

April 1, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1367

Page 1, line 1, after "12.1-32-06.1" insert ", subsections 1 and 3 of section 12.1-32-07, and section 29-01-20"

Page 1, line 2, after "probation" insert ", supervision of probation, and conditions of probation and to address peace officer custody of stolen goods; and to provide a penalty"

Page 1, line 15, after "section" insert an underscored comma

Page 1, line 17, remove "class C"

Page 1, line 17, remove the underscored comma

Page 1, line 18, replace "ten" with "offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1 which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-40, or a violation of section 14-09-22; three"

Page 1, line 18, replace "all" with "any"

Page 1, line 18, replace "offenses, and" with "offense:"

Page 1, line 18, after "misdemeanor" insert "; and three hundred sixty days for a class B misdemeanor offense"

Page 3, after line 6, insert:

**"SECTION 2. AMENDMENT.** Subsection 1 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~When~~Whenever the court imposes probation upon conviction for a felony offense subject to section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of 12.1-40, a violation of 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. Whenever the court imposes probation upon conviction or order of disposition in all other felony cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. ~~If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation.~~ A community

corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court ~~or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.~~

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

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under 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 court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:
  - a. Community service;
  - b. Day reporting;
  - c. Curfew;
  - d. Home confinement;
  - e. House arrest;
  - f. Electronic monitoring;
  - g. Residential halfway house;
  - h. Intensive supervision program; ~~or~~
  - i. Up to five non-successive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or
  - j. Participation in the twenty-four seven sobriety program.

**SECTION 4. AMENDMENT.** Section 29-01-20 of the North Dakota Century Code is amended and reenacted as follows:

**29-01-20. Stolen property to be held by peace officer.**

~~When~~ Except for consumer goods, as defined under section 41-09-02,  
whenever property alleged to have been stolen or embezzled comes into the custody  
of a peace officer, the peace officer shall hold it subject to the order of the magistrate  
authorized by section 29-01-21 to direct the disposal thereof."

Renumber accordingly