

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, section
4 19-03.1-22.3, subsection 1 of section 19-03.1-22.5, subsections 5 and 7 of section 19-03.1-23,
5 subdivision a of subsection 1 of section 19-03.1-23.1, section 19-03.4-03, subdivision f of
6 subsection 5 of section 39-08-01, section 43-45-06, subsection 17 of section 50-06-05.1, and
7 section 50-09-29 of the North Dakota Century Code, relating to sentence reduction credit,
8 medical paroles, domestic violence offender treatment, grading of theft offenses, credit for time
9 spent in custody, terms and conditions of probation, controlled substances and controlled
10 substance paraphernalia, addiction counseling services, and the supplemental nutrition
11 assistance program; to provide a penalty; to provide for the creation of a pretrial services
12 program pilot project within the department of corrections and rehabilitation; and to provide for a
13 report to the legislative assembly.

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

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

17 **12-44.1-32. Performance-based sentence**~~Performance-based sentence~~**Sentence reduction credit.**

18 ~~The presiding judge of a judicial district in which a correctional facility is located, after~~
19 ~~consultation with the other judges in the district, may authorize the facility administrator to~~
20 ~~provide for~~An inmate sentenced to a correctional facility under this chapter is eligible to earn
21 sentence reductions based upon performance criteria established ~~through~~by the administrator
22 ~~except that sentence reductions may not be given to offenders sentenced under section~~
23 12.1-32-09.1, including sentence reduction for good conduct. While incarcerated in a

1 correctional facility, an offender may earn no more than a one-day sentence reduction per six
2 days served.

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

5 **12-54.1-01. ~~Performance-based sentence~~ Sentence reduction.**

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

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

21 **12-59-08. ~~Emergency~~ Medical paroles.**

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

1 who receives an emergency medical parole remains under the jurisdiction of the parole board
2 until the expiration of the maximum term or terms of imprisonment for which the inmate was
3 sentenced, less any sentence reduction the inmate has received. **SECTION 4. AMENDMENT.**

4 Section 12.1-17-13 of the North Dakota Century Code is amended and reenacted as follows:

5 **12.1-17-13. Mandated treatment of domestic violence offenders.**

6 The sentence for an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-02,
7 12.1-17-03, 12.1-17-04, or 12.1-17-05 against an actor's family or household member, as
8 defined in subsection 4 of section 14-07.1-01, must include an order to complete a domestic
9 violence offender evaluation and treatment program as determined by the court. ~~A court may not~~
10 ~~order the offender to attend anger management classes or individual counseling unless a~~
11 ~~domestic violence offender treatment program is not reasonably available to the defendant and~~
12 ~~the court makes findings for the record explaining why an order to complete a domestic violence~~
13 ~~offender treatment program would be inappropriate.~~

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

16 **12.1-23-05. Grading of theft offenses.**

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

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

- 1 6. Notwithstanding subsection 3 of section 12.1-06-01, an attempt to commit a theft
2 under this chapter is punishable equally with the completed offense when the actor
3 has completed all of the conduct which the actor believes necessary on the actor's
4 part to complete the theft except receipt of the property.
- 5 7. For purposes of grading, the amount involved in a theft under this chapter is the
6 highest value by any reasonable standard, regardless of the actor's knowledge of such
7 value, of the property or services which were stolen by the actor, or which the actor
8 believed that the actor was stealing, or which the actor could reasonably have
9 anticipated to have been the property or services involved. Thefts committed pursuant
10 to one scheme or course of conduct, whether from the same person or several
11 persons, may be charged as one offense and the amounts proved to have been stolen
12 may be aggregated in determining the grade of the offense.

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

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

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

25 **Presumptive probation.**

26 Except as provided under section 12.1-32-09.1, the court shall sentence an individual
27 convicted of a class A misdemeanor drug offense to a term of probation if the individual has
28 never plead guilty to, or been found guilty of, a class A misdemeanor drug offense or a felony
29 offense before the date of the commission of the offense charged in the complaint, information,
30 or indictment. The court may impose a sentence of imprisonment if the court finds aggravating

1 factors to justify a departure and states the aggravating factors on the record at the time of
2 sentencing.

3 **SECTION 8. AMENDMENT.** Section 19-03.1-22.3 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.**

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

14 **SECTION 9. AMENDMENT.** Subsection 1 of section 19-03.1-22.5 of the North Dakota
15 Century Code is amended and reenacted as follows:

16 1. The use of controlled substance analog includes the ingestion, inhalation, absorption,
17 or any other method of taking the controlled substance analog into the body. An
18 individual who intentionally uses a controlled substance analog is guilty of a class ~~G-~~
19 ~~felony~~B misdemeanor for a first offense and a class A misdemeanor for a second or
20 subsequent offense, unless the individual obtains the analog directly from a
21 practitioner or pursuant to a valid prescription or order of a practitioner.

22 **SECTION 10. AMENDMENT.** Subsections 5 and 7 of section 19-03.1-23 of the North
23 Dakota Century Code are amended and reenacted as follows:

24 5. A violation of this chapter or a law of another state or the federal government which is
25 equivalent to an offense with respect to the manufacture, delivery, or intent to deliver a
26 controlled substance under this chapter committed while the offender was an adult
27 and which resulted in a plea or finding of guilt must be considered a prior offense
28 under subsections 1, 3, and 4. The prior offense must be alleged in the complaint,
29 information, or indictment. The plea or finding of guilt for the prior offense must have
30 occurred before the date of the commission of the offense or offenses charged in the
31 complaint, information, or indictment.

- 1 7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess
2 a controlled substance or a controlled substance analog unless the substance
3 was obtained directly from, or pursuant to, a valid prescription or order of a
4 practitioner while acting in the course of the practitioner's professional practice, or
5 except as otherwise authorized by this chapter, but any person who violates
6 section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.
7 Except as otherwise provided in this subsection, any person who violates this
8 subsection is guilty of a class G ~~felony~~ A misdemeanor. If, at the time of the
9 offense the person is in or on, or within ~~one thousand~~ five hundred feet
10 ~~[300.48152.4~~ meters] of the real property comprising a public or private
11 elementary or secondary school or a public career and technical education
12 school, the person is guilty of a class B felony, unless the offense involves one
13 ounce [28.35 grams] or less of marijuana. Any person who violates this
14 subsection regarding possession of one ounce [28.35 grams] or less of marijuana
15 is guilty of a class B misdemeanor.
- 16 b. If an individual is sentenced to the legal and physical custody of the department
17 of corrections and rehabilitation under this subsection, the department may place
18 the individual in a drug and alcohol treatment program designated by the
19 department. Upon the successful completion of the drug and alcohol treatment
20 program, the department shall release the individual from imprisonment to begin
21 any court-ordered period of probation.
- 22 c. If the individual is not subject to any court-ordered probation, the court shall order
23 the individual to serve the remainder of the sentence of imprisonment on
24 supervised probation subject to the terms and conditions imposed by the court.
- 25 d. Probation under this subsection may include placement in another facility,
26 treatment program, or drug court. If an individual is placed in another facility or
27 treatment program upon release from imprisonment, the remainder of the
28 sentence must be considered as time spent in custody.
- 29 e. An individual incarcerated under this subsection as a result of a second probation
30 revocation is not eligible for release from imprisonment upon the successful
31 completion of treatment.

1 **SECTION 11. AMENDMENT.** Subdivision a of subsection 1 of section 19-03.1-23.1 of the
2 North Dakota Century Code is amended and reenacted as follows:

- 3 a. The offense involved the manufacture, delivery, or possession, with intent to
4 manufacture or deliver a controlled substance in or on, or within ~~one thousand five~~
5 hundred feet [~~300.48~~152.4 meters] of, the real property comprising a child care or
6 preschool facility, public or private elementary or secondary school, public career
7 and technical education school, or a public or private college or university;

8 **SECTION 12. AMENDMENT.** Section 19-03.4-03 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **19-03.4-03. Unlawful possession of drug paraphernalia - Penalty.**

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

1 **43-45-06. Addiction counseling practice - Exemptions.**

2 1. ~~Nothing in this~~This chapter may be construed to ~~does not~~ prevent any ~~person~~individual
3 from doing work within the standards and ethics of that ~~person's~~individual's profession
4 and calling, ~~provided that~~if the ~~person~~individual does not represent to the public, by
5 title or by use of the initials L.A.C., that the ~~person~~individual is engaging in addiction
6 counseling. A licensed clinical psychologist, a doctoral candidate in psychology, a
7 licensed independent clinical social worker, or a licensed professional clinical
8 counselor may provide addiction counseling services, as determined qualified by each
9 respective licensing board.

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

13 **SECTION 15. AMENDMENT.** Subsection 17 of section 50-06-05.1 of the North Dakota
14 Century Code is amended and reenacted as follows:

15 17. To act as the official agency of the state in the administration of the supplemental
16 nutrition assistance program and to direct and supervise county administration of that
17 program. Provided, however, that the department with the consent of the budget
18 section of the legislative management may terminate the program if the rate of federal
19 financial participation in administrative costs provided under Public Law 93-347 is
20 decreased or limited, or if the state or counties become financially responsible for all or
21 a portion of the coupon bonus payments under the Food Stamp Act. ~~Unless at least~~
22 ~~seven years has elapsed since the most recent felony conviction that has as an~~
23 ~~element the possession, use, or distribution of a controlled substance, the~~The
24 department ~~shall~~may not deny assistance under the supplemental nutrition assistance
25 program to any individual who has been convicted of a felony offense that has as an
26 element the possession, use, or distribution of a controlled substance as defined in
27 section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].

28 **SECTION 16. AMENDMENT.** Section 50-09-29 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **50-09-29. Requirements for administration of temporary assistance for needy**
2 **families.**

- 3 1. Except as provided in subsections 2, 3, and 4, the department of human services, in
4 its administration of the temporary assistance for needy families program, shall:
- 5 a. Provide assistance to otherwise eligible women in the third trimester of a
6 pregnancy;
 - 7 b. Except as provided in subdivision c, afford eligible households benefits for no
8 more than sixty months;
 - 9 c. Exempt eligible households from the requirements of subdivision b due to mental
10 or physical disability of a parent or child, mental or physical incapacity of a
11 parent, or other hardship including a parent subject to domestic violence as
12 defined in section 14-07.1-01;
 - 13 d. Unless an exemption, exclusion, or disregard is required by law, count income
14 and assets whenever actually available;
 - 15 e. Except as provided in subdivision j, and as required to allow the state to receive
16 funds from the federal government under title IV-A, provide no benefits to
17 noncitizen immigrants who arrive in the United States after August 21, 1996;
 - 18 f. Limit eligibility to households with total available assets, not otherwise exempted
19 or excluded, of a value established by the department;
 - 20 g. Exclude one motor vehicle of any value in determining eligibility;
 - 21 h. Require work activities for all household members not specifically exempted by
22 the department of human services for reasons such as mental or physical
23 disability of a parent or child or mental or physical incapacity of a parent;
 - 24 i. Establish goals and take action to prevent and reduce the incidence of
25 out-of-wedlock pregnancies and establish numerical goals for reducing the
26 illegitimacy rate for the state for periods through calendar year 2005;
 - 27 j. To the extent required to allow the state to receive funds from the federal
28 government under title IV-A, provide benefits to otherwise eligible noncitizens
29 who are lawfully present in the United States;
 - 30 k. Establish and enforce standards against program fraud and abuse;
 - 31 l. Provide employment placement programs;

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- 1 m. Exempt from assets and income the savings and proportionate matching funds in
2 individual development accounts;
- 3 n. Determine the unemployment rate of adults living in a county that includes Indian
4 reservation lands and a significant population of Indian individuals by using
5 unemployment data provided by job service North Dakota;
- 6 o. When appropriate, require household members to complete high school;
- 7 p. To the extent required to allow the state to receive funds from the federal
8 government under title IV-A, exempt single parents from required work activities;
- 9 q. Provide for sanctions, including termination of assistance to the household, if a
10 household member fails to cooperate with work requirements;
- 11 r. Provide for sanctions, including termination of assistance to the household, if a
12 household member fails, without good cause, to cooperate with child support
13 activities;
- 14 s. Deny assistance with respect to a minor child absent from the household for
15 more than one calendar month, except as specifically provided by the state
16 agency for absences;
- 17 t. Require each household to participate in developing an individual employment
18 plan and provide for sanctions, including termination of assistance to the
19 household, if adult or minor household members age sixteen or older fail to
20 cooperate with the terms of the individual employment plan;
- 21 u. Provide pre-pregnancy family planning services that are to be incorporated into
22 the temporary assistance for needy families program assessment;
- 23 v. Except in cases of pregnancy resulting from rape or incest, not increase the
24 assistance amount to recognize the increase in household size when a child is
25 born to a household member who was a recipient of assistance under this
26 chapter during the probable month of the child's conception;
- 27 w. Disregard earned income as an incentive allowance for no more than twelve
28 months; and
- 29 x. Consider, and if determined appropriate, authorize demonstration projects in
30 defined areas which may provide benefits and services that are not identical to
31 benefits and services provided elsewhere; ~~and~~

1 y. ~~Unless at least seven years has elapsed since the most recent felony conviction-~~
2 ~~that has as an element the possession, use, or distribution of a controlled-~~
3 ~~substance, deny assistance to any individual who has been convicted of a felony-~~
4 ~~offense that has as an element the possession, use, or distribution of a controlled-~~
5 ~~substance as defined in section 102(6) of the Controlled Substances Act-~~
6 ~~[21 U.S.C. 802(6)].~~

7 2. If the secretary of the United States department of health and human services
8 determines that funds otherwise available for the temporary assistance for needy
9 families program in this state must be reduced or eliminated should the department of
10 human services administer the program in accordance with any provision of
11 subsection 1, the department of human services shall administer the program in a
12 manner that avoids the reduction or loss.

13 3. If the department of human services determines, subject to the approval of the
14 legislative management, that there is insufficient worker opportunity, due to increases
15 in the unemployment rate, to participate in work activities, the department may
16 administer the temporary assistance for needy families program in a manner different
17 than provided in subsection 1.

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

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

27 **SECTION 17. PRETRIAL SERVICES DIVISION PILOT PROJECT - REPORT TO**

28 **LEGISLATIVE ASSEMBLY.** The department of corrections and rehabilitation may establish a
29 pretrial services program as a pilot project in one or more judicial districts during the biennium
30 beginning July 1, 2017, and ending June 30, 2019. The pretrial services pilot project must
31 involve coordination among the department, the judicial branch, and state and local law

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1 enforcement agencies for the provision of pretrial services by the department for the district
2 courts to individuals charged with felony offenses. Pretrial services include risk assessments,
3 background and criminal history background investigations, recommendations for conditions of
4 pretrial release, monitoring and supervision of individuals on pretrial release for compliance with
5 pretrial conditions to assure the individual's appearance at all court proceedings, and reporting
6 violations of pretrial release conditions to the district court. The department and the judicial
7 branch shall provide a report of the process and outcome measures of the pretrial services
8 program and recommendations, together with any legislation required to implement the
9 recommendations, to the sixty-sixth legislative assembly.