

HOUSE BILL NO. 1490
with Senate Amendments
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Introduced by

Representatives Ista, Hagert, Heinert, Louser, O'Brien, Schauer, Schreiber-Beck

Senator Dwyer

1 A BILL for an Act to amend and reenact section 12.1-32-07.4 of the North Dakota Century
2 Code, relating to presumptive probation; to provide a penalty; and to provide for application.

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

4 **SECTION 1. AMENDMENT.** Section 12.1-32-07.4 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **12.1-32-07.4. Presumptive probation.**

- 7 1. The sentencing court shall sentence an individual who has pled guilty to, or has been
8 found guilty of, a class C felony offense or class A misdemeanor offense to a term of
9 probation at the time of initial sentencing, except for an offense involving domestic
10 violence; an offense subject to registration under section 12.1-32-15; an offense
11 involving a firearm or dangerous weapon, explosive, or incendiary device; or if a
12 mandatory term of incarceration is required by law.
- 13 2. The sentencing court may impose a sentence of imprisonment if the sentencing court
14 finds there are aggravating factors present to justify a departure from presumptive
15 probation. Aggravating factors include:
- 16 a. That the individual has plead guilty to, or has been found guilty of, a felony
17 offense or class A misdemeanor offense prior to the date of the commission of
18 the offense or offenses charged in the complaint, information, or indictment;
- 19 b. The age and vulnerability of the victim, whether the individual was in a position of
20 responsibility or trust over the victim, or whether the individual abused a public
21 position of responsibility or trust; or
- 22 c. If the individual used force, threats, or coercion in the commission of the offense.
- 23 3. This section does not preclude the sentencing court from deferring imposition of
24 sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an

1 individual to a term of incarceration with credit for time spent in custody if execution of
2 the sentence is suspended.

3 **SECTION 2. APPLICATION.** This Act applies to criminal charges filed after the effective
4 date of this Act.