

Introduced by

Senators Armstrong, D. Larson

Representatives Klemin, P. Anderson

1 A BILL for an Act to amend and reenact subdivision k of subsection 3 of section 12.1-23-05,  
2 subdivision b of subsection 1 of section 12.1-32-02.1, subsection 3 of section 19-03.1-22.2,  
3 section 19-03.1-23, subsection 2 of section 19-03.1-23.1, section 19-03.1-23.4, paragraph 3 of  
4 subdivision e of subsection 1 of section 19-03.1-36, subdivision e of subsection 5 of section  
5 19-03.1-36, subsection 1 of section 19-03.1-45, and subsection 29 of section 40-05-02 of the  
6 North Dakota Century Code, relating to grading of theft offenses, illegal possession of  
7 prescription capsules, pills, or tablets, possession of marijuana, and misdemeanor marijuana  
8 convictions being excluded as prior offenses for purposes of determining mandatory terms of  
9 imprisonment; and to provide a penalty.

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

11 **SECTION 1. AMENDMENT.** Subdivision k of subsection 3 of section 12.1-23-05 of the  
12 North Dakota Century Code is amended and reenacted as follows:

13 k. The property stolen is a prescription drug as defined in section 43-15.3-01,  
14 except when the quantity stolen is ten or fewer capsules, pills, or tablets.

15 **SECTION 2. AMENDMENT.** Subdivision b of subsection 1 of section 12.1-32-02.1 of the  
16 North Dakota Century Code is amended and reenacted as follows:

17 b. The offender possesses or has within immediate reach and control a dangerous  
18 weapon, explosive, destructive device, or firearm while in the course of  
19 committing any felony offense under subsection 1, ~~2~~3, or ~~7~~8 of section  
20 19-03.1-23.

21 **SECTION 3. AMENDMENT.** Subsection 3 of section 19-03.1-22.2 of the North Dakota  
22 Century Code is amended and reenacted as follows:

23 3. Unless a greater penalty is otherwise provided by law, a person who violates  
24 subsection 2, and a child or vulnerable adult actually suffers bodily injury or death by

1 exposure to, ingestion of, inhalation of, or contact with a controlled substance,  
2 chemical substance, or drug paraphernalia, is guilty of a class B felony ~~unless the~~  
3 ~~exposure, ingestion, inhalation, or contact results in the death of the child or~~  
4 ~~vulnerable adult, in which case the person is guilty of a class A felony.~~

5 **SECTION 4. AMENDMENT.** Section 19-03.1-23 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines -**  
8 **Unclassified offenses - Penalties.**

- 9 1. Except as authorized by this chapter, it is unlawful for any person to willfully, as  
10 defined in section 12.1-02-02, manufacture, deliver, or possess with intent to  
11 manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a  
12 controlled substance by means of the internet, but any person who violates  
13 section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any  
14 person who violates this subsection with respect to:
- 15 a. A controlled substance classified in schedule I or II which is a narcotic drug, or  
16 methamphetamine, is guilty of a class ~~AB~~ felony and must be sentenced:
    - 17 (1) For a second offense, to imprisonment for at least ~~five~~three years.
    - 18 (2) For a third or subsequent offense, to imprisonment for ~~twenty~~ten years.
  - 19 b. Any other controlled substance classified in schedule I, II, or III, or a controlled  
20 substance analog is guilty of a class B felony. Except for a person who  
21 manufactures, delivers, or possesses with the intent to manufacture or deliver  
22 marijuana, any person found guilty under this subdivision must be sentenced:
    - 23 (1) For a second offense, to imprisonment for at least ~~three~~two years.
    - 24 (2) For a third or subsequent offense, to imprisonment for ~~ten~~five years.
  - 25 c. A substance classified in schedule IV, is guilty of a class C felony and must be  
26 sentenced:
    - 27 (1) For a second offense, to imprisonment for at least ~~six~~three months.
    - 28 (2) For a third offense, to imprisonment for at least ~~one year~~six months.
    - 29 (3) For a fourth or subsequent offense, to imprisonment for ~~five~~three years.
  - 30 d. A substance classified in schedule V, is guilty of a class A misdemeanor.

1        2.    A prior misdemeanor conviction under subsection 8 or a prior conviction under  
2        subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under  
3        subsections 1 and 4.

4        ~~2-3.~~    Except as authorized by this chapter, it is unlawful for any person to willfully, as  
5        defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit  
6        substance by means of the internet or any other means, or possess with intent to  
7        deliver, a counterfeit substance by means of the internet or any other means, but any  
8        person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this  
9        subsection. Any person who violates this subsection with respect to:

10       a.    ~~A counterfeit substance classified in schedule I or II which is a narcotic drug, is~~  
11       ~~guilty of a class A felony.~~

12       b.    ~~Any other~~ A counterfeit substance classified in schedule I, II, or III, is guilty of a  
13       class B felony.

14       ~~e-b.~~    A counterfeit substance classified in schedule IV, is guilty of a class C felony.

15       ~~d-c.~~    A counterfeit substance classified in schedule V, is guilty of a class A  
16       misdemeanor.

17       ~~3-4.~~    For second or subsequent offenders, in addition to any other penalty imposed under  
18       this section, a person who violates this chapter, except a person who manufactures,  
19       delivers, or possesses with the intent to manufacture or deliver marijuana, is subject  
20       to, and the court shall impose, the following penalties to run consecutively to any other  
21       sentence imposed:

22       a.    Any person, eighteen years of age or older, who violates this section by willfully  
23       manufacturing, delivering, or possessing with intent to manufacture or deliver a  
24       controlled substance in or on, or within one thousand feet [300.48 meters] of the  
25       real property comprising a public or private elementary or secondary school or a  
26       public career and technical education school is subject to an ~~eight-year~~ four-year  
27       term of imprisonment.

28       b.    If the defendant was at least twenty-one years of age at the time of the offense,  
29       and delivered a controlled substance to a person under the age of eighteen, the  
30       defendant must be sentenced to imprisonment for at least ~~eight~~ four years. It is

1 not a defense that the defendant did not know the age of a person protected  
2 under this subdivision.

3 4.5. A person at least eighteen years of age who solicits, induces, intimidates, employs,  
4 hires, or uses a person under eighteen years of age to aid or assist in the  
5 manufacture, delivery, or possession with intent to manufacture or deliver a controlled  
6 substance for the purpose of receiving consideration or payment for the manufacture  
7 or delivery of any controlled substance is guilty of a class B felony and must be  
8 sentenced:

- 9 a. For a second or subsequent offense, to imprisonment for at least ~~five~~three years.  
10 b. It is not a defense to a violation of this subsection that the defendant did not know  
11 the age of a person protected under this subsection.

12 ~~5.~~ A

13 6. Except for a prior conviction equivalent to a misdemeanor violation of subsection 8 or  
14 a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this  
15 chapter or a law of another state or the federal government which is equivalent to an  
16 offense under this chapter committed while the offender was an adult and which  
17 resulted in a plea or finding of guilt must be considered a prior offense under  
18 subsections 1, ~~34~~, and ~~45~~. The prior offense must be alleged in the complaint,  
19 information, or indictment. The plea or finding of guilt for the prior offense must have  
20 occurred before the date of the commission of the offense or offenses charged in the  
21 complaint, information, or indictment.

22 ~~6-7.~~ It is unlawful for a person to willfully, as defined in section 12.1-02-02:

- 23 a. Serve as an agent, intermediary, or other entity that causes the internet to be  
24 used to bring together a buyer and seller to engage in the delivery, distribution, or  
25 dispensing of a controlled substance in a manner not authorized by this chapter;  
26 or  
27 b. Offer to fill or refill a prescription for a controlled substance based solely on a  
28 consumer's completion of an online medical questionnaire.

29 A person who violates this subsection is guilty of a class C felony.

30 7-8. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess  
31 a controlled substance or a controlled substance analog unless the substance

1 was obtained directly from, or pursuant to, a valid prescription or order of a  
2 practitioner while acting in the course of the practitioner's professional practice, or  
3 except as otherwise authorized by this chapter, but any person who violates  
4 section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.

5 b. Except as otherwise provided in this subsection, any person who violates this  
6 subsection is guilty of a class C felony.

7 c. If, at the time of the offense the person is in or on, or within one thousand feet  
8 [300.48 meters] of the real property comprising a public or private elementary or  
9 secondary school or a public career and technical education school, the person is  
10 guilty of a class B felony, unless the offense involves one ounce [28.35 grams] or  
11 less of marijuana.

12 d. Any person who violates this subsection regarding possession of one ounce  
13 [28.35 grams] or less of marijuana is guilty of a class B misdemeanor.

14 e. Any person who violates this subsection regarding possession of ten or fewer  
15 capsules, pills, or tablets of a schedule II, III, or IV controlled substance or  
16 controlled substance analog is guilty of a class A misdemeanor.

17 8-9. Except as provided by section 19-03.1-45, a court may order a person who violates  
18 this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed  
19 addiction counselor. The evaluation must indicate the prospects for rehabilitation and  
20 whether addiction treatment is required. If ordered, the evaluation must be submitted  
21 to the court before imposing punishment for a felony violation or a misdemeanor  
22 violation. A court shall order a person who violates subdivision e of subsection 8 to  
23 undergo the drug addiction evaluation.

24 9-10. If a person pleads guilty or is found guilty of a first offense regarding possession of  
25 one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a  
26 court, upon motion, shall seal the court record of that conviction if the person is not  
27 subsequently convicted within two years of a further violation of this chapter. Once  
28 sealed, the court record may not be opened even by order of the court.

29 **SECTION 5. AMENDMENT.** Subsection 2 of section 19-03.1-23.1 of the North Dakota  
30 Century Code is amended and reenacted as follows:

31 2. The offense is:

- 1           a. ~~A class AA felony if the violation of section 19-03.1-23 is designated as a class A-~~  
2            felony.
- 3           ~~b.~~ A class A felony if the violation of section 19-03.1-23 is designated as a class B  
4            felony.
- 5           ~~e.~~b. A class B felony if the violation of section 19-03.1-23 is designated as a class C  
6            felony.
- 7           ~~d.~~c. A class C felony if the violation of section 19-03.1-23 is designated as a class A  
8            misdemeanor.

9           **SECTION 6. AMENDMENT.** Section 19-03.1-23.4 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11           **19-03.1-23.4. Overdose prevention and immunity.**

12           An individual is immune from criminal prosecution under sections 19-03.1-22.1,  
13 19-03.1-22.3, 19-03.1-22.5, subsection ~~7~~8 of section 19-03.1-23, subsection 3 of section  
14 19-03.2-03, and section 19-03.4-03 if that individual contacted law enforcement or emergency  
15 medical services and reported that the individual was or that another individual was in need of  
16 emergency medical assistance due to a drug overdose. To receive immunity under this section,  
17 the individual receiving immunity must have remained on the scene until assistance arrived,  
18 cooperated with emergency medical services and law enforcement personnel in the medical  
19 treatment of the reported drug overdosed individual, and the overdosed individual must have  
20 been in need of emergency medical services. The maximum number of individuals that may be  
21 immune for any one occurrence is three individuals. Immunity from prosecution under this  
22 section is not applicable for a violation under section 19-03.1-23.1.

23           **SECTION 7. AMENDMENT.** Paragraph 3 of subdivision e of subsection 1 of  
24 section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- 25                   (3) A conveyance is not subject to forfeiture for a violation of subsection ~~7~~8 of  
26                    section 19-03.1-23 or subsection 3 of section 19-03.2-03.

27           **SECTION 8. AMENDMENT.** Subdivision e of subsection 5 of section 19-03.1-36 of the  
28 North Dakota Century Code is amended and reenacted as follows:

- 29           e. Use the property, including controlled substances, imitation controlled  
30            substances, and plants forfeited under subsections 6 and 7, in enforcement of  
31            this chapter. However, in a case involving the delivery of a forfeited controlled

1 substance by a law enforcement officer or a person acting as an agent of a law  
2 enforcement officer, no prosecution or conviction for simple possession of a  
3 controlled substance under subsection 67 of section 19-03.1-23 may be based  
4 upon the forfeited controlled substances supplied by the law enforcement officer  
5 or the officer's agent.

6 **SECTION 9. AMENDMENT.** Subsection 1 of section 19-03.1-45 of the North Dakota  
7 Century Code is amended and reenacted as follows:

8 1. If a person has pled guilty or has been found guilty of a felony violation of subsection  
9 78 of section 19-03.1-23, if that person has not previously pled guilty or been found  
10 guilty of any offense involving the use, possession, manufacture, or delivery of a  
11 controlled substance or of any other felony offense of this or another state or the  
12 federal government, the court shall impose a period of probation up to the length  
13 authorized under section 12.1-32-06.1 with a suspended execution of a sentence of  
14 imprisonment, a sentence to probation, or an order deferring imposition of sentence.

15 **SECTION 10. AMENDMENT.** Subsection 29 of section 40-05-02 of the North Dakota  
16 Century Code is amended and reenacted as follows:

17 29. Marijuana possession. To prohibit by ordinance any person, except a person operating  
18 a motor vehicle, from possessing not more than one-half ounce [14.175 grams] of  
19 marijuana, as defined by section 19-03.1-01, within the jurisdiction of a city, and to  
20 prescribe the punishment, provided the penalty assessed is subject to subsection 910  
21 of section 19-03.1-23.