

Sixty-fifth
Legislative Assembly
of North Dakota

REENGROSSED HOUSE BILL NO. 1041

Introduced by

Legislative Management

(Incarceration Issues Committee)

1 A BILL for an Act to create and enact a new section to chapter 12.1-32 of the North Dakota
2 Century Code, relating to presumptive probation; to amend and reenact sections 12-44.1-32,
3 12-54.1-01, 12-59-08, 12.1-17-13, and 12.1-23-05, subsection 2 of section 12.1-32-02,
4 ~~subsections~~ subsection 3 and 6 of section 12.1-32-07, section 19-03.1-22.3, subsection 1 of
5 section 19-03.1-22.5, subsections 5 and 7 of section 19-03.1-23, subdivision a of subsection 1
6 of section 19-03.1-23.1, section 19-03.4-03, subdivision f of subsection 5 of section 39-08-01,
7 ~~section 43-45-06~~ subsection 2 of section 39-20-01, subsection 17 of section 50-06-05.1, and
8 section 50-09-29 of the North Dakota Century Code, relating to sentence reduction credit,
9 medical paroles, domestic violence offender treatment, grading of theft offenses, credit for time
10 spent in custody, terms and conditions of probation, controlled substances and controlled
11 substance paraphernalia, ~~addiction counseling services~~, and the supplemental nutrition
12 assistance program; to provide a penalty; to provide for the creation of a pretrial services
13 program pilot project within the department of corrections and rehabilitation; to provide a report
14 to the legislative management; ~~and~~ to provide for a report to the legislative assembly; to provide
15 an appropriation; to provide an effective date; and to declare an emergency.

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

17 **SECTION 1. AMENDMENT.** Section 12-44.1-32 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **12-44.1-32. Performance-based sentence** Sentence reduction credit.

20 ~~The presiding judge of a judicial district in which a correctional facility is located, after~~
21 ~~consultation with the other judges in the district, may authorize the facility administrator to~~
22 ~~provide for~~ An inmate sentenced to a correctional facility under this chapter is eligible to earn
23 ~~sentence reductions based upon performance criteria established through~~ by the administrator
24 ~~except that sentence reductions may not be given to offenders sentenced under section~~

1 ~~12.1-32-09.1, including sentence reduction for good conduct.~~ While incarcerated in a
2 correctional facility, an offender may earn no more than a one-day sentence reduction per six
3 days served.

4 **SECTION 2. AMENDMENT.** Section 12-54.1-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **12-54.1-01. ~~Performance-based sentence~~Sentence reduction.**

7 Except as provided under section 12.1-32-09.1, ~~offenders~~an offender committed to the legal
8 and physical custody of the department of corrections and rehabilitation ~~are~~is eligible to earn
9 sentence reductions based upon performance criteria established through department and
10 penitentiary rules. Performance criteria includes participation in court-ordered or
11 staff-recommended treatment and education programs and good work performance. The
12 department may credit an offender committed to the legal and physical custody of the
13 department who is eligible for sentence reduction five days good time per month for each month
14 of the sentence imposed. The department may ~~not~~ credit an offender with ~~any~~ sentence
15 reduction for time spent in custody ~~prior to~~before ~~sentencing~~sentencing and commitment, ~~for time~~
16 ~~under supervised probation, or for any sentence where the incarceration time is six months or~~
17 ~~less~~ to the legal and physical custody of the department. The department may not credit an
18 offender with any sentence reduction for time spent on probation under the supervision and
19 management of the department.

20 **SECTION 3. AMENDMENT.** Section 12-59-08 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **12-59-08. ~~Emergency~~Medical paroles.**

23 ~~The~~If an inmate, including an inmate whose sentence is subject to sections 12.1-32-02.1
24 and 12.1-32-09.1, and an inmate sentenced under subsection 1 of section 12.1-32-01, has a
25 serious or terminal medical condition, the parole board may consider whether to grant the
26 inmate may receive an emergency medical parole at a meeting scheduled by the chairman.
27 ~~The board may request the inmate to personally appear before the board before the board~~
28 ~~makes a decision whether to grant the inmate an emergency parole. The board may grant or~~
29 ~~deny an emergency parole, or grant a conditional emergency parole, or continue its~~
30 ~~consideration to another meeting. Two members of the parole board may grant emergency~~
31 ~~parole, subject to terms and conditions of emergency parole that may be established by the two~~

1 ~~members of the parole board, or by the department of corrections and rehabilitation with the~~
2 ~~approval of the parole board.~~ An inmate who receives an emergency medical parole remains
3 under the jurisdiction of the parole board until the expiration of the maximum term or terms of
4 imprisonment for which the inmate was sentenced, less any sentence reduction the inmate has
5 received.

6 **SECTION 4. AMENDMENT.** Section 12.1-17-13 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **12.1-17-13. Mandated treatment of domestic violence offenders.**

9 The sentence for an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-02,
10 12.1-17-03, 12.1-17-04, or 12.1-17-05 against an actor's family or household member, as
11 defined in subsection 4 of section 14-07.1-01, must include an order to complete a domestic
12 violence offender evaluation and treatment program as determined by the court. A court may not
13 order the offender to attend anger management classes or individual counseling unless a
14 domestic violence offender treatment program is not reasonably available to the defendant and
15 the court makes findings for the record explaining why an order to complete a domestic violence
16 offender treatment program would be inappropriate.

17 **SECTION 5. AMENDMENT.** Section 12.1-23-05 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **12.1-23-05. Grading of theft offenses.**

- 20 1. Notwithstanding subsection 3, theft under this chapter is a class A felony if the
21 property or services stolen exceed fifty thousand dollars in value.
- 22 2. Notwithstanding the provisions of subsection 3, theft under this chapter is a class B
23 felony if the property or services stolen exceed ten thousand dollars in value but do
24 not exceed fifty thousand dollars or are acquired or retained by a threat to commit a
25 felony.
- 26 3. Theft under this chapter is a class C felony if:
- 27 a. The property or services stolen exceed ~~one~~two thousand ~~five hundred~~ dollars in
28 value;
- 29 b. The property or services stolen are acquired or retained by threat and (1) are
30 acquired or retained by a public servant by a threat to take or withhold official
31 action, or (2) exceed one hundred dollars in value;

- 1 c. The property or services stolen exceed one hundred dollars in value and are
2 acquired or retained by a public servant in the course of official duties;
- 3 d. The property stolen is a firearm, ammunition, or an explosive or destructive
4 device, ~~or an automobile, aircraft, or other motor-propelled vehicle~~;
- 5 e. The property consists of any government file, record, document, or other
6 government paper stolen from any government office or from any public servant;
- 7 f. The defendant is in the business of buying or selling stolen property and the
8 defendant receives, retains, or disposes of the property in the course of that
9 business;
- 10 g. The property stolen consists of any implement, paper, or other thing uniquely
11 associated with the preparation of any money, stamp, bond, or other document,
12 instrument, or obligation of this state;
- 13 h. The property stolen consists of livestock taken from the premises of the owner;
- 14 i. The property stolen consists of a key or other implement uniquely suited to
15 provide access to property the theft of which would be a felony and it was stolen
16 to gain such access;
- 17 j. The property stolen is a card, plate, or other credit device existing for the purpose
18 of obtaining money, property, labor, or services on credit, or is a debit card,
19 electronic fund transfer card, code, or other means of access to an account for
20 the purposes of initiating electronic fund transfers; or
- 21 k. The property stolen is a prescription drug as defined in section 43-15.3-01.
- 22 4. All other theft under this chapter is a class A misdemeanor, unless the requirements of
23 subsection 5 are met.
- 24 5. Theft under this chapter of property or services of a value not exceeding five hundred
25 dollars is a class B misdemeanor if:
 - 26 a. The theft was not committed by threat;
 - 27 b. The theft was not committed by deception by one who stood in a confidential or
28 fiduciary relationship to the victim of the theft; and
 - 29 c. The defendant was not a public servant or an officer or employee of a financial
30 institution who committed the theft in the course of official duties.

1 The special classification provided in this subsection applies if the offense is classified
2 under this subsection in the charge or if, at sentencing, the required factors are
3 established by a preponderance of the evidence.

4 6. Notwithstanding subsection 3 of section 12.1-06-01, an attempt to commit a theft
5 under this chapter is punishable equally with the completed offense when the actor
6 has completed all of the conduct which the actor believes necessary on the actor's
7 part to complete the theft except receipt of the property.

8 7. For purposes of grading, the amount involved in a theft under this chapter is the
9 highest value by any reasonable standard, regardless of the actor's knowledge of such
10 value, of the property or services which were stolen by the actor, or which the actor
11 believed that the actor was stealing, or which the actor could reasonably have
12 anticipated to have been the property or services involved. Thefts committed pursuant
13 to one scheme or course of conduct, whether from the same person or several
14 persons, may be charged as one offense and the amounts proved to have been stolen
15 may be aggregated in determining the grade of the offense.

16 **SECTION 6. AMENDMENT.** Subsection 2 of section 12.1-32-02 of the North Dakota
17 Century Code is amended and reenacted as follows:

18 2. Credit against any sentence to a term of imprisonment must be given by the court to a
19 defendant for all time spent in custody as a result of the criminal charge for which the
20 sentence was imposed or as a result of the conduct on which such charge was based.
21 "Time spent in custody" includes time spent in custody in a jail or mental institution for
22 the offense charged, whether that time is spent prior to trial, during trial, pending
23 sentence, or pending appeal. The total amount of credit the defendant is entitled to for
24 time spent in custody and any credit for sentence reduction under section 12-44.1-32
25 or 12-54.1-01 the defendant is entitled to must be stated in the criminal judgment.

26 **SECTION 7. AMENDMENT.** Subsection 3 of section 12.1-32-07 of the North Dakota
27 Century Code is amended and reenacted as follows:

28 3. The court shall provide as an explicit condition of every probation that the defendant
29 may not possess a firearm, destructive device, or other dangerous weapon while the
30 defendant is on probation. Except when the offense is a misdemeanor offense under
31 section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the

1 court may waive this condition of probation if the defendant has pled guilty to, or has
2 been found guilty of, a misdemeanor or infraction offense, the misdemeanor or
3 infraction is the defendant's first offense, and the court has made a specific finding on
4 the record before imposition of a sentence or a probation that there is good cause to
5 waive the condition. The court may not waive this condition of probation if the court
6 places the defendant under the supervision and management of the department of
7 corrections and rehabilitation. The court shall provide as an explicit condition of
8 probation that the defendant may not willfully defraud a urine test administered as a
9 condition of probation. Unless waived on the record by the court, the court shall also
10 provide as a condition of probation that the defendant undergo various agreed-to
11 community constraints and conditions as intermediate measures of the department of
12 corrections and rehabilitation to avoid revocation, which may include:

- 13 a. Community service;
- 14 b. Day reporting;
- 15 c. Curfew;
- 16 d. Home confinement;
- 17 e. House arrest;
- 18 f. Electronic monitoring;
- 19 g. Residential halfway house;
- 20 h. Intensive supervision program;
- 21 i. Up to five nonsuccessive periods of incarceration during any twelve-month
22 period, each of which may not exceed forty-eight consecutive hours; or
- 23 j. Participation in the twenty-four seven sobriety program; or
- 24 k. One period of incarceration during a period of probation not to exceed thirty
25 consecutive days in lieu of a petition for revocation of probation.

26 ~~SECTION 8. AMENDMENT. Subsection 6 of section 12.1-32-07 of the North Dakota~~
27 ~~Century Code is amended and reenacted as follows:~~

28 ~~6. a. The court, upon notice to the probationer and with good cause, may modify or~~
29 ~~enlarge the conditions of probation at any time prior to the expiration or~~
30 ~~termination of the period for which the probation remains conditional.~~

1 ~~b.~~ If the defendant violates a condition of probation at any time before the expiration
2 or termination of the period and the petition for revocation of probation is the first
3 petition for revocation for a violation of a condition of probation in the case and
4 the violation does not include the commission of an offense involving violence, a
5 firearm or dangerous weapon, or the commission of a felony offense, or the
6 defendant was on probation for an offense subject to registration under section
7 12.1-32-15, the court may continue~~shall~~:

8 ~~(1) Continue the defendant on the existing probation, with or without modifying~~
9 ~~or enlarging the conditions;~~

10 ~~(2) Require the defendant to serve up to ninety days of incarceration or the~~
11 ~~balance of the defendant's sentence, whichever is less, as a condition of~~
12 ~~probation; or may revoke~~

13 ~~(3) Revoke the probation and impose a sentence not to exceed ninety days of~~
14 ~~incarceration or the balance of the defendant's sentence, whichever is less.~~
15 ~~In any other case, the court may revoke the probation and impose any other~~
16 ~~sentence that was available under section 12.1-32-02 or 12.1-32-09 at the~~
17 ~~time of initial sentencing or deferment.~~

18 ~~c.~~ In the case of suspended execution of sentence, if the defendant violates a
19 condition of probation at any time before the expiration or termination of the
20 period and the petition for revocation of probation is the first petition for
21 revocation for a violation of a condition of probation in the case and the violation
22 does not include the commission of an offense involving violence, a firearm or
23 dangerous weapon, or the commission of a felony offense, or the defendant was
24 on probation for an offense subject to registration under section 12.1-32-15, the
25 court may revoke~~shall~~:

26 ~~(1) Continue the defendant on the existing probation, with or without modifying~~
27 ~~or enlarging the conditions;~~

28 ~~(2) Require the defendant to serve up to ninety days of incarceration or the~~
29 ~~balance of the defendant's sentence, whichever is less, as a condition of~~
30 ~~probation; or~~

1 ~~————— (3) Revoke the probation and impose a sentence not to exceed ninety days of~~
2 ~~incarceration or the balance of the defendant's sentence, whichever is less.~~
3 ~~In any other case, the court may revoke the probation and cause the~~
4 ~~defendant to suffer the penalty of the sentence previously imposed upon the~~
5 ~~defendant.~~

6 **SECTION 8.** A new section to chapter 12.1-32 of the North Dakota Century Code is created
7 and enacted as follows:

8 **Presumptive probation.**

9 1. The sentencing court shall sentence an individual convicted of a class C felony
10 offense or class A misdemeanor offense to a term of probation at the time of initial
11 sentencing, except for an offense involving domestic violence; an offense in violation
12 of section 12.1-17-07.1 chapters 12.1-06.2, 12.1-08, and 12.1-09, section 12.1-16-03,
13 chapter 12.1-41, or sections chapters 12.1-17, 12.1-18, and 12.1-22, section
14 12.1-23-02.1, chapter 12.1-25, an offense subject to registration under section
15 12.1-32-15, chapter 12.1-36, or section 14-07.1-06 or 14-09-22, including attempt,
16 servng as an accomplice to an offense, or conspiracy to commit the offense; an
17 attempt to commit an offense involving a firearm or dangerous weapon or serving as
18 an accomplice or in a conspiracy to commit an offense involving a firearm or
19 dangerous weapon; or if a mandatory term of incarceration is required by law. The
20 sentencing court may impose a sentence of imprisonment if the sentencing court finds
21 there are aggravating factors present to justify a departure from presumptive
22 probation. The sentencing court shall state the aggravating factors on the record at the
23 time of sentencing. This section does not preclude the sentencing court from deferring
24 imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or
25 sentencing an individual to a term of incarceration with credit for time spent in custody
26 if execution of the sentence is suspended.

27 2. This section does not apply to an offense committed under subsection 1 of section
28 12.1-22-02.

29 3. This section does not apply if the sentencing court finds there are aggravating factors
30 present to justify a departure from presumptive probation. The sentencing court shall

1 state the aggravating factors on the record at the time of sentencing. Aggravating
2 factors include:

3 a. That the individual has plead guilty to, or has been found guilty of, a felony
4 offense or class A misdemeanor offense prior to the date of the commission of
5 the offense or offenses charged in the complaint, information, or indictment;

6 b. The age and vulnerability of the victim, whether the individual was in a position of
7 responsibility or trust over the victim, or whether the individual abused a public
8 position of responsibility or trust; or

9 c. If the individual used threats or coercion in the commission of the offense.

10 **SECTION 9. AMENDMENT.** Section 19-03.1-22.3 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.**

13 A person who intentionally ingests, inhales, or otherwise takes into the body a controlled
14 substance, unless the substance was obtained directly from a practitioner or pursuant to a valid
15 prescription or order of a practitioner while acting in the course of the practitioner's professional
16 practice, is guilty of a class ~~AB~~ misdemeanor for a first offense and a class A misdemeanor for a
17 second or subsequent offense. The venue for a violation of this section exists in either the
18 jurisdiction in which the controlled substance was ingested, inhaled, or otherwise taken into the
19 body or the jurisdiction in which the controlled substance was detected in the body of the
20 accused.

21 **SECTION 10. AMENDMENT.** Subsection 1 of section 19-03.1-22.5 of the North Dakota
22 Century Code is amended and reenacted as follows:

- 23 1. The use of controlled substance analog includes the ingestion, inhalation, absorption,
24 or any other method of taking the controlled substance analog into the body. An
25 individual who intentionally uses a controlled substance analog is guilty of a class ~~G-~~
26 felonyB misdemeanor for a first offense and a class A misdemeanor for a second or
27 subsequent offense, unless the individual obtains the analog directly from a
28 practitioner or pursuant to a valid prescription or order of a practitioner.

29 **SECTION 11. AMENDMENT.** Subsections 5 and 7 of section 19-03.1-23 of the North
30 Dakota Century Code are amended and reenacted as follows:

- 1 5. A violation of this chapter or a law of another state or the federal government which is
2 equivalent to an offense with respect to the manufacture, delivery, or intent to deliver a
3 controlled substance under this chapter committed while the offender was an adult
4 and which resulted in a plea or finding of guilt must be considered a prior offense
5 under subsections 1, 3, and 4. The prior offense must be alleged in the complaint,
6 information, or indictment. The plea or finding of guilt for the prior offense must have
7 occurred before the date of the commission of the offense or offenses charged in the
8 complaint, information, or indictment.
- 9 7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess
10 a controlled substance or a controlled substance analog unless the substance
11 was obtained directly from, or pursuant to, a valid prescription or order of a
12 practitioner while acting in the course of the practitioner's professional practice, or
13 except as otherwise authorized by this chapter, but any person who violates
14 section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.
15 Except as otherwise provided in this subsection, any person who violates this
16 subsection is guilty of a class ~~C~~ A misdemeanor. If, at the time of the
17 offense the person is in or on, ~~or within one thousand feet [300.48 meters]~~ of the
18 real property comprising a public or private elementary or secondary school ~~or a~~
19 ~~public career and technical education school~~, the person is guilty of a class B
20 felony, unless the offense involves ~~one ounce [28.35 grams]~~ or less of marijuana.
21 Any person who violates this subsection regarding possession of ~~one ounce~~
22 ~~[28.35 grams]~~ or less of marijuana is guilty of a class B misdemeanor.
- 23 b. If an individual is sentenced to the legal and physical custody of the department
24 of corrections and rehabilitation under this subsection, the department may place
25 the individual in a drug and alcohol treatment program designated by the
26 department. Upon the successful completion of the drug and alcohol treatment
27 program, the department shall release the individual from imprisonment to begin
28 any court-ordered period of probation.
- 29 c. If the individual is not subject to any court-ordered probation, the court shall order
30 the individual to serve the remainder of the sentence of imprisonment on
31 supervised probation subject to the terms and conditions imposed by the court.

- 1 d. Probation under this subsection may include placement in another facility,
2 treatment program, or drug court. If an individual is placed in another facility or
3 treatment program upon release from imprisonment, the remainder of the
4 sentence must be considered as time spent in custody.
5 e. An individual incarcerated under this subsection as a result of a second probation
6 revocation is not eligible for release from imprisonment upon the successful
7 completion of treatment.

8 **SECTION 12. AMENDMENT.** Subdivision a of subsection 1 of section 19-03.1-23.1 of the
9 North Dakota Century Code is amended and reenacted as follows:

- 10 a. The offense involved the manufacture, delivery, or possession, with intent to
11 manufacture or deliver a controlled substance in or on, ~~or within one thousand-~~
12 ~~feet [300.48 meters] of,~~ the real property comprising a child care or preschool
13 ~~facility, or a public or private elementary or secondary school, public career and~~
14 ~~technical education school, or a public or private college or university;~~

15 **SECTION 13. AMENDMENT.** Section 19-03.4-03 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **19-03.4-03. Unlawful possession of drug paraphernalia - Penalty.**

- 18 1. A person may not use or possess with intent to use drug paraphernalia to plant,
19 propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,
20 process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled
21 substance in violation of chapter 19-03.1. Any person violating this subsection is guilty
22 of a class C felony if the drug paraphernalia is used, or possessed with intent to be
23 used, to manufacture, compound, convert, produce, process, prepare, test, or analyze
24 a controlled substance, other than marijuana, classified in schedule I, II, or III of
25 chapter 19-03.1.
26 2. A person may not use or possess with the intent to use drug paraphernalia to inject,
27 ingest, inhale, or otherwise induce into the human body a controlled substance, other
28 than marijuana, classified in schedule I, II, or III of chapter 19-03.1. A person violating
29 this subsection is guilty of a class ~~A~~ B misdemeanor. If a person previously has been
30 convicted of an offense under this title, other than an offense related to marijuana, or

1 an equivalent offense from another court in the United States, a violation of this
2 subsection is a class ~~C felony~~ A misdemeanor.

3 3. A person may not use or possess with intent to use drug paraphernalia to plant,
4 propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,
5 process, prepare, test, analyze, pack, repack, store, contain, or conceal marijuana in
6 violation of chapter 19-03.1. A person violating this subsection is guilty of a class A
7 misdemeanor.

8 4. A person may not use or possess with the intent to use drug paraphernalia to ingest,
9 inhale, or otherwise introduce into the human body marijuana in violation of
10 chapter 19-03.1. A person violating this subsection is guilty of a class B misdemeanor.

11 **SECTION 14. AMENDMENT.** Subdivision f of subsection 5 of section 39-08-01 of the North
12 Dakota Century Code is amended and reenacted as follows:

13 f. If the offense is subject to subdivision a or b, a municipal court or district court
14 may not suspend a sentence, but may convert each day of a term of
15 imprisonment to ten hours of community service for an offense subject to
16 paragraph 2 of subdivision a. If the offense is subject to subdivision c, the district
17 court may suspend a sentence, except for sixty days' imprisonment, under
18 subsection 3 of section 12.1-32-02 on the condition that the defendant first
19 undergo and complete an evaluation for alcohol and substance abuse treatment
20 and rehabilitation. If the offense is subject to subdivision d, the district court may
21 suspend a sentence, except for one year's imprisonment, under subsection 3 of
22 section 12.1-32-02 on the condition that the defendant first undergo and
23 complete an evaluation for alcohol and substance abuse treatment and
24 rehabilitation. If the defendant is found to be in need of alcohol and substance
25 abuse treatment and rehabilitation, the district court may order the defendant
26 placed under the supervision and management of the department of corrections
27 and rehabilitation and is subject to the conditions of probation under section
28 12.1-32-07. The district court may require the defendant to complete alcohol and
29 substance abuse treatment and rehabilitation under the direction of the drug
30 court program as a condition of probation in accordance with rules adopted by
31 the supreme court. The district court may terminate probation under this section

1 when the defendant completes the drug treatment program. If the district court
2 finds that a defendant has failed to undergo an evaluation or complete treatment
3 or has violated any condition of probation, the district court shall revoke the
4 defendant's probation and shall sentence the defendant in accordance with this
5 subsection.

6 ~~SECTION 16. AMENDMENT. Section 43-45-06 of the North Dakota Century Code is~~
7 ~~amended and reenacted as follows:~~

8 ~~43-45-06. Addiction counseling practice -- Exemptions.~~

9 ~~1. Nothing in this chapter may be construed to prevent any person~~individual ~~from doing~~
10 ~~work within the standards and ethics of that person's~~individual's ~~profession and calling,~~
11 ~~provided that if the person~~individual ~~is providing addiction treatment or counseling and~~
12 ~~does not represent to the public, by title or by use of the initials L.A.C., that the~~
13 ~~person~~individual ~~is engaging in the practice of licensed addiction counseling.~~

14 ~~2. Nothing in this~~This ~~chapter may be construed to~~does not ~~prevent addiction~~
15 ~~counseling trainees or interns in board-approved programs from engaging in addiction~~
16 ~~counseling related to training.~~

17 **SECTION 15. AMENDMENT.** Subsection 2 of section 39-20-01 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 2. The test or tests must be administered at the direction of a law enforcement officer
20 only after placing the individual, ~~except individuals mentioned in section 39-20-03,~~
21 under arrest and informing that individual that the individual is or will be charged with
22 the offense of driving or being in actual physical control of a vehicle upon the public
23 highways while under the influence of intoxicating liquor, drugs, or a combination
24 thereof. For the purposes of this chapter, the taking into custody of a child under
25 section 27-20-13 or an individual under twenty-one years of age satisfies the
26 requirement of an arrest. The law enforcement officer shall determine which of the
27 tests is to be used.

28 **SECTION 16. AMENDMENT.** Subsection 17 of section 50-06-05.1 of the North Dakota
29 Century Code is amended and reenacted as follows:

30 17. To act as the official agency of the state in the administration of the supplemental
31 nutrition assistance program and to direct and supervise county administration of that

1 program. Provided, however, that the department with the consent of the budget
2 section of the legislative management may terminate the program if the rate of federal
3 financial participation in administrative costs provided under Public Law 93-347 is
4 decreased or limited, or if the state or counties become financially responsible for all or
5 a portion of the coupon bonus payments under the Food Stamp Act. ~~Unless at least~~
6 ~~seven years has elapsed since the most recent felony conviction that has as an~~
7 ~~element the possession, use, or distribution of a controlled substance, the~~The
8 department ~~shall~~may not deny assistance under the supplemental nutrition assistance
9 program to any individual who has been convicted of a felony offense that has as an
10 element the possession, use, or distribution of a controlled substance as defined in
11 section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].

12 **SECTION 17. AMENDMENT.** Section 50-09-29 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **50-09-29. Requirements for administration of temporary assistance for needy**
15 **families.**

- 16 1. Except as provided in subsections 2, 3, and 4, the department of human services, in
17 its administration of the temporary assistance for needy families program, shall:
- 18 a. Provide assistance to otherwise eligible women in the third trimester of a
19 pregnancy;
 - 20 b. Except as provided in subdivision c, afford eligible households benefits for no
21 more than sixty months;
 - 22 c. Exempt eligible households from the requirements of subdivision b due to mental
23 or physical disability of a parent or child, mental or physical incapacity of a
24 parent, or other hardship including a parent subject to domestic violence as
25 defined in section 14-07.1-01;
 - 26 d. Unless an exemption, exclusion, or disregard is required by law, count income
27 and assets whenever actually available;
 - 28 e. Except as provided in subdivision j, and as required to allow the state to receive
29 funds from the federal government under title IV-A, provide no benefits to
30 noncitizen immigrants who arrive in the United States after August 21, 1996;

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- 1 f. Limit eligibility to households with total available assets, not otherwise exempted
2 or excluded, of a value established by the department;
- 3 g. Exclude one motor vehicle of any value in determining eligibility;
- 4 h. Require work activities for all household members not specifically exempted by
5 the department of human services for reasons such as mental or physical
6 disability of a parent or child or mental or physical incapacity of a parent;
- 7 i. Establish goals and take action to prevent and reduce the incidence of
8 out-of-wedlock pregnancies and establish numerical goals for reducing the
9 illegitimacy rate for the state for periods through calendar year 2005;
- 10 j. To the extent required to allow the state to receive funds from the federal
11 government under title IV-A, provide benefits to otherwise eligible noncitizens
12 who are lawfully present in the United States;
- 13 k. Establish and enforce standards against program fraud and abuse;
- 14 l. Provide employment placement programs;
- 15 m. Exempt from assets and income the savings and proportionate matching funds in
16 individual development accounts;
- 17 n. Determine the unemployment rate of adults living in a county that includes Indian
18 reservation lands and a significant population of Indian individuals by using
19 unemployment data provided by job service North Dakota;
- 20 o. When appropriate, require household members to complete high school;
- 21 p. To the extent required to allow the state to receive funds from the federal
22 government under title IV-A, exempt single parents from required work activities;
- 23 q. Provide for sanctions, including termination of assistance to the household, if a
24 household member fails to cooperate with work requirements;
- 25 r. Provide for sanctions, including termination of assistance to the household, if a
26 household member fails, without good cause, to cooperate with child support
27 activities;
- 28 s. Deny assistance with respect to a minor child absent from the household for
29 more than one calendar month, except as specifically provided by the state
30 agency for absences;

- 1 t. Require each household to participate in developing an individual employment
2 plan and provide for sanctions, including termination of assistance to the
3 household, if adult or minor household members age sixteen or older fail to
4 cooperate with the terms of the individual employment plan;
- 5 u. Provide pre-pregnancy family planning services that are to be incorporated into
6 the temporary assistance for needy families program assessment;
- 7 v. Except in cases of pregnancy resulting from rape or incest, not increase the
8 assistance amount to recognize the increase in household size when a child is
9 born to a household member who was a recipient of assistance under this
10 chapter during the probable month of the child's conception;
- 11 w. Disregard earned income as an incentive allowance for no more than twelve
12 months; and
- 13 x. Consider, and if determined appropriate, authorize demonstration projects in
14 defined areas which may provide benefits and services that are not identical to
15 benefits and services provided elsewhere; and
- 16 y. ~~Unless at least seven years has elapsed since the most recent felony conviction~~
17 ~~that has as an element the possession, use, or distribution of a controlled~~
18 ~~substance, deny assistance to any individual who has been convicted of a felony~~
19 ~~offense that has as an element the possession, use, or distribution of a controlled~~
20 ~~substance as defined in section 102(6) of the Controlled Substances Act~~
21 ~~[21 U.S.C. 802(6)].~~
- 22 2. If the secretary of the United States department of health and human services
23 determines that funds otherwise available for the temporary assistance for needy
24 families program in this state must be reduced or eliminated should the department of
25 human services administer the program in accordance with any provision of
26 subsection 1, the department of human services shall administer the program in a
27 manner that avoids the reduction or loss.
- 28 3. If the department of human services determines, subject to the approval of the
29 legislative management, that there is insufficient worker opportunity, due to increases
30 in the unemployment rate, to participate in work activities, the department may

1 administer the temporary assistance for needy families program in a manner different
2 than provided in subsection 1.

3 4. If the department of human services determines, subject to the approval of the
4 legislative management, that administration of the temporary assistance for needy
5 families program, in the manner provided by subsection 1, causes otherwise eligible
6 individuals to become a charge upon the counties under chapter 50-01, the
7 department may administer the program in a manner that avoids that result.

8 5. The department of human services may not deny assistance to any individual who has
9 been convicted of a felony offense that has as an element the possession, use, or
10 distribution of a controlled substance as defined in section 102(6) of the Controlled
11 Substance Act [21 U.S.C. 802(6)].

12 **SECTION 18. PRETRIAL SERVICES DIVISION PILOT PROJECT - REPORT TO**

13 **LEGISLATIVE ASSEMBLY.** The department of corrections and rehabilitation may establish a
14 pretrial services program as a pilot project in one or more judicial districts during the biennium
15 beginning July 1, 2017, and ending June 30, 2019. The pretrial services pilot project must
16 involve coordination among the department, the judicial branch, the commission on legal
17 counsel for indigents, and state and local law enforcement agencies for the provision of pretrial
18 services by the department for the district courts to individuals charged with felony offenses.
19 Pretrial services include risk assessments, background and criminal history background
20 investigations, recommendations for conditions of pretrial release, monitoring and supervision of
21 individuals on pretrial release for compliance with pretrial conditions to assure the individual's
22 appearance at all court proceedings, and reporting violations of pretrial release conditions to the
23 district court. The department and the judicial branch shall provide a report of the process and
24 outcome measures of the pretrial services program and recommendations, together with any
25 legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

26 **SECTION 19. JUSTICE REINVESTMENT INITIATIVE - REPORT TO LEGISLATIVE**

27 **MANAGEMENT - REPORT TO LEGISLATIVE ASSEMBLY.** Before September 1, 2018, the
28 department of corrections and rehabilitation and the supreme court shall provide a report to the
29 legislative management regarding the progress of the justice reinvestment initiative. The
30 department of corrections and rehabilitation and the supreme court shall provide a report on the
31 progress of the justice reinvestment initiative to the sixty-sixth legislative assembly.

1 | **SECTION 20. APPROPRIATION.** There is appropriated out of any moneys in the general
2 | fund in the state treasury, not otherwise appropriated, the sum of \$110,916, or so much of the
3 | sum as may be necessary, and \$1,532,785 from federal funds, or so much of the sum as may
4 | be necessary, to the department of human services for the purpose of implementing sections 16
5 | and 17 of this Act, for the biennium beginning July 1, 2017, and ending June 30, 2019.

6 | **SECTION 21. EFFECTIVE DATE.** Sections 7 and 8 of this Act become effective January 1,
7 | 2018.

8 | **SECTION 22. EMERGENCY.** Sections 1 through 6, 9 through 14, and 16 and 17 of this Act
9 | are declared to be an emergency measure.