

February 6, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1041

Page 1, line 3, after the fifth comma insert "subsections 3 and 6 of section 12.1-32-07,"

Page 1, line 12, after the semicolon insert "to provide a report to the legislative management;

Page 2, line 22, replace "section" with "sections"

Page 2, line 22, after "12.1-32-02.1" insert "and 12.1-32-09.1,"

Page 3, line 10, remove the overstrike over "~~A court may not~~"

Page 3, remove the overstrike over lines 11 through 14

Page 5, after line 22, insert:

"SECTION 7. 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;

- i. Up to five nonsuccessive 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; ~~or~~
- k. One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.

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

- 6. a. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the probation remains conditional.
- b. If the defendant violates a condition of probation at any time before the expiration or termination of the period and the petition for revocation of probation is the first petition for revocation for a violation of a condition of probation in the case and the violation does not include the commission of an offense involving violence, a firearm or dangerous weapon, or the commission of a felony offense, or the defendant was on probation for an offense subject to registration under section 12.1-32-15, the court may ~~continue~~ shall:

 - (1) Continue the defendant on the existing probation, with or without modifying or enlarging the conditions; ~~;~~
 - (2) Require the defendant to serve up to ninety days of incarceration or the balance of the defendant's sentence, whichever is less, as a condition of probation; or may revoke
 - (3) Revoke the probation and impose a sentence not to exceed ninety days of incarceration or the balance of the defendant's sentence, whichever is less. In any other case, the court may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment.

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

 - (1) Continue the defendant on the existing probation, with or without modifying or enlarging the conditions;
 - (2) Require the defendant to serve up to ninety days of incarceration or the balance of the defendant's sentence, whichever is less, as a condition of probation; or

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

Page 5, remove lines 26 through 30

Page 6, replace lines 1 and 2 with "The sentencing court shall sentence an individual convicted of a class C felony offense or class A misdemeanor offense to a term of probation at the time of initial sentencing, except for an offense involving domestic violence, an offense in violation of section 12.1-17-07.1, chapter 12.1-41, sections 14-07.1-06 or 14-09-22, an offense involving a firearm or dangerous weapon, or when a mandatory term of incarceration is required by law. The sentencing court may impose a sentence to imprisonment if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. The sentencing court shall state the aggravating factors on the record at the time of sentencing. This section does not preclude the sentencing court from deferring imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an individual to a term of incarceration with credit for time spent in custody so long as execution of the sentence is suspended."

Page 10, line 9, after "board" insert "in consultation with the state board of addiction counseling examiners"

Page 13, line 31, after the second comma insert "the Commission on Legal Counsel for Indigents."

Page 14, after line 9, insert:

"SECTION 22. JUSTICE REINVESTMENT INITIATIVE - REPORT TO LEGISLATIVE MANAGEMENT - REPORT TO LEGISLATIVE ASSEMBLY. Before September 1, 2018, the department of corrections and rehabilitation and the supreme court shall provide a report to the legislative management regarding the progress of the justice reinvestment initiative. The department of corrections and rehabilitation and the supreme court shall provide a report on the progress of the justice reinvestment initiative to the sixty-sixth legislative assembly."

Renumber accordingly