual is an habitual offender under current law if the offender has been convicted of two felonies of Class C or above in North Dakota or in another state or federal court. The maximum penalty in North Dakota for a Class C felony is five years. The problem is that under the laws in some other states, the maximum penalty for a Class C felony may be less than five years. Consequently, a Class C felony conviction in North Dakota can't be combined with a Class C felony conviction in another state that has a lesser sentence for purpose of the habitual offender statute. The court can't sentence the individual as an habitual offender. However, taking out the North Dakota reference to a "**Class C**" felony will allow the court to consider any felony from another state without the need to match maximum penalties to sentence an offender as an habitual offender.

In some cases, criminals in North Dakota with two felony convictions are being treated more harshly than criminals from other states with two felony convictions. Criminals coming into North Dakota should be treated the same as criminals in North Dakota – a felony is a felony regardless of the maximum punishment.

Fiscal Note

The fiscal note prepared by DOCR is only for Section 1 of the bill relating to reckless endangerment. If you consider amending the bill due to the fiscal note, please don't also remove or amend Section 2 for this reason. The fiscal note is for the 2027-2029 biennium. There is no fiscal effect for the 2025-2027 biennium.

Rep. Lawrence R. Klemin
District 47, Bismarck

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

HB 1225
4/8/2025

A BILL for an Act to amend and reenact sections 12.1-17-03 and 12.1-32-09 of the North Dakota Century Code, relating to reckless endangerment and habitual offenders; and to provide a penalty.

8:41 a.m. Chairman Bekkedahl opened the hearing.

Members Present: Chairman Bekkedahl, Vice-Chairman Erbele, and Senators Burckhard, Cleary, Conley, Davison, Dever, Dwyer, Magrum, Mathern, Meyer, Schaible, Sickler, Sorvaag, Wanzek.

Members Absent: Senator Thomas.

Discussion Topics:

- Increased Penalties
- Fiscal Impact on 27-29 Biennium
- Dischargetment of Weapons in ND
- Mandatory Sentences Impact on Crime Reduction

8:41 a.m. Senator Mathern introduced the bill.

8:43 a.m. Senator Mathern moved a Do Not Pass.

8:43 a.m. Senator Magrum seconded the motion.

| Senators | Vote |
|----------------------------|------|
| Senator Brad Bekkedahl | Y |
| Senator Robert Erbele | Y |
| Senator Randy A. Burckhard | N |
| Senator Sean Cleary | Y |
| Senator Cole Conley | N |
| Senator Kyle Davison | Y |
| Senator Dick Dever | N |
| Senator Michael Dwyer | Y |
| Senator Jeffery J. Magrum | Y |
| Senator Tim Mathern | Y |
| Senator Scott Meyer | Y |
| Senator Donald Schaible | Y |
| Senator Jonathan Sickler | N |
| Senator Ronald Sorvaag | N |
| Senator Paul J. Thomas | A |
| Senator Terry M. Wanzek | N |

Motion Passed 9-6-1.

Senator Mathern will carry the bill.

8:50 a.m. Chairman Bekkedahl closed the hearing.

Elizabeth Reiten, Committee Clerk

REPORT OF STANDING COMMITTEE
ENGROSSED AND AMENDED HB 1225 ([25.0996.03000](#))

Appropriations Committee (Sen. Bekkedahl, Chairman) recommends **DO NOT PASS** (9 YEAS, 6 NAYS, 1 ABSENT OR EXCUSED AND NOT VOTING). Engrossed HB 1225, as amended, was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.