

2023 SENATE JUDICIARY

SB 2107

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2107

1/4/2023

A bill relating to shooting offenses and drug trafficking; relating to sentences for crimes committed with firearms and for fleeing law enforcement; relating to mandatory prison terms for certain offenses; and to provide a penalty.

10:44am The Chairman opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Braunberger, Sickler and Paulson are present.

Discussion Topics:

- Mandatory sentences
- Presumptive sentences
- Possessing firearms
- Deterrent to crimes

10:52am Allyson Hicks, Office of the Attorney General Introduced the bill. She stated they will have an amendment for a typographical error.

10:59am Stephanie Dassinger Engebretson, Chiefs of Police Association of North Dakota, testified in favor of the bill and offer written testimony #12358.

11:07am Travis Finck, Executive Director, North Dakota Commission on Legal Counsel for Indigents, testified opposed to the bill and provided written testimony #12332.

11:16am Lloyd Suhr testified opposed to the bill #12361.

11:36am Dave Krabbenhaoft, Director, Department of Corrections and Rehabilitation gave oral testimony, neutral on the bill.

11:39 Chairman Larson stated the public hearing will remain open until such time as the Attorney General is available to testify.

Additional written testimony:

Jackson Lofgren provided written testimony #12313

11:39am The Chairman adjourned the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2107
1/4/2023

A bill relating to shooting offenses and drug trafficking, relating to sentences for crimes committed with firearms and for fleeing law enforcement; relating to mandatory prison terms for certain offenses; and to provide a penalty.

2:15pm the Chairman opened the meeting.

Senators Larson, Paulson, Sickler, Braunberger, Estenson, Luick and Myrdal are present.

Discussion Topics:

- Violent Crime
- Repeat Offenders
- Crime exculpation in ND
- Sentencing practices

Testimony:

2:15pm ND Attorney General Drew Wrigley testified in favor of passing the bill.

2:51pm Jeremy Ensrud from the Attorney General's office answered questions from the committee.

3:02pm Rick Becker testified against the bill.

3:09pm The Chairman closed the public hearing.

3:10pm Senator Paulson will chair a subcommittee, Senator Braumberger and Senator Myrdal will be on the committee as well.

Meeting Closing:

3:15pm Chairman adjourned the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2107
1/10/2023
Subcommittee

A bill relating to shooting offenses and drug trafficking; relating to sentences for crimes committed with firearms and for fleeing law enforcement; relating to mandatory prison terms for certain offenses; and to provide a penalty.

2:00 PM Subcommittee Chairman Paulson opened the meeting.

Senators Paulson, Myrdal and Braunberger are present.

Discussion Topics:

- Consecutive sentences
- Crime deterrents
- Length of sentences
- Mandatory sentences
- Presumptive sentences
- Second amendment

2:01 PM Committee members went through the bill section by section and discussed concerns and issues they had regarding the bill.

2:19 PM Jeremy Ensrud, Assistant Attorney General, gave oral testimony in favor of the bill and provided written testimony #13514.

2:47 PM Jason Ziegler, Chief of Police in Mandan, ND gave oral testimony in favor of the bill and provided written testimony #13510.

2:58 PM Donnell Preskey, Executive Director, Association of the ND Sheriffs and Deputies Association, gave verbal testimony in favor of the bill.

3:01 PM Travis Fink, Executive Director, ND Legal Counsel for Indigents, gave verbal testimony opposing the bill.

3:09 PM Brian Gosch, Lobbyist, National Rifle Association gave oral testimony neutral on the bill.

3:12 PM Dave Krabbenhoft, Director of the Department of Corrections and Rehabilitation, gave neutral verbal testimony on the bill.

3:27 PM Chairman Paulson closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2107
1/17/2023
Subcommittee

A bill relating to shooting offenses and drug trafficking; relating to sentences for crimes committed with firearms and for fleeing law enforcement; relating to mandatory prison terms for certain offenses; and to provide a penalty.

2:30pm Subcommittee Chairman Paulson opened the meeting.
Senators Paulson, Myrdal and Braunberger were present.

Discussion Topics:

- Violent offenders sentences
- Minimum mandatory sentence
- Armed offenders prison terms
- Performance-based sentence reduction
- Good time
- Sentence calculation
- Prison population charts
- Parole and prison population
- Methodology
- Parole board capabilities
- Fiscal note impacts
- Additional possible amendments

2:31 Dave Krabbenhoft, Director, ND Department of Corrections and Rehabilitation, provided verbal testimony.

2:35 Tom Erhardt, Director, Parole and Probation Division - ND Department of Corrections and Rehabilitation, testified. #13955

3:05 Travis Finck, Executive Director, ND Commission on Legal Counsel for Indigents, provided verbal testimony.

3:07 Pat Bohn, Retired, Former Director Parole & Probation Division, provided verbal testimony.

3:15 Dave Krabbenhoft, Director, ND Department of Corrections and Rehabilitation, provided verbal information on the fiscal note.

Sub-Committee discussed potential amendments and requested additional information from intern.

3:29 Pat Bohn, Retired, Former Director Parole and Probation Division, answered questions.

3:32pm the Chairman Paulson closed the meeting.

Patricia Wilkens, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2107
1/18/2023

A BILL relating to shooting offenses and drug trafficking; relating to sentences for crimes committed with firearms and for fleeing law enforcement relating to mandatory prison terms for certain offenses; and to provide a penalty.
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2:19 PM Madam Chair called meeting to order.

Madam Chair Larson, Senators, Myrdal, Luick, Estenson, Sickler, Braunberger, and Paulson were present.

Discussion Topics:

- Bill review

2:20 PM Madam Chair Larson closed meeting.

Patricia Wilkens, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2107
1/26/2023
Subcommittee

<p>A bill relating to shooting offenses and drug trafficking, relating to sentences for crimes committed with firearms and for fleeing law enforcement; relating to mandatory prison terms for certain offenses; and to provide a penalty.</p>
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4:02 PM Subcommittee Chair Paulson opened the meeting.

Present were Chairman Paulson, and Senators Myrdal and Braunberger.

Discussion Topics:

- Consecutive sentences
- Concurrent sentences

4:03 PM Claire Ness, Chief Deputy Attorney General, reviewed amendments offered by the Attorney General's Office and testified. #17736

4:13 PM Jeremy Ensrud from the Attorney General's Office provided oral testimony.

4:18 PM Chairman Paulson closed the meeting.

Additional Testimony: #17737, #17738

4:19 PM Subcommittee Chairman Paulson closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2107
1/31/2023
Subcommittee

A bill relating to shooting offenses and drug trafficking, relating to mandatory prison terms for certain offenses; and to provide a penalty.

2:16 PM Chairman Paulson opened the subcommittee meeting.

Present are Chairman Paulson and Senators Myrdal, and Braunberger.

Discussion Topics:

- Offenses and penalties

2:18 PM Chairman Paulson closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2107
2/1/2023

A bill relating to shooting offenses and drug trafficking, relating to sentences for crimes committed with firearms and for fleeing law enforcement; relating to mandatory prison terms for certain offenses; and to provide a penalty.

9:24 AM Chairman Larson opened the meeting.

Chairman Larson, Senators Myrdal, Luick, Estenson, Sickler, Braunberger, and Paulson are present.

Discussion Topics:

- Bill Amendments

9:25 AM Senator Paulson spoke to amendments that were recommended by the subcommittee. #18474, #18475

Senator Paulson is going to check on some more possible language changes before the committee acts on the bill.

9:50 AM The Chairman closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2107
2/1/2023

A bill relating to shooting offenses and drug trafficking, relating to sentences for crimes committed with firearms and for fleeing law enforcement; relating to mandatory prison terms for certain offenses; and to provide a penalty.

2:00 PM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Braunberger and Paulson are present.

Discussion Topics:

- Crime rates
- Consecutive sentences
- Gun violence
- Presumptive sentences

2:01 PM North Dakota Attorney General Drew Wrigley testified regarding amendments on the bill.

2:20 PM Senator Myrdal moved to adopt proposed amendments LC 23.8013.01002. Senator Luick seconded.

Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passed 7-0-0.

2:22 PM Senator Myrdal moved to Do Pass as Amended and be Rereferred to Appropriations Committee.

Senator Luick seconded.

Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	N
Senator Jonathan Sickler	N
Senator Ryan Braunberger	N
Senator Judy Estenson	N
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion Did Not pass 3-4-0.

2:23 PM Senator Braunberger moved to Do Not Pass and be Rereferred to Appropriations Committee.

Senator Estensen seconded.

Roll call vote was taken.

Senators	Vote
Senator Diane Larson	N
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	N
Senator Janne Myrdal	N

Motion passed 4-3-0.

Senator Paulson will carry the bill.

This bill does not affect workforce safety.

2:24 PM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

January 31, 2023

DR
183
2-1-23

PROPOSED AMENDMENTS TO SENATE BILL NO. 2107

Page 1, line 3, after the second comma insert "12.1-32-02.1,"

Page 1, remove line 5

Page 1, line 6, remove "terms for certain offenses;"

Page 2, line 3, replace "must be consecutive" with "may not be served concurrently"

Page 2, line 4, replace "a" with "at least the presumed minimum"

Page 2, line 26, replace "must be consecutive" with "may not be served concurrently"

Page 2, line 27, replace "a" with "at least the presumptive minimum"

Page 3, after line 6, insert:

"SECTION 4. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:
 - a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, or destructive device, ~~or firearm~~; or
 - b. The offender possesses or has within immediate reach and control a dangerous weapon, explosive, or destructive device, ~~or firearm~~ while in the course of committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.
2. This requirement applies only when possession of a dangerous weapon, explosive, or destructive device, ~~or firearm~~ has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:
 - a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
 - b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.
3. This section applies even when being armed is an element of the offense for which the offender is convicted.

4. An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence."

Page 3, line 15, after the first "of" insert "section"

Page 3, line 15, after "or" insert "section"

Page 4, line 23, remove "must be"

Page 4, line 24, replace "consecutive" with "may not be served concurrently"

Page 4, line 25, replace the first "a" with "at least the presumptive minimum"

Page 5, line 28, after "justice" insert "is prohibited from owning a firearm or having a firearm in possession or under control"

Page 5, line 29, remove "A person who is an unlawful user of or addicted to any controlled substance as"

Page 5, remove line 30

Page 5, line 31, remove "g."

Page 5, line 31, after "States" insert "is prohibited from owning a firearm or having a firearm in possession or under control"

Page 6, line 1, replace "h." with "g."

Page 6, line 2, after "violence" insert "is prohibited from owning a firearm or having a firearm in possession or under control. For the purposes of this section a "misdemeanor crime of domestic violence" means the willful infliction of bodily injury against an individual who:

- (1) Is a current or former spouse or intimate partner of the victim, or individual similarly situated to a spouse of the victim;
- (2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; or
- (3) Shares a child in common with the victim"

Page 6, line 3, replace "i." with "h."

Page 6, line 4, after "conditions" insert "is prohibited from owning a firearm or having a firearm in possession or under control"

Page 6, line 5, replace "j." with "i."

Page 6, line 5, replace "who" with "is prohibited from owning a firearm or having a firearm in possession or under control if that person"

Page 6, line 17, remove the overstrike over "subdivision"

Page 6, line 17, remove "subdivisions"

Page 6, line 17, after the sixth underscored comma insert "or"

Page 6, line 17, remove ", or j"

Page 6, line 18, after "d" insert "of subsection 1"

MR
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2-1-2023

Page 6, line 20, after "prior" insert "felony"

Page 6, line 22, replace "12.1-19," with "or"

Page 6, line 22, replace "12.1-21" with "section 12.1-21-01"

Page 6, line 22, after the fourth underscored comma insert "chapter"

Page 6, line 22, remove "12.1-23, 12.1-24, 12.1-25, or"

Page 6, line 23, replace the second underscored comma with "or"

Page 6, line 24, remove ", or a tribal court"

Page 7, line 14, after "5." insert "For purposes of subsection 1, unless the pardon, expungement, or restoration of civil rights expressly provides that a person may not ship, transport, possess, or receive firearms, a person is not considered to have been convicted of a crime under subdivision a, b, or g of subsection 1 if:

a. The conviction has been expunged or set aside; or

b. The conviction is for an offense for which the person has been pardoned or has had civil rights restored if the law of the applicable jurisdiction provides for the loss of civil rights for the offense.

6."

Page 8, line 10, remove "or is equipped with a silencer,"

Page 8, line 23, after the underscored period insert "For purposes of this subsection, confinement does not include placement in a halfway house, treatment facility, or other community placement."

Page 8, line 24, replace "subsection" with "section"

Page 8, line 24, remove "the term"

Page 8, line 26, replace "subsection" with "section"

Page 8, line 26, remove "the term"

Page 8, line 29, after the fifth underscored comma insert "or"

Page 8, line 29, remove ", 12.1-22-03,"

Page 8, line 30, remove "12.1-22-04, 12.1-23-02, or 12.1-23-06"

Page 8, after line 30, insert:

"7. For purposes of this section, "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another individual, in order to intimidate that individual, regardless of whether the firearm is directly visible to that individual."

Page 8, remove line 31

Renumber accordingly

OR
373
2-1-2023

REPORT OF STANDING COMMITTEE

SB 2107: Judiciary Committee (Sen. Larson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO NOT PASS** and **BE REREFERRED** to the **Appropriations Committee** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2107 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 3, after the second comma insert "12.1-32-02.1,"

Page 1, remove line 5

Page 1, line 6, remove "terms for certain offenses;"

Page 2, line 3, replace "must be consecutive" with "may not be served concurrently"

Page 2, line 4, replace "a" with "at least the presumed minimum"

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Page 2, line 27, replace "a" with "at least the presumptive minimum"

Page 3, after line 6, insert:

"SECTION 4. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:
 - a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, or destructive device, ~~or firearm~~; or
 - b. The offender possesses or has within immediate reach and control a dangerous weapon, explosive, or destructive device, ~~or firearm~~ while in the course of committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.
2. This requirement applies only when possession of a dangerous weapon, explosive, or destructive device, ~~or firearm~~ has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:
 - a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
 - b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.
3. This section applies even when being armed is an element of the offense for which the offender is convicted.
4. An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence."

Page 3, line 15, after the first "of" insert "section"

Page 3, line 15, after "or" insert "section"

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Page 5, line 29, remove "A person who is an unlawful user of or addicted to any controlled substance as"

Page 5, remove line 30

Page 5, line 31, remove "g."

Page 5, line 31, after "States" insert "is prohibited from owning a firearm or having a firearm in possession or under control"

Page 6, line 1, replace "h." with "g."

Page 6, line 2, after "violence" insert "is prohibited from owning a firearm or having a firearm in possession or under control. For the purposes of this section a "misdemeanor crime of domestic violence" means the willful infliction of bodily injury against an individual who:

- (1) Is a current or former spouse or intimate partner of the victim, or individual similarly situated to a spouse of the victim;
- (2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; or
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Page 6, line 5, replace "j." with "i."

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Page 6, line 17, remove the overstrike over "subdivision"

Page 6, line 17, remove "subdivisions"

Page 6, line 17, after the sixth underscored comma insert "or"

Page 6, line 17, remove ", or j"

Page 6, line 18, after "d" insert "of subsection 1"

Page 6, line 20, after "prior" insert "felony"

Page 6, line 22, replace "12.1-19." with "or"

Page 6, line 22, replace "12.1-21" with "section 12.1-21-01"

Page 6, line 22, after the fourth underscored comma insert "chapter"

Page 6, line 22, remove "12.1-23, 12.1-24, 12.1-25, or"

Page 6, line 23, replace the second underscored comma with "or"

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- a. The conviction has been expunged or set aside; or
- b. The conviction is for an offense for which the person has been pardoned or has had civil rights restored if the law of the applicable jurisdiction provides for the loss of civil rights for the offense.

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Page 8, after line 30, insert:

- "7. For purposes of this section, "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another individual, in order to intimidate that individual, regardless of whether the firearm is directly visible to that individual."

Page 8, remove line 31

Renumber accordingly

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2107
2/6/2023

A bill relating to shooting offenses and drug trafficking, relating to sentences for crimes committed with firearms and for fleeing law enforcement; relating to mandatory prison terms for certain offenses; and to provide a penalty.

3:15 PM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger are present.

Discussion Topics:

- Amendment
- Committee action

3:16 PM Senator Myrdal moved to reconsider the action previously taken on the bill. Seconded by Senator Paulson.

Committee discussed.

3:21 PM Senator Myrdal moves adopt amendment LC 23.8013.01002.
Motion seconded by Senator Paulson.

3:21 PM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passed 7-0-0

3:22 PM Senator Myrdal moves to DO PASS as Amended.
Motion seconded by Senator Luick.

3:22 PM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passed 7-0-0.

3:23 PM Travis Finck provided oral testimony on the bill.

3:26 PM Senator Luick moves to rerefer the bill to appropriations.
Motion seconded by Senator Myrdal.

3:26 PM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passed 7-0-0.

Senator Paulson will carry the bill.

Additional Testimony: #19358, #19359

This bill does not affect workforce development.

3:26 PM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

January 31, 2023

DR
183
2-1-23

PROPOSED AMENDMENTS TO SENATE BILL NO. 2107

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Page 1, line 6, remove "terms for certain offenses;"

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 - a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, or destructive device, ~~or firearm~~; or
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 - a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
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3. This section applies even when being armed is an element of the offense for which the offender is convicted.

4. An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence."

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Page 5, remove line 30

Page 5, line 31, remove "g."

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2-1-2023

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Page 6, line 23, replace the second underscored comma with "or"

Page 6, line 24, remove ", or a tribal court"

Page 7, line 14, after "5." insert "For purposes of subsection 1, unless the pardon, expungement, or restoration of civil rights expressly provides that a person may not ship, transport, possess, or receive firearms, a person is not considered to have been convicted of a crime under subdivision a, b, or g of subsection 1 if:

- a. The conviction has been expunged or set aside; or
- b. The conviction is for an offense for which the person has been pardoned or has had civil rights restored if the law of the applicable jurisdiction provides for the loss of civil rights for the offense.

6."

Page 8, line 10, remove "or is equipped with a silencer,"

Page 8, line 23, after the underscored period insert "For purposes of this subsection, confinement does not include placement in a halfway house, treatment facility, or other community placement."

Page 8, line 24, replace "subsection" with "section"

Page 8, line 24, remove "the term"

Page 8, line 26, replace "subsection" with "section"

Page 8, line 26, remove "the term"

Page 8, line 29, after the fifth underscored comma insert "or"

Page 8, line 29, remove ", 12.1-22-03,"

Page 8, line 30, remove "12.1-22-04, 12.1-23-02, or 12.1-23-06"

Page 8, after line 30, insert:

- "7. For purposes of this section, "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another individual, in order to intimidate that individual, regardless of whether the firearm is directly visible to that individual."

Page 8, remove line 31

Renumber accordingly

OR
373
2-1-2023

REPORT OF STANDING COMMITTEE

SB 2107: Judiciary Committee (Sen. Larson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2107 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 3, after the second comma insert "12.1-32-02.1,"

Page 1, remove line 5

Page 1, line 6, remove "terms for certain offenses;"

Page 2, line 3, replace "must be consecutive" with "may not be served concurrently"

Page 2, line 4, replace "a" with "at least the presumed minimum"

Page 2, line 26, replace "must be consecutive" with "may not be served concurrently"

Page 2, line 27, replace "a" with "at least the presumptive minimum"

Page 3, after line 6, insert:

"SECTION 4. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:
 - a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, or destructive device, ~~or firearm~~; or
 - b. The offender possesses or has within immediate reach and control a dangerous weapon, explosive, or destructive device, ~~or firearm~~ while in the course of committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.
2. This requirement applies only when possession of a dangerous weapon, explosive, or destructive device, ~~or firearm~~ has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:
 - a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
 - b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.
3. This section applies even when being armed is an element of the offense for which the offender is convicted.
4. An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence."

Page 3, line 15, after the first "of" insert "section"

Page 3, line 15, after "or" insert "section"

Page 4, line 23, remove "must be"

Page 4, line 24, replace "consecutive" with "may not be served concurrently"

Page 4, line 25, replace the first "a" with "at least the presumptive minimum"

Page 5, line 28, after "justice" insert "is prohibited from owning a firearm or having a firearm in possession or under control"

Page 5, line 29, remove "A person who is an unlawful user of or addicted to any controlled substance as"

Page 5, remove line 30

Page 5, line 31, remove "g."

Page 5, line 31, after "States" insert "is prohibited from owning a firearm or having a firearm in possession or under control"

Page 6, line 1, replace "h." with "g."

Page 6, line 2, after "violence" insert "is prohibited from owning a firearm or having a firearm in possession or under control. For the purposes of this section a "misdemeanor crime of domestic violence" means the willful infliction of bodily injury against an individual who:

- (1) Is a current or former spouse or intimate partner of the victim, or individual similarly situated to a spouse of the victim;
- (2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; or
- (3) Shares a child in common with the victim"

Page 6, line 3, replace "i." with "h."

Page 6, line 4, after "conditions" insert "is prohibited from owning a firearm or having a firearm in possession or under control"

Page 6, line 5, replace "j." with "i."

Page 6, line 5, replace "who" with "is prohibited from owning a firearm or having a firearm in possession or under control if that person"

Page 6, line 17, remove the overstrike over "subdivision"

Page 6, line 17, remove "subdivisions"

Page 6, line 17, after the sixth underscored comma insert "or"

Page 6, line 17, remove ", or j"

Page 6, line 18, after "d" insert "of subsection 1"

Page 6, line 20, after "prior" insert "felony"

Page 6, line 22, replace "12.1-19." with "or"

Page 6, line 22, replace "12.1-21" with "section 12.1-21-01"

Page 6, line 22, after the fourth underscored comma insert "chapter"

Page 6, line 22, remove "12.1-23, 12.1-24, 12.1-25, or"

Page 6, line 23, replace the second underscored comma with "or"

Page 6, line 24, remove ", or a tribal court"

Page 7, line 14, after "5." insert "For purposes of subsection 1, unless the pardon, expungement, or restoration of civil rights expressly provides that a person may not ship, transport, possess, or receive firearms, a person is not considered to have been convicted of a crime under subdivision a, b, or g of subsection 1 if:

- a. The conviction has been expunged or set aside; or
- b. The conviction is for an offense for which the person has been pardoned or has had civil rights restored if the law of the applicable jurisdiction provides for the loss of civil rights for the offense.

6."

Page 8, line 1, replace "and, consecutive" with ". A conviction under this section carries a presumptive minimum term of imprisonment which may not run concurrently"

Page 8, line 2, after the second "crime" insert ". The presumptive minimum term of imprisonment is"

Page 8, line 3, replace "Must be sentenced to a term of imprisonment of not" with "Not"

Page 8, line 4, replace "Must be sentenced to a term of imprisonment of not" with "Not"

Page 8, line 6, replace "Must be sentenced to a term of imprisonment of not" with "Not"

Page 8, line 10, remove "or is equipped with a silencer."

Page 8, line 10, replace "person must be sentenced to a" with "presumptive minimum"

Page 8, line 11, replace the second "of" with "is"

Page 8, line 13, remove "must be"

Page 8, line 14, replace "sentenced to a" with "the presumptive minimum"

Page 8, line 14, replace the second "of" with "is"

Page 8, remove line 20

Page 8, line 23, after the underscored period insert "For purposes of this subsection, confinement does not include placement in a halfway house, treatment facility, or other community placement; and

- c. If the sentencing court does not impose at least the presumptive minimum term of imprisonment for an offense under this section, the court shall justify the reasoning for a departure from the presumptive minimum sentence within the judgment."

Page 8, line 24, replace "subsection, the term "drug"" with "section:

- a. "Brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another individual, in order to intimidate that individual, regardless of whether the firearm is directly visible to that individual.
- b. "Drug"

Page 8, line 26, replace "6. For the purpose of this subsection, the term "felony" with "c. "Felony"

Page 8, line 29, after the fifth underscored comma insert "or"

Page 8, line 29, remove ", 12.1-22-03,"

Page 8, line 30, remove "12.1-22-04, 12.1-23-02, or 12.1-23-06"

Page 8, remove line 31

Renumber accordingly

2023 SENATE APPROPRIATIONS

SB 2107

2023 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

SB 2107
2/16/2023

Relating to shooting offenses and drug trafficking, relating to sentences for crimes committed with firearms and for fleeing law enforcement; and to provide a penalty.

4:28 PM Chairman Bekkedahl opened the meeting.

Members present: **Senators Bekkedahl, Krebsbach, Burckhard, Davison, Dever, Dwyer, Erbele, Kreun, Meyer, Roers, Schaible, Sorvaag, Vedaa, Wanzek, Rust, and Mathern.**

Discussion Topics:

- Committee Action
- Amendment

4:29 PM Senator Paulson introduced the bill and proposed amendment LC 23.8013.03001 #21035

4:34 PM Senator Dever moved to ADOPT AMENDMENT LC 23.8013.03001

4:34 PM Senator Kreun seconded.

4:34 PM Roll call vote.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Karen K. Krebsbach	Y
Senator Randy A. Burckhard	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Robert Erbele	Y
Senator Curt Kreun	Y
Senator Tim Mathern	Y
Senator Scott Meyer	Y
Senator Jim P. Roers	Y
Senator Donald Schaible	Y
Senator Ronald Sorvaag	Y
Senator Shawn Vedaa	Y
Senator Terry M. Wanzek	Y
Senator Rust	Y

Passed 16-0-0

4:35 PM Senator Dever moved DO PASS as AMENDED

4:35 PM Senator Dwyer seconded.

4:38 PM Roll call vote.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Karen K. Krebsbach	Y
Senator Randy A. Burckhard	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Robert Erbele	Y
Senator Curt Kreun	Y
Senator Tim Mathern	N
Senator Scott Meyer	Y
Senator Jim P. Roers	Y
Senator Donald Schaible	Y
Senator Ronald Sorvaag	Y
Senator Shawn Vedaa	Y
Senator Terry M. Wanzek	Y
Senator Rust	Y

Passed 15-1-0

Senator Paulsen will carry the bill.

4:40 PM Chairman Bekkedahl closed the meeting.

Peter Gualandri on behalf of Kathleen Hall, Committee Clerk

February 10, 2023

AG
2-16-23
(1-1)

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2107

Page 7, line 29, remove ". and the court shall impose a"

Page 7, line 30, remove "minimum sentence of five years' imprisonment"

Page 7, line 30, after the underscored period insert "A conviction under this subsection carries a presumptive minimum term of imprisonment of five years. If the sentencing court does not impose at least the presumptive minimum term of imprisonment for an offense under this section, the court shall justify the reasoning for a departure from the presumptive minimum sentence within the judgment."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2107, as engrossed: Appropriations Committee (Sen. Bekkedahl, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed SB 2107 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 7, line 29, remove ". and the court shall impose a"

Page 7, line 30, remove "minimum sentence of five years' imprisonment"

Page 7, line 30, after the underscored period insert "A conviction under this subsection carries a presumptive minimum term of imprisonment of five years. If the sentencing court does not impose at least the presumptive minimum term of imprisonment for an offense under this section, the court shall justify the reasoning for a departure from the presumptive minimum sentence within the judgment."

Renumber accordingly

2023 HOUSE JUDICIARY

SB 2107

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2107
3/14/2023

Relating to sentences for crimes committed with firearms and for fleeing law enforcement; and to provide a penalty.

11:02 AM Chairman Klemin opened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter.

Discussion Topics:

- Double jeopardy
- Statutes conflict.
- Presumptive probation
- Fiscal note.

Drew Wrigley, ND Attorney General: No written testimony.

Stephanie Dassinger Engebretson, ND League of Cities. No written testimony

Jason Ziegler, Chief of Police for Mandan. Testimony # 24905

Calvin Benson, ND Peace Officers Association. No written testimony

Ladd Erickson, McClain and Sheridan County Attorney. Testimony #24898

Travis Finck, Executive Director, NDCLCI: Testimony #24521

Jesse Walstad, ND Association of Criminal Defense Lawyers: In opposition. Testimony #24659

Jonathan Byers, States Attorney's Association. In opposition. No written testimony

David Krabbenoфт, Director, ND Dept. of Corrections & Rehabilitation. Neutral. Testimony # 24914

The hearing closed at 12:36 PM.

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2107
3/28/2023

Relating to sentences for crimes committed with firearms and for fleeing law enforcement; and to provide a penalty.

9:09 AM Chairman Klemin opened the meeting. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter.

Discussion Topics:

- Amendments.
- Proposed study.
- Double Jeopardy.
- Minimum imprisonment.
- Minimum mandatory sentencing.
- Fiscal Note.

Drew Wriggley, ND Attorney General: Introduced an amendment 23.8013.04000. Testimony #26863, #26915

Jeremey Emsrud, Ass't Attorney General: Explained the language for new prosecutors. No written testimony.

Julie Lawyer, States Attorney, Burleigh County: No written testimony. In agreement with proposed amendments. No written testimony.

Travis Finck, Executive Director, NDCLCI: Went through proposed 23.8013.04001. Testimony #26846

Jonathan Byers, ND States Attorney's Association: No written testimony.

The meeting recess at 10:12 AM

Chairman Klemin reopened the meeting at 11:03 AM

Vice Chairman Karls moved the Wrigley proposed amendment 23.8013.04000 and adding NRA to the Study.

Seconded by Rep. Rep. SuAnn Olson.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	A
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	A
Representative Shannon Roers Jones	N
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll call vote: 10 Yes 1 No 2 Absent; Motion carried.

Rep. Henderson moved to Reconsider the proposed amendment;
Seconded by Rep. Satrom

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	N
Representative Landon Bahl	A
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	N
Representative Nico Rios	N
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll call vote: 8 Yes 4 No 1 Absent; Motion carried

Rep. Shannon Roers Jones moved amendment 23.8013.04002. Adding NRA to Legislative
Mgmt. Study.
Seconded by Rep. VanWinkle

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	N
Representative Landon Bahl	A
Representative Cole Christensen	Y
Representative Claire Cory	N
Representative Donna Henderson	Y
Representative SuAnn Olson	N
Representative Nico Rios	N
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll call vote: 7 Yes 5 No 1 Absent; Motion carried

Rep. Satrom moved a Do Pass as Amended and Rereferred to Appropriations;
Seconded by Rep. VanWinkle

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	N
Representative Landon Bahl	Y
Representative Cole Christensen	N
Representative Claire Cory	N
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll call vote: 9 Yes 4 No 0 Absent; Motion carried
Carrier: Rep. Shannon Roers Jones

The meeting closed at 11:33 AM

Delores Shimek, Committee Clerk

JA
3/28/23

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2107

Page 1, line 1, remove "create and enact sections 12.1-17-14 and 62.1-02-15 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to shooting offenses and drug trafficking; to"

Page 1, line 3, replace "12.1-08-02, 12.1-17-01" with "12.1-17-03"

Page 1, line 3, after the third comma insert "and"

Page 1, line 3, remove ", 39-10-71, and 62.1-02-01"

Page 1, line 4, remove "sentences for crimes committed with firearms and for fleeing"

Page 1, line 5, replace "law enforcement" with "reckless endangerment, mandatory prison terms for armed offenders, and presumptive probation; to provide for a legislative management study"

Page 1, remove lines 7 through 23

Page 2, remove lines 1 through 30

Page 3, replace lines 1 through 8 with:

"SECTION 1. AMENDMENT. Section 12.1-17-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-03. Reckless endangerment.

A person is guilty of an offense if ~~he~~the person creates a substantial risk of serious bodily injury or death to another. The offense is a class B felony if the offense is committed by intentionally or knowingly discharging a firearm. The offense is a class C felony if the circumstances manifest ~~his~~the person's extreme indifference to the value of human life. Otherwise it is a class A misdemeanor. There is risk within the meaning of this section if the potential for harm exists, whether or not a particular person's safety is actually jeopardized."

Page 3, line 16, remove "or"

Page 3, line 16, remove the overstrike over "~~or firearm~~"

Page 3, line 18, remove "or"

Page 3, line 18, remove the overstrike over "~~or firearm~~"

Page 3, line 20, remove "or"

Page 3, line 21, remove the overstrike over "~~or firearm~~"

Page 3, after line 26, insert:

"c. If the court finds the offender is a special dangerous or habitual offender under subdivision a, b, c, or d of subsection 1 of section 12.1-32-09 and the offender violates subsection 1 of this section, the

court shall impose a minimum sentence of ten years' imprisonment, if the offense is a class AA, class A, or class B felony. If the offense is a class C felony, the court shall impose a minimum sentence of seven years' imprisonment. An offender sentenced under this subdivision is not eligible for parole any earlier than eighteen months before the expiration of the mandatory sentence."

3/28/23

Page 3, line 29, overstrike "An" and insert immediately thereafter "Unless the offender is sentenced under subdivision c of subsection 2, an"

Page 4, line 9, after the second underscored comma insert "section 12.1-17-03,"

Page 4, remove lines 25 through 31

Page 5, remove lines 1 through 31

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 30

Page 10, replace lines 1 through 24 with:

"SECTION 4. LEGISLATIVE MANAGEMENT STUDY - FIREARM

POSSESSION. During the 2023-24 interim, the legislative management shall consider studying those provisions of the North Dakota Century Code that prohibit certain individuals from possessing a firearm. The study may include an examination of the state's firearm and weapon possession prohibitions as compared to the federal regulations. The study must include an examination of whether the category of individuals prohibited from possessing a firearm by statute should be maintained as is, narrowed, or expanded. The study must include input from the attorney general, the supreme court, the association of counties, the league of cities, the state's attorney association, the association of criminal defense lawyers, and the peace officers association. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

2

REPORT OF STANDING COMMITTEE

SB 2107, as reengrossed: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (9 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed SB 2107 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "create and enact sections 12.1-17-14 and 62.1-02-15 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to shooting offenses and drug trafficking; to"

Page 1, line 3, replace "12.1-08-02, 12.1-17-01" with "12.1-17-03"

Page 1, line 3, after the third comma insert "and"

Page 1, line 3, remove ", 39-10-71, and 62.1-02-01"

Page 1, line 4, remove "sentences for crimes committed with firearms and for fleeing"

Page 1, line 5, replace "law enforcement" with "reckless endangerment, mandatory prison terms for armed offenders, and presumptive probation; to provide for a legislative management study"

Page 1, remove lines 7 through 23

Page 2, remove lines 1 through 30

Page 3, replace lines 1 through 8 with:

"SECTION 1. AMENDMENT. Section 12.1-17-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-03. Reckless endangerment.

A person is guilty of an offense if ~~he~~the person creates a substantial risk of serious bodily injury or death to another. The offense is a class B felony if the offense is committed by intentionally or knowingly discharging a firearm. The offense is a class C felony if the circumstances manifest ~~his~~the person's extreme indifference to the value of human life. Otherwise it is a class A misdemeanor. There is risk within the meaning of this section if the potential for harm exists, whether or not a particular person's safety is actually jeopardized."

Page 3, line 16, remove "or"

Page 3, line 16, remove the overstrike over "~~or firearm~~"

Page 3, line 18, remove "or"

Page 3, line 18, remove the overstrike over "~~or firearm~~"

Page 3, line 20, remove "or"

Page 3, line 21, remove the overstrike over "~~or firearm~~"

Page 3, after line 26, insert:

"c. If the court finds the offender is a special dangerous or habitual offender under subdivision a, b, c, or d of subsection 1 of section 12.1-32-09 and the offender violates subsection 1 of this section, the court shall impose a minimum sentence of ten years' imprisonment.

if the offense is a class AA, class A, or class B felony. If the offense is a class C felony, the court shall impose a minimum sentence of seven years' imprisonment. An offender sentenced under this subdivision is not eligible for parole any earlier than eighteen months before the expiration of the mandatory sentence."

Page 3, line 29, overstrike "An" and insert immediately thereafter "Unless the offender is sentenced under subdivision c of subsection 2, an"

Page 4, line 9, after the second underscored comma insert "section 12.1-17-03."

Page 4, remove lines 25 through 31

Page 5, remove lines 1 through 31

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 30

Page 10, replace lines 1 through 24 with:

"SECTION 4. LEGISLATIVE MANAGEMENT STUDY - FIREARM POSSESSION. During the 2023-24 interim, the legislative management shall consider studying those provisions of the North Dakota Century Code that prohibit certain individuals from possessing a firearm. The study may include an examination of the state's firearm and weapon possession prohibitions as compared to the federal regulations. The study must include an examination of whether the category of individuals prohibited from possessing a firearm by statute should be maintained as is, narrowed, or expanded. The study must include input from the attorney general, the supreme court, the association of counties, the league of cities, the state's attorney association, the association of criminal defense lawyers, and the peace officers association. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

2023 HOUSE APPROPRIATIONS

SB 2107

2023 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee Brynhild Haugland Room, State Capitol

SB 2107
4/5/2023

Relating to reckless endangerment, mandatory prison terms for armed offenders, and presumptive probation; to provide for a legislative management study; and to provide a penalty.

9:24 AM Chairman Vigesaa Called the meeting to order and roll call was taken-

All Members Present; Chairman Vigesaa, Representative Kempenich, Representative B. Anderson, Representative Bellew, Representative Brandenburg, Representative Hanson, Representative Kreidt, Representative Martinson, Representative Mitskog, Representative Meier, Representative Mock, Representative Monson, Representative Nathe, Representative J. Nelson, Representative O'Brien, Representative Pyle, Representative Richter, Representative Sanford, Representative Schatz, Representative Schobinger, Representative Strinden, Representative G. Stemen and Representative Swiontek.

Discussion Topics:

- Raise Penalties
- Use of Firearms or Deadly Weapon
- Assault or Fleeing a Police Officer
- Proposed Amendment

Representative Klemin- Introduces the bill and its purpose (Testimony #27294 and #27293)

Dave Krabbenhoft- ND Department of Corrections and Rehabilitation- Answers questions for the committee

Travis Finck- ND Executive Director NDCLCI- Answers questions for the committee

Drew Wrigley – ND Attorney General- Answers questions for the committee

10:15 AM Chairman Vigesaa Closed the meeting for SB 2107

Risa Berube, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Brynhild Haugland Room, State Capitol

SB 2107
4/6/2023

Relating to reckless endangerment, mandatory prison terms for armed offenders, and presumptive probation; to provide for a legislative management study; and to provide a penalty.
--

8:55 AM Chairman Vigesaa Called the meeting to order and roll call was taken-

Members Present; Chairman Vigesaa, Representative B. Anderson, Representative Bellew, Representative Hanson, Representative Kreidt, Representative Martinson, Representative Mitskog, Representative Meier, Representative Mock, Representative Monson, Representative Nathe, Representative J. Nelson, Representative O'Brien, Representative Pyle, Representative Richter, Representative Sanford, Representative Schatz, Representative Schobinger, Representative Strinden, Representative G. Stemen and Representative Swiontek.

Members not Present- Representative Kempenich and Representative Brandenburg

Discussion Topics:

- Committee Action

Chairman Vigesaa Opens discussion for SB 2107

Representative Mock- Move for a Do Pass

Representative Schobinger- Seconds the Motion

Committee Discussion - Motions are withdrawn.

Representative Mock Move to Rerefer SB 2107 back to Judiciary committee

Representative Martinson Seconds the motion.

Committee Discussion- Motions are Withdrawn.

Representative Mock Move that SB 2107 Be Placed On The Consent Calendar Without Recommendation

Representative Monson Seconds the Motion

Committee Discussion Roll call vote

Representatives	Vote
Representative Don Vigesaa	Y
Representative Keith Kempenich	A
Representative Bert Anderson	Y
Representative Larry Bellew	N
Representative Mike Brandenburg	A
Representative Karla Rose Hanson	Y
Representative Gary Kreidt	N
Representative Bob Martinson	Y
Representative Lisa Meier	Y
Representative Alisa Mitskog	Y
Representative Corey Mock	Y
Representative David Monson	Y
Representative Mike Nathe	Y
Representative Jon O. Nelson	Y
Representative Emily O'Brien	Y
Representative Brandy Pyle	Y
Representative David Richter	Y
Representative Mark Sanford	Y
Representative Mike Schatz	N
Representative Randy A. Schobinger	Y
Representative Greg Stemen	Y
Representative Michelle Strinden	Y
Representative Steve Swiontek	Y

Motion Carries 18-3-2 Representative Roers Jones will carry the bill

9:17 AM Chairman Vigesaa Closed the meeting for SB 2107

Risa Berube, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2107, as reengrossed and amended: Appropriations Committee (Rep. Vigesaa, Chairman) recommends BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION (18 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING). Reengrossed SB 2107, as amended, was placed on the Fourteenth order on the calendar.

2023 CONFERENCE COMMITTEE

SB 2107

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2107
4/17/2023
Conference Committee

A bill relating to shooting offenses and drug trafficking, relating to sentences for crimes committed with firearms and for fleeing law enforcement; relating to mandatory prison terms for certain offenses; and to provide a penalty.

10:59 AM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal and Paulson and Representatives Klemin, Karls and Cory are present.

Discussion Topics:

- Minimum mandatory sentences.
- Amendments
- Presumptive probation
- Firearms

10:59 AM Representative Klemin reviewed amendment LC 8013.04005.

#27609, #27610, #27611

11:12 AM The committee has discussion on the bill.

11:18 AM Claire Ness, Chief Deputy Attorney General provided oral testimony. 11:21 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2107
4/19/2023
Conference Committee

A bill relating to shooting offenses and drug trafficking, relating to sentences for crimes committed with firearms and for fleeing law enforcement; relating to mandatory prison terms for certain offenses; and to provide a penalty.

10:59 AM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal and Paulson and Representatives Klemin, Karls and Cory are present.

Discussion Topics:

- Reckless endangerment
- Amendments

10:59 AM The committee has discussion on the bill and amendments #27706.

11:05 AM Representative Klemin moved the House to Recede from House amendments and amend further LC 23.8013.04006, #27706. Motion is seconded by Representative Karls.

11:06 AM Roll call vote is taken. Motion passes 6-0-0.

Senator Larson will carry the bill for the Senate.

Representative Klemin will carry the bill for the House.

11:07 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

April 19, 2023

AG
4-19-23
(1-4)

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2107

That the House recede from its amendments as printed on pages 1472 and 1473 of the Senate Journal and pages 1412 and 1413 of the House Journal and that Reengrossed Senate Bill No. 2107 be amended as follows:

Page 1, line 3, after "12.1-17-01" insert ", 12.1-17-03"

Page 1, line 3, after the fourth comma insert "12.1-32-09.1, and"

Page 1, line 3, remove ", and 62.1-02-01"

Page 1, line 5, after "enforcement" insert ", reckless endangerment, simple assault, and presumptive probation; to provide for a legislative management study"

Page 2, line 1, remove "jail"

Page 2, line 1, after "sentence" insert "of incarceration"

Page 2, line 2, remove "jail"

Page 2, line 2, after "sentence" insert "of incarceration"

Page 2, line 3, remove "jail"

Page 2, line 3, after "sentence" insert "of incarceration"

Page 2, line 4, after "court" insert ", in the exercise of the court's discretion"

Page 2, line 5, replace "imprisonment" with "incarceration"

Page 2, line 6, remove "jail"

Page 2, line 25, remove "of this section"

Page 2, line 26, remove "jail"

Page 2, line 26, after "sentence" insert "of incarceration"

Page 2, line 27, remove "jail"

Page 2, line 27, after "sentence" insert "of incarceration"

Page 2, line 28, after "court" insert ", in the exercise of the court's discretion,"

Page 2, line 29, replace "imprisonment" with "incarceration"

Page 2, line 30, remove "jail"

Page 3, line 6, replace "a class B felony" with "reckless endangerment as provided in section 12.1-17-03"

Page 3, after line 8, insert:

"SECTION 4. AMENDMENT. Section 12.1-17-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-03. Reckless endangerment.

AG
4-19-23
(2-4)

A person is guilty of an offense if ~~hethe person~~ creates a substantial risk of serious bodily injury or death to another. The offense is a class B felony if the offense is committed by intentionally or knowingly discharging a firearm. The offense is a class C felony if the circumstances manifest ~~histhe person's~~ extreme indifference to the value of human life. Otherwise it is a class A misdemeanor. There is risk within the meaning of this section if the potential for harm exists, whether or not a particular person's safety is actually jeopardized."

Page 3, line 16, remove "or"

Page 3, line 16, remove the overstrike over "~~,or firearm~~"

Page 3, line 18, remove "or"

Page 3, line 18, remove the overstrike over "~~,or firearm~~"

Page 3, line 20, remove "or"

Page 3, line 21, remove the overstrike over "~~,or firearm~~"

Page 3, after line 31, insert:

"5. This section does not apply to an offender convicted under section 62.1-02-15."

Page 4, line 9, after the second underscored comma insert "section 12.1-17-03,"

Page 4, after line 24, insert:

"SECTION 7. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. Sentencing of violent offenders.

1. Except as provided under section 12-48.1-02 and pursuant to rules adopted by the department of corrections and rehabilitation, an offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-17-14, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of ~~imprisonment~~incarceration is not eligible for release from ~~confinement~~incarceration on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted.
2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.

3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.
4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.
5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation."

AG
4-19-23
(3-4)

Page 5, line 15, remove "jail"

Page 5, line 15, after "sentence" insert "of incarceration"

Page 5, line 16, remove "jail"

Page 5, line 16, after "sentence" insert "of incarceration"

Page 5, line 17, remove "jail"

Page 5, line 17, after "sentence" insert "of incarceration"

Page 5, line 18, after "court" insert ", in the exercise of the court's discretion,"

Page 5, line 18, replace "imprisonment" with "incarceration"

Page 5, line 19, remove "jail"

Page 5, remove lines 21 through 31

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 9

Page 9, line 14, after the underscored comma insert "knowingly possesses, within the person's proximity, or uses a firearm"

Page 9, line 14, replace "and" with "or"

Page 9, line 15, remove ", uses or carries a firearm, or who, in furtherance of any such crime,"

Page 9, line 16, remove "possesses a firearm"

Page 9, line 17, replace "imprisonment" with "incarceration"

Page 9, line 18, after the second "the" insert "underlying"

Page 9, line 19, replace "imprisonment" with "incarceration"

Page 9, line 20, after "years" insert "if the firearm is possessed within the person's proximity"

Page 9, line 25, replace "imprisonment" with "incarceration"

Page 9, line 29, replace "imprisonment" with "incarceration"

Page 10, line 1, remove "A term of imprisonment imposed on a person under this section may not run"

4-19-23
(4-4)

Page 10, remove lines 2 through 4

Page 10, line 5, remove "b."

Page 10, line 6, replace "confinement" with "incarceration"

Page 10, line 7, remove "For"

Page 10, line 8, replace "purposes of this subsection, confinement" with "Incarceration"

Page 10, line 10, replace "c." with "b."

Page 10, line 10, after "court" insert ", in the exercise of the court's discretion."

Page 10, line 11, replace "imprisonment" with "incarceration"

Page 10, after line 24, insert:

"SECTION 10. LEGISLATIVE MANAGEMENT STUDY - FIREARM POSSESSION. During the 2023-24 interim, the legislative management shall consider studying those provisions of the North Dakota Century Code which prohibit certain individuals from possessing a firearm. The study may include an examination of the state's firearm and weapon possession prohibitions as compared to the federal regulations. The study must include an examination of whether the category of individuals prohibited from possessing a firearm by statute should be maintained in its current form, narrowed, or expanded. The study must include input from the attorney general, the supreme court, the North Dakota association of counties, the North Dakota league of cities, the North Dakota state's attorneys' association, the North Dakota association of criminal defense lawyers, the North Dakota peace officers association, and the national rifle association. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

**2023 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 2107 re engrossed

Senate "Enter committee name" Committee

- Action Taken
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Klemin Seconded by: Karls

Senators	4/19		Yes	No	Representatives	4/19		Yes	No
Larson	P		X		Klemin	P		X	
Myrdal	P		X		Karls	P		X	
Paulson	P		X		Cory	P		X	
Total Senate Vote			3	0	Total Rep. Vote			3	0

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Larson House Carrier Klemin

LC Number 23.8013 . 04006 of amendment

LC Number 23.8013 . 06000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Adoption of amendment LC 23.8013.04006

REPORT OF CONFERENCE COMMITTEE

SB 2107, as reengrossed: Your conference committee (Sens. Larson, Myrdal, Paulson and Reps. Klemin, Karls, Cory) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1472-1473, adopt amendments as follows, and place SB 2107 on the Seventh order:

That the House recede from its amendments as printed on pages 1472 and 1473 of the Senate Journal and pages 1412 and 1413 of the House Journal and that Reengrossed Senate Bill No. 2107 be amended as follows:

Page 1, line 3, after "12.1-17-01" insert ", 12.1-17-03"

Page 1, line 3, after the fourth comma insert "12.1-32-09.1, and"

Page 1, line 3, remove ", and 62.1-02-01"

Page 1, line 5, after "enforcement" insert ", reckless endangerment, simple assault, and presumptive probation; to provide for a legislative management study"

Page 2, line 1, remove "jail"

Page 2, line 1, after "sentence" insert "of incarceration"

Page 2, line 2, remove "jail"

Page 2, line 2, after "sentence" insert "of incarceration"

Page 2, line 3, remove "jail"

Page 2, line 3, after "sentence" insert "of incarceration"

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Page 2, line 6, remove "jail"

Page 2, line 25, remove "of this section"

Page 2, line 26, remove "jail"

Page 2, line 26, after "sentence" insert "of incarceration"

Page 2, line 27, remove "jail"

Page 2, line 27, after "sentence" insert "of incarceration"

Page 2, line 28, after "court" insert ", in the exercise of the court's discretion."

Page 2, line 29, replace "imprisonment" with "incarceration"

Page 2, line 30, remove "jail"

Page 3, line 6, replace "a class B felony" with "reckless endangerment as provided in section 12.1-17-03"

Page 3, after line 8, insert:

"SECTION 4. AMENDMENT. Section 12.1-17-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-03. Reckless endangerment.

A person is guilty of an offense if ~~he~~the person creates a substantial risk of serious bodily injury or death to another. The offense is a class B felony if the offense is committed by intentionally or knowingly discharging a firearm. The offense is a class C felony if the circumstances manifest ~~his~~the person's extreme indifference to the value of human life. Otherwise it is a class A misdemeanor. There is risk within the meaning of this section if the potential for harm exists, whether or not a particular person's safety is actually jeopardized."

Page 3, line 16, remove "or"

Page 3, line 16, remove the overstrike over "~~or firearm~~"

Page 3, line 18, remove "or"

Page 3, line 18, remove the overstrike over "~~or firearm~~"

Page 3, line 20, remove "or"

Page 3, line 21, remove the overstrike over "~~or firearm~~"

Page 3, after line 31, insert:

"5. This section does not apply to an offender convicted under section 62.1-02-15."

Page 4, line 9, after the second underscored comma insert "section 12.1-17-03."

Page 4, after line 24, insert:

"SECTION 7. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. Sentencing of violent offenders.

1. Except as provided under section 12-48.1-02 and pursuant to rules adopted by the department of corrections and rehabilitation, an offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-17-14, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of ~~imprisonment~~incarceration is not eligible for release from ~~confinement~~incarceration on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted.
2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.

3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.
4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.
5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation."

Page 5, line 15, remove "jail"

Page 5, line 15, after "sentence" insert "of incarceration"

Page 5, line 16, remove "jail"

Page 5, line 16, after "sentence" insert "of incarceration"

Page 5, line 17, remove "jail"

Page 5, line 17, after "sentence" insert "of incarceration"

Page 5, line 18, after "court" insert ", in the exercise of the court's discretion."

Page 5, line 18, replace "imprisonment" with "incarceration"

Page 5, line 19, remove "jail"

Page 5, remove lines 21 through 31

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 9

Page 9, line 14, after the underscored comma insert "knowingly possesses, within the person's proximity, or uses a firearm"

Page 9, line 14, replace "and" with "or"

Page 9, line 15, remove ", uses or carries a firearm, or who, in furtherance of any such crime."

Page 9, line 16, remove "possesses a firearm"

Page 9, line 17, replace "imprisonment" with "incarceration"

Page 9, line 18, after the second "the" insert "underlying"

Page 9, line 19, replace "imprisonment" with "incarceration"

Page 9, line 20, after "years" insert "if the firearm is possessed within the person's proximity"

Page 9, line 25, replace "imprisonment" with "incarceration"

Page 9, line 29, replace "imprisonment" with "incarceration"

Page 10, line 1, remove "A term of imprisonment imposed on a person under this section may not run"

Page 10, remove lines 2 through 4

Page 10, line 5, remove "b."

Page 10, line 6, replace "confinement" with "incarceration"

Page 10, line 7, remove "For"

Page 10, line 8, replace "purposes of this subsection, confinement" with "Incarceration"

Page 10, line 10, replace "c." with "b."

Page 10, line 10, after "court" insert ", in the exercise of the court's discretion."

Page 10, line 11, replace "imprisonment" with "incarceration"

Page 10, after line 24, insert:

"SECTION 10. LEGISLATIVE MANAGEMENT STUDY - FIREARM POSSESSION. During the 2023-24 interim, the legislative management shall consider studying those provisions of the North Dakota Century Code which prohibit certain individuals from possessing a firearm. The study may include an examination of the state's firearm and weapon possession prohibitions as compared to the federal regulations. The study must include an examination of whether the category of individuals prohibited from possessing a firearm by statute should be maintained in its current form, narrowed, or expanded. The study must include input from the attorney general, the supreme court, the North Dakota association of counties, the North Dakota league of cities, the North Dakota state's attorneys' association, the North Dakota association of criminal defense lawyers, the North Dakota peace officers association, and the national rifle association. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

Reengrossed SB 2107 was placed on the Seventh order of business on the calendar.

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2107
4/26/2023
Conference Committee

A bill relating to shooting offenses and drug trafficking, relating to sentences for crimes committed with firearms and for fleeing law enforcement; relating to mandatory prison terms for certain offenses; and to provide a penalty.

3:29 PM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Paulson, and Representatives Satrom, Olson and Heinert are present.

Discussion Topics:

- Firearms statutes
- Truth in sentencing
- Presumptive sentencing
- Public safety

3:29 PM The committee has discussion on the bill.

3:54 PM Representative Heinert moved the House recede from House amendments and amend as follows LC 23.8013.04006. Motion was seconded by Senator Myrdal.

4:00 PM Roll call vote was taken. Motion failed 4-2-0.

4:02 PM Senator Myrdal moved the House Recede from House amendments and amend as follows, "delete sections 1-9 and keep section 10". LC 23.8013.04007. Motion is seconded by Senator Paulson.

4:03 PM Roll call vote is taken. Motion carried 6-0-0.

Senator Myrdal will carry the bill for the Senate.

Representative SuAnn Olson will carry the bill for the House.

4:03 PM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

April 26, 2023

AGC
4-26-23
(1-1)

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2107

That the House recede from its amendments as printed on pages 1472 and 1473 of the Senate Journal and pages 1412 and 1413 of the House Journal and that Reengrossed Senate Bill No. 2107 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study relating to statutory provisions that prohibit certain individuals from possessing a firearm.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - FIREARM POSSESSION. During the 2023-24 interim, the legislative management shall consider studying those provisions of the North Dakota Century Code which prohibit certain individuals from possessing a firearm. The study may include an examination of the state's firearm and weapon possession prohibitions as compared to the federal regulations. The study must include an examination of whether the category of individuals prohibited from possessing a firearm by statute should be maintained in its current form, narrowed, or expanded. The study must include input from the attorney general, the supreme court, the North Dakota association of counties, the North Dakota league of cities, the North Dakota state's attorneys' association, the North Dakota association of criminal defense lawyers, the North Dakota peace officers association, and the national rifle association. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

**2023 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 2107 as (re) engrossed

Senate Judiciary Committee

- Action Taken**
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree**, recommends that the committee be discharged, and a new committee be appointed

Motion Made by: Heinert Seconded by: Myrdal

Senators		4/26		Yes	No	Representatives		4/26		Yes	No
<i>Larson</i>		P		X		Satrom		P			X
<i>Myrdal</i>		P		X		SuAnn Olson		P			X
<i>Paulson</i>		P		X		Heinert		P		X	
Total Senate Vote				3	0	Total Rep. Vote				1	2

Vote Count Yes: 4 No: 2 Absent: 0

Senate Carrier _____ House Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

*Motion failed.

**2023 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. 2107 as (re) engrossed

Senate Judiciary Committee

- Action Taken**
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Myrdal Seconded by: Paulson

Senators	4/26		Yes	No		Representatives			Yes	No
Larson	P		X						X	
Myrdal	P		X						X	
Paulson	P		X						X	
Total Senate Vote			3	0		Total Rep. Vote			3	0

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Myrdal House Carrier SuAnn Olson

LC Number 23.8013 . 04007 of amendment

LC Number 23.8013 . 07000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Adoption of amendment LC 23.8013.04007

Insert LC: 23.8013.04007
Senate Carrier: Myrdal
House Carrier: S. Olson

REPORT OF CONFERENCE COMMITTEE

SB 2107, as reengrossed: Your conference committee (Sens. Larson, Myrdal, Paulson and Reps. Satrom, S. Olson, Heinert) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1472-1473, adopt amendments as follows, and place SB 2107 on the Seventh order:

That the House recede from its amendments as printed on pages 1472 and 1473 of the Senate Journal and pages 1412 and 1413 of the House Journal and that Reengrossed Senate Bill No. 2107 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study relating to statutory provisions that prohibit certain individuals from possessing a firearm.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - FIREARM

POSSESSION. During the 2023-24 interim, the legislative management shall consider studying those provisions of the North Dakota Century Code which prohibit certain individuals from possessing a firearm. The study may include an examination of the state's firearm and weapon possession prohibitions as compared to the federal regulations. The study must include an examination of whether the category of individuals prohibited from possessing a firearm by statute should be maintained in its current form, narrowed, or expanded. The study must include input from the attorney general, the supreme court, the North Dakota association of counties, the North Dakota league of cities, the North Dakota state's attorneys' association, the North Dakota association of criminal defense lawyers, the North Dakota peace officers association, and the national rifle association. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

Reengrossed SB 2107 was placed on the Seventh order of business on the calendar.

TESTIMONY

SB 2107

January 4, 2023
Testimony to the **Senate Judiciary Committee**
By Jackson J. Lofgren
Testimony in Opposition to S.B. 2107

Madam Chairman and Members of the Senate Judiciary Committee:

My name is Jackson Lofgren and I reside in District 35. I have had the pleasure of practicing law in North Dakota for sixteen years. I spent the first seven years of my career working as a Special Assistant Attorney General and Assistant Morton County State's Attorney. For the last nine years I have been in private practice in Bismarck. My law practice is focused almost entirely on criminal defense. I am a past president of the North Dakota Association of Criminal Defense Lawyers. **I oppose S.B. 2107.**

Senate Bill 2107 attempts to insert sections of federal law into the Century Code where they do not fit or belong, establishes many new mandatory prison sentences, and expands who cannot possess a firearm under state law. The North Dakota Legislature has worked hard over the last several sessions to make well researched and meaningful changes to our criminal code. This bill goes in the opposite direction.

Mandatory prison sentences increase incarceration rates but do not reduce crime. During the 1980s and early 1990s the Federal Government and many states added mandatory prison sentences to their criminal codes. Between 1990 and 2005 a new prison opened in the United States every ten days. Over the last forty years the prison population in America has increased by 500%. There are currently two million Americans in prisons and jails. One in twenty-eight children has an incarcerated parent. But, there is nothing to show lengthy prison sentences decrease crime. Just the opposite. Since 2008 thirty-five states have managed to reduce both their prison populations and crime rates.

Any suggestion that elected North Dakota judges are soft on crime is patently false. Defendants who deserve to go to prison are going to prison. The population of male inmates in the custody of the North Dakota Department of Corrections and Rehabilitation is nearly at capacity. The population of female inmates is at capacity. Senate Bill 2107 will cost the State of North Dakota millions of dollars as the North Dakota prison population swells. Our current correctional facilities will require significant expansion if not a whole new prison.

Finally, the bill's insertion of federal firearm law into the Century Code is highly problematic. The bill is not written well. For example, Section 6 makes it a state felony for a person to possess a firearm after a conviction for a "misdemeanor crime of domestic violence." This phrase comes directly out of the Federal criminal code where it has a lengthy statutory definition. The Century Code has no matching definition leaving law enforcement and the courts to struggle over the meaning under state law. It allows tribal court convictions to be used to trigger mandatory sentences even though tribal courts are not subject to the Bill of Rights. It allows firearm owners who smoke marijuana, or who are addicted to medication, to be charged

with a state felony. Senate Bill 2107 will cause problems for many well-meaning gun owning North Dakotans.

For these reasons I urge you to vote **DO NOT PASS** on Senate Bill 2107.

Thank You,

Jackson J. Lofgren

Jackson J. Lofgren

SB 2107
68th Legislative Assembly
Senate Judiciary Committee
January 4, 2023
Testimony of Travis W. Finck, Executive Director, NDCLCI

Madam Chair Larson, members of the Senate Judiciary Committee, my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota. I rise today on behalf of the Commission to provide testimony in opposition to SB 2107.

The Commission is concerned about the legislation currently in front of the Committee. The concern is two-fold. First, this legislation will undoubtedly cause more cases to be tried in North Dakota State Courts. North Dakota state courts are very separate and distinct from the federal courts. In 2015, the Legislature started down the path of Justice Reinvestment which led to many evidence-based policy changes. This bill seeks to roll back many of those policy changes.

The Commission believes this legislation will leave defendants with relatively little incentive to settle cases. If a Defendant is going to be facing a county jail sentence even if they plead guilty, this will undoubtedly change the equation. Further, by creating new mandatory minimum sentences we again disincentivize resolving a case via a plea agreement. Thus, we anticipate there will be more trials.

More trials will cost more money. We have not had the opportunity to figure a fiscal note on this bill because we had not been provided a copy prior to session. However, given the number of minimum mandatory penalties included herein, there will be more trials. The concept of having more trials and more work is concerning given we are on the verge of not being able to meet our current constitutional and statutory requirements. We currently have four attorney positions for which we are recruiting across the state, which is 20% of the FT attorneys the commission employs. Further, it is becoming more and more difficult to find attorneys to provide contract services at the rate we pay. If we are now going to tell those

attorneys they are more likely to be going to trial, we may find ourselves past the rubicon of constitutional failure.

The second concern the Commission has relates to the effectiveness of mandatory minimums. The national pulse has been to move away from mandatory minimum sentences and to be smart on crime by applying resources in evidence-based attempts in dealing in the criminal justice system. As recently as 2018, Congress in a bipartisan fashion came together to pass the First Step Act. The First Step Act was an act in Congress that eliminated the stacking of mandatory minimum sentences, made it easier for judges to depart from archaic and draconian federal sentencing laws, and reduced the three strikes law. This law was signed under President Trump.

SB2107 seems to be a step in the wrong direction.

Madam Chair, members of the Senate Judiciary Committee, for the reasons stated herein, the Commission on Legal Counsel urges a DO NOT PASS recommendation.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Travis W. Finck", is written over a horizontal line.

Travis W. Finck

Executive Director, NDCLCI

January 4, 2023
 Senate Judiciary Committee
 SB 2107
 Sen. Larson, Chair

For the record, I am Stephanie Dassinger Engebretson. I am appearing on behalf of the Chiefs of Police Association of North Dakota. I am also the deputy director and attorney for the North Dakota League of Cities.

The Chiefs of Police appear today in support of SB 2107. The bill enhances the penalty for several troubling crimes. If you talk to any law enforcement officer, he or she would likely tell you that the instances of encountering violence and fleeing has increased greatly over the past several years. The Bismarck Police Department numbers comparing 2021 to 2022 from some of the crimes in this bill found:

Offense	2021	2022	% Change
Aggravated Assault on Law Enforcement	2	5	150%
Assault on Law Enforcement	33	56	70%
Fleeing (1st Offense)	13	26	100%
Fleeing (Subsequent)	86	76	-12%
Fleeing (After Felony)	6	8	33%

I frequently hear how seeing individuals who have been convicted of these dangerous crimes on the street after a short amount of time is causing morale issues with law enforcement officers. The morale issue in turn cause recruitment and retention issues. On top of that, it is making the job of protecting and serving our cities as law enforcement officers more dangerous.

The Chiefs of Police request a Do Pass recommendation on SB 2107 to create some deterrence from committing these crimes and to help keep law enforcement officers safe.

Thank you for your consideration.

Good morning. My name is Lloyd Suhr. I am an attorney in private practice here in Bismarck. I testify in opposition Senate Bill 2107.

I have spent more than 20 years working in and analyzing the criminal justice system in North Dakota from various angles, in both the state and federal courts. I was a prosecutor with the Burleigh County State's Attorney's Office for 11 years. I have been in private practice for 10 years focusing almost entirely on criminal defense practice in both state and federal court. For the last two years I have been an adjunct faculty member with the University of Mary teaching Criminal Procedure. Relying on this experience, I can state with confidence that this bill, if passed, will be very costly and cause more problems than it could ever conceivably solve.

The bill has two primary components. The first is the creation of literally dozens of new, complicated, clumsily written, and overly broad mandatory minimum and "presumptive jail" sentences. The second is a significant expansion of the list of individuals who would not be able to use or possess firearms, in some instances lacking rhyme or reason.

As to the first component, mandatory minimum sentences have come under harsh criticism in the last decade-plus from the judiciary, prosecutors, defense attorneys, and correctional officials alike. Just a few of the commonly seen reasons:

- They force cases to trial (most defendants are not going to plead to offenses that carry a guaranteed minimum sentence) adding significant cost to the judiciary and to the executive branches bringing the cases.
- They divest judges from exercising the very discretion that they are elected to perform and sentence offenders not on the individual facts and circumstances of a case, but in compliance sentencing mandates.
- It operates on the false premise that judges cannot be trusted to sentence people to prison where it is appropriate. That is simply not true. Our judges dutifully apply the sentencing statutes to the facts of each case. People that deserve to go to prison do.
- They strain our prisons and jails, already at or near capacity in many instances, and in a constant need of already limited resources to perform their necessary functions.

According to NDDOCR statistics published on the DOCR website, www.docr.nd.gov, the average daily prison population for FY 2015 – FY 2020 ranged from 1696.26 to 1805.71. Notably, only 5.2% of the prison population was subject to a mandatory minimum. The

number of mandatory minimum sentences that this bill would create is almost infinite, as they reach out to dozens of sections of the criminal code. It is not difficult to see how the inmate population will skyrocket with the implementation of a whole catalogue of mandatory minimum sentences. You will need to invest the resources to keep up with this.

Notably, there is no fiscal note attached to this bill.

As to the second component, this bill has a number of far-reaching restrictions on the use or possession of firearms that quite simply don't make sense. For example, the bill provides that a person who is an unlawful user of, or addicted to, any controlled substance cannot possess a firearm. This would include marijuana, which is still defined as a "controlled substance". Use or possession of marijuana is an infraction yet a conviction would prohibit firearm possession. That just doesn't make sense. It also prohibits someone who has been dishonorably discharged from the service from possessing a firearm, without any regard to the underlying circumstances. The bill defines the term "felony crime of violence" to include multiple non-violent offenses, such as theft and unauthorized entry into a motor vehicle.

If I were to describe this bill in one sentence, it would be "everyone goes to prison". It is going to be costly, ineffective, and I can virtually guarantee you will be looking at this again next session if it passes.

I thank you for your time, and strongly urge you to recommend a DO NOT PASS.

Senate Judiciary Sub Committee SB2017

Chair Paulson and Committee Members,

January 10, 2023

As the Chief of Mandan Police department I am in support of SB2017 and I am willing to work with the committee to draft a passable form of this bill.

I will breakdown how this bill if turned into law will not only help the citizens of Mandan but all communities across the Great State of North Dakota.

Currently law enforcement is experiencing a workforce shortage and in my professional opinion one of the major factors is that it's a dangerous job and individuals who may want to do the job think twice because of that reason. It's hard to recruit and retain officers when criminals can assault them, flee from them and shoot at them with very little consequences to the criminals.

I hear it from police officers all the time that the criminal gets no time or very little time for the crimes they commit. This kills morale among police officers, and in some cases as we have seen across our country cause officers to not even engage criminal acts. If we as a State take the stance that we will not let the criminals make victims of our citizens and let our officers know that if they track down those in our communities that want to do harm to others, we will send a clear message to the criminals, "Not in our State!"

SB2017 would address those concerns for most police officers and when a criminal knows that there are minimum mandatories if they assault a police officer, flee from a police officer and or use a firearm in the commission of a crime they will spend significant time in jail or prison, they may think twice before victimizing the innocent citizens and our brave police officers.

Fleeing: When a criminal flees in a vehicle from law enforcement they do it for one reason and that is to avoid capture and arrest from the police. Fleeing in a vehicle from the police is one of the most dangerous things to our communities that can happen. In many cases the fleeing criminal has committed a crime and or has an active warrant for their arrest. Our police officers know how dangerous these pursuits can be and in many cases will not pursue. The fleeing criminal does not care for anyone except themselves and continue to flee after the police cancel. These fleeing criminals do sometimes crash even after the police cancel. This is an unnecessary endangerment to our communities and a minimum of 14 days in jail could reduce fleeing incidents, and at the least would keep them off the streets for 14 days.

Senate Judiciary Sub Committee SB2017

In Mandan we have experienced the following increases in fleeing vehicles from the police:

2013	2014	2015	2016*	2017*	2018	2019	2020	2021	2022
3	3	19	28	12	54	42	49	53	55
0	0	+533%	+47%	-57%	+350%	-22%	+17%	+8%	+4%

*DAPL

As the above illustrates there is a consistent pattern of increasing dangerous pursuits in Mandan.

Assault: When a criminal resist arrest and or assaults and officer they do it for one reason that is to avoid arrest. This section of SB2017 should speak for itself and in my professional opinion, someone who is attempting to prevent any police officer from performing their lawful duties and or assaults them should do the minimum of 30 days in jail, if not more. If we cannot protect the protectors, then how do we expect good people to want to be police officers? Again let's send the message "Not in our State!"

Firearm: When a criminal possesses, points or fires a firearm in the commission of a crime there intent is not only to avoid arrest but to terrorize victims. With crimes becoming more violent and the belief that criminals are now victims our police officers are seeing more and more firearms on the street. In the Mandan/Bismarck Metro our agencies have a Narcotics Taskforce. Over the past three years they have seen a significant increase in firearms being seized from drug dealers. Below is a breakdown on what they have experienced:

Year	2020	2021	2022
Firearms Seized	24	50	60
Percentage +/-	N/A	+108%	+20%

This section of the bill will not affect law abiding citizens and will give the criminal elements from victimizing our citizen. If a criminal knew that if they uses a firearm they would do minim of 3yrs to 7yrs they once again would think twice from using them.

As a Chief of one of North Dakota's larger cities I would hope that we can work together with the AG and this committee to make a passable draft of SB2017. Let's send a message "Not in our State!"

Respectfully,

Chief Jason J. Ziegler



Drew H. Wrigley
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL
www.attorneygeneral.nd.gov
(701) 328-2210

For the record, I am Jeremy Ensrud. I am appearing on behalf of the Attorney General's Office. I am an assistant attorney general in the criminal division. I appear in support of SB 2017.

SB 2017 is a necessary response to the uptick in violent crime in North Dakota, specifically violent crime involving firearms. Attached as Exhibit 1 are the number of incidents of different crimes of violence and drug possession or sales. These numbers track from 1999 to 2021. While these numbers have increased exponentially, this legislation is narrowly targeted at those crimes committed with possessing, brandishing, or discharging a firearm.

Attached as Exhibit 2 are the numbers of individuals incarcerated and serving a minimum mandatory sentence for aggravated assault, robbery, burglary, terrorizing, and reckless endangerment. These numbers are not the number sentenced by year, but rather the cumulative total in the state penitentiary on December 31st of each year. Under the existing law these crimes currently require a 2-year minimum mandatory for C felonies and a 4-year minimum mandatory for B felonies. The second column is the total number of individuals serving minimum mandatory sentences for all crimes, not just firearm related crimes.

At the first hearing, numerous individuals raised concerns as to the effectiveness of increased penalties on criminal deterrence. The only crime in North Dakota that has increased penalties in the last decade that I am aware of is driving under the influence. DUI numbers are included in Exhibit 1 as well. In 2013, the legislature created a new crime for refusing to submit to testing and increased the minimum mandatory penalties. This was done out of concern for the rising number of DUI cases. Immediately after the new legislation went into effect, DUI numbers began dropping. In a period of 8 years, DUI numbers have nearly been cut in half. This is an example of the legislature identifying a worrying trend, increasing the associated minimum mandatory penalties, and having great success.

Thank you for your consideration.

	Homicide	Forcible Rape	Robbery	Aggravated Assault	Burglary	Drugs	Drug Sales	DUI
1999	13	147	70	217	2200	1456	159	5179
2000	8	173	62	319	2004	1501	188	4304
2001	9	159	71	275	2027	1658	118	4301
2002	6	167	71	309	2250	1752	134	4467
2003	12	143	55	289	1814	2045	143	4854
2004	10	181	49	343	1953	2078	318	5783
2005	14	179	53	444	1966	2343	284	5946
2006	9	195	72	532	2302	2256	298	6488
2007	17	202	68	599	2096	2323	217	6085
2008	4	222	71	738	2035	2158	250	5815
2009	15	206	102	795	2180	2063	257	5819
2010	11	222	85	847	1826	2791	338	6050
2011	15	207	91	1040	2227	3344	346	6600
2012	20	243	117	1071	2200	3698	269	7322
2013	14	237	151	1156	2656	4064	325	7086
2014	19	251	166	1145	2490	5154		6705
2015	21	287	157	1185	3212	5648		6189
2016	17	260	181	1132	3051	6086		5406
2017	12	310	183	1216	2673	6453		5597
2018	17	315	158	1304	2505	6884		5148
2019	26	350	176	1251	2525	6444		4828
2020	32	316	145	1371	2832	6095		4175
2021	17	340	186	1521	2899	6451		4040
1999-2001	30	479	203	811	6231	4615		
2019-2021	75	1006	507	4143	8256	18990		
Increase	150%	110%	149%	411%	32%	311%		

Burglary, AA, Robbery, Terrorizing, RE	All
2004 35 total	135 total
2005 39 total	124 total
2006 28 total	110 total
2007 19 total	70 total
2008 30 total	92 total
2009 25 total	89 total
2010 25 total	105 total
2011 31 total	117 total
2012 26 total	114 total
2013 32 total	99 total
2014 25 total	82 total
2015 17 total	68 total
2016 36 total	121 total
2017 49 total	128 total
2018 54 total	115 total
2019 67 total	122 total
2020 63 total	120 total
2021 72 total	149 total

	Avg. Prison Population	Simple Drug Dealing	Violent	Sexual	Property	
2004	1252	14.30%	20.20%	28.40%	14.70%	25.80%
2005	1335	17.50%	20.00%	29.70%	13.80%	21.80%
2006	1402					
2007	1408					
2008	1436					
2009	1451					
2010	1505					
2011	1440					
2012	1536					
2013	1576					
2014	1718					
2015	1795					
2016	1791					
2017	1723	10.45%	16.13%	34.82%	17.06%	19.15%
2018	1695	10.38%	16.87%	34.75%	17.76%	18.47%
2019	1794	10.37%	15.44%	36.12%	16.89%	19.23%
2020	1401	6.28%	14.85%	41.97%	20.91%	14.42%
2021	1689	7.20%	14.45%	40.60%	18.18%	18.47%

Releases from DOCR Custody - Controlling Sentence							
		Number Released			Ave Days Served - DOCR Custody	Ave % of Sentence Served - DOCR Custody	Ave % of Sentenced Served - Parole
		Exp Sent / Prob	Parole	Total			
January 1, 2022 - June 30, 2022							
	Misdemeanor A	4	5	9	151	67%	33%
	Felony C	113	253	366	317	66%	34%
	Felony B	19	91	110	437	61%	39%
	Felony A	12	35	47	1,197	70%	30%
	Felony AA	1	3	4	1,811	88%	12%
January 1, 2021 - December 31, 2021							
	Misdemeanor A	8	6	14	172	77%	23%
	Felony C	186	436	622	345	66%	34%
	Felony B	47	181	228	479	63%	37%
	Felony A	18	53	71	949	69%	31%
	Felony AA	9	16	25	2,441	88%	12%
January 1, 2020 - December 31, 2020							
	Misdemeanor A	0	14	14	129	50%	50%
	Felony C	166	554	720	328	62%	38%
	Felony B	26	190	216	474	57%	43%
	Felony A	23	80	103	1,099	63%	37%
	Felony AA	4	11	15	2,114	65%	35%
DOCR Sentence Calculation							
Sentence length = Total sentence - Suspended Portion - Credit for jail time served - Credit for jail good time - Maximum amount of good time to be earned while in DOCR custody							
Estimated Good Time Release Date = Sentence Date + Sentence Length							
<i>NOTE: Sentence calculation is subject to change, based on consecutive sentences, additional sentences, crimes committed while in prison, and / or loss of good time</i>							

DOCR Adult Services Prison Population Information

Prison Population on December 31, 2022 (Male and Female)

TOTAL COUNT: 1817

NDSP 776, HRCC 49, JRCC 469, MRCC 183, DWCR 138, Non Traditional Beds 202

Non-Traditional Bed Breakdown:

Correctional Centers (Jails) 33, Interstate Compact 15, BTC 64, GFC 15, MTPFAR 32, MTPMDN 10

FTPFAR 25, FTPMDN 8

Year	2017	2018	2019	2020	2021	2022
Admissions - Calendar Year	1604	1527	1530	936	1491	1451
Releases - Calendar Year	1672	1555	1431	1329	1203	1323
Prison Count on December 31	1723	1695	1794	1401	1689	1817

Prison Count on December 31 (Crime Type)

Offense	2017	2018	2019	2020	2021	2022
Violent Offenders (Excluding Sexual)	600	589	648	588	686	743
Sex Offenders	294	301	303	293	307	330
Property and Other Public Order Offenders	330	313	345	202	312	337
Drug & Alcohol Offenders	499	492	498	318	384	407
Drug - Deliver, Manufacture or Intent	278	286	277	208	244	251
Drug - Possession Only	180	176	186	88	122	131
Alcohol - DUI, APC	41	30	35	22	18	25

Prison Count on December 31 (Minimum Mandatory)

Offense	2017	2018	2019	2020	2021	2022
Breaking/Unlawful Entry Into a Motor Vehicle	1	0	0	0	0	0
DUI/Actual Physical Control	2	0	0	0	0	0
Driving Under Suspension	0	0	0	0	0	0
Refusing to Submit to Chemical Testing	0	0	0	0	0	0
Drug Offenses (Not Alcohol)	26	15	7	6	10	14
Reckless Endangerment	4	3	6	6	8	7
Aggravated Assault	13	17	20	20	26	31
Burglary With Weapon	4	4	4	3	4	4
Felonious Restraint	1	0	1	1	0	0
Kidnapping	0	0	0	0	0	0
Sex Offense	21	17	12	15	17	16
Terrorizing	16	14	19	17	16	16
Robbery	12	16	18	17	18	17
Criminal Vehicular Injury	1	0	0	0	0	0
Negligent Homicide/Criminal Vehicular Homicide	2	3	2	2	2	2
Manslaughter	1	1	2	4	6	6
Murder/Attempted Murder *	22	25	31	29	42	47
Felon in Possession of a Firearm	0	0	0	0	0	0
Offender Registration Violation	2	0	0	0	0	0
Total	128	115	122	120	149	160

* There are 91 males and 4 females with a Life sentence (not all are minimum mandatory sentences)
8.8% of the prison population on December 31, 2022 had a minimum mandatory sentence.

Prison Count on December 31 (85% Truth-In-Sentencing)

	2017	2018	2019	2020	2021	2022
Number of Offenders Having 85% TIS	274	261	241	244	290	293
Average Sentence In Years (excludes Life)	11.88	12.90	15.85	15.95	16.18	15.69

DOCR Adult Services Prison Population Information (Male and Female)						
Average Prison Population, Admissions, Releases by Fiscal Year						
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Average Daily Population	1805.81	1760.97	1716.50	1698.82	1453.17	1693.76
Admissions	1600	1576	1514	1146	1336	1428
Releases	1586	1681	1444	1540	1085	1312
Number Of Fiscal Year Admissions by Crime Type						
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
All Admissions	1600	1576	1514	1146	1336	1428
Violent Offenders (Non-Sexual)	364	366	358	293	413	421
Sex Offenders	98	76	89	65	85	81
Drug & Alcohol Offenders	729	712	660	483	521	530
Property and Other Public Order Offenders	409	422	407	305	317	396
Average Sentence Imposed By Court (Fiscal Year, Crime Type, In Years, Excludes Life Sentences)						
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
All Admissions	2.76	2.57	2.56	2.89	2.80	2.78
Violent Offenders (Non-Sexual)	3.18	2.91	2.54	3.17	3.03	3.35
Sex Offenders	5.80	5.54	6.10	8.16	5.72	6.62
Drug & Alcohol Offenders	2.47	2.33	2.36	2.45	2.48	2.40
Property and Other Public Order Offenders	2.19	2.15	2.14	2.20	2.25	2.21
Number Of Fiscal Year Admissions By Length Of Court Imposed Sentence						
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Less Than One Year	29	43	41	37	26	38
One Year to Less Than Five Years	1356	1342	1315	955	1149	1214
Five Years to Less Than Ten years	165	147	115	103	108	126
Ten Years to Less Than Twenty Years	29	25	28	31	38	24
Twenty Years or More	21	19	15	20	15	26

NOTE: The average sentence is that sentence imposed by the court. It does not take into account such things as good time, credit for time served, parole relief or any other method of shortening the sentence except Pardon Advisory Board recommendations adopted by the Governor (which can actually change the sentence). The average sentence is reported in months to two decimal points.

Data is based on the "controlling sentence" for offenders who are admitted for multiple crimes. Controlling sentence is the longest sentence ordered by the court that has not expired.

NDSP - North Dakota State Penitentiary. **JRCC** - James River Correctional Center. **MRCC** - Missouri River Correctional Center. **HRCC** - Heart River Correctional Center. **DWCRC** - Dakota Women's Correctional Rehabilitation Center (New England). **BTC** - Bismarck Transition Center. **CPP** - Community Placement Program. **MTP** - Male Transition Program (Fargo & Mandan). **FTP** - Female Transition Program (Fargo & Mandan). **GFC** - Grand Forks Centre. **LRRP** - Lake Region Re-entry Program (Devils Lake).

DOCR Adult Services Prison Population Information

Prison Population on December 31, 2022 (Female Only)

TOTAL COUNT: 233

NDSP 0, HRCC 49, JRCC 0, MRCC 0, DWCR 138, Non Traditional Beds 46

Non-Traditional Bed Breakdown:

Correctional Centers (Jails) 7, BTC 6, FTPFAR 25, FTPMDN 8

Year	2017	2018	2019	2020	2021	2022
Admissions - Calendar Year	300	296	310	198	286	302
Releases - Calendar Year	314	299	297	245	248	269
Prison Count on December 31	199	196	209	162	200	233

Prison Count on December 31 (Crime Type)

Offense	2017	2018	2019	2020	2021	2022
Violent Offenders (Excluding Sexual)	68	59	63	57	83	90
Sex Offenders	4	5	6	7	5	4
Property and Other Public Order Offenders	35	34	43	28	47	53
Drug & Alcohol Offenders	92	98	97	70	65	86
Drug - Deliver, Manufacture or Intent	39	49	46	43	36	41
Drug - Possession Only	50	47	48	24	26	41
Alcohol - DUI, APC	3	2	3	3	3	4

Prison Count on December 31 (Minimum Mandatory)

Offense	2017	2018	2019	2020	2021	2022
Breaking/Unlawful Entry Into a Motor Vehicle	0	0	0	0	0	0
DUI/Actual Physical Control	0	0	0	0	0	0
Driving Under Suspension	0	0	0	0	0	0
Refusing to Submit to Chemical Testing	0	0	0	0	0	0
Drug Offenses (Not Alcohol)	3	1	0	0	0	1
Reckless Endangerment	0	1	1	0	1	2
Aggravated Assault	2	2	1	1	6	6
Burglary With Weapon	0	0	0	0	0	0
Felonious Restraint	0	0	0	0	0	0
Kidnapping	0	0	0	0	0	0
Sex Offense	0	0	0	0	0	0
Terrorizing	0	0	0	1	1	0
Robbery	0	0	0	0	0	1
Criminal Vehicular Injury	0	0	0	0	0	0
Negligent Homicide/Criminal Vehicular Homicide	0	0	0	0	0	0
Manslaughter	0	0	1	1	3	3
Murder/Attempted Murder *	0	0	1	1	2	2
Felon in Possession of a Firearm	0	0	0	0	0	0
Offender Registration Violation	0	0	0	0	0	0
Total	5	4	4	4	13	15

* There are 4 females with a Life sentence (not all are minimum mandatory sentences)

6.4% of the female prison population on December 31, 2022 had a minimum mandatory sentence.

Prison Count on December 31 (85% Truth-In-Sentencing)

	2017	2018	2019	2020	2021	2022
Number of Offenders Having 85% TIS	23	17	13	13	15	27
Average Sentence In Years (excludes Life)	9.85	11.75	15.46	14.35	16.77	11.31

DOCR Prisons Adult Services Prison Population Information (Female Only)

Average Prison Population, Admissions, Releases by Fiscal Year						
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Average Daily Population	224.15	205.14	207.28	196.60	160.05	199.74
Admissions	291	300	301	236	259	291
Releases	308	309	279	339	198	266
Number Of Fiscal Year Admissions by Crime Type						
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
All Females	291	300	301	236	259	291
Violent Offenders (Non-Sexual)	57	65	62	54	66	89
Sex Offenders	1	1	2	0	2	0
Drug & Alcohol Offenders	177	169	173	130	136	133
Property and Other Public Order Offenders	56	65	64	52	55	69
Average Sentence Imposed By Court (Fiscal Year, Crime Type, In Years, Excludes Life Sentences)						
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
All Females	2.25	2.57	2.01	2.18	2.21	2.25
Violent Offenders (Non-Sexual)	2.40	2.54	1.93	2.50	2.73	2.66
Sex Offenders	5.00	8.00	6.50	0	3.25	0
Drug & Alcohol Offenders	2.28	2.07	1.98	2.16	1.95	2.08
Property and Other Public Order Offenders	1.96	1.87	2.01	1.92	2.20	2.03
Number Of Fiscal Year Admissions By Length Of Court Imposed Sentence						
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Less Than One Year	6	11	12	7	4	12
One Year to Less Than Five Years	266	271	280	214	243	260
Five Years to Less Than Ten years	16	13	6	11	8	15
Ten Years to Less Than Twenty Years	2	2	2	3	4	2
Twenty Years or More	1	3	1	1	0	2

NOTE: The average sentence is that sentence imposed by the court. It does not take into account such things as good time, credit for time served, parole relief or any other method of shortening the sentence except Pardon Advisory Board recommendations adopted by the Governor (which can actually change the sentence). The average sentence is reported in months to two decimal points.

Data is based on the "controlling sentence" for offenders who are admitted for multiple crimes. Controlling sentence is the longest sentence ordered by the court that has not expired.

NDSP - North Dakota State Penitentiary. **JRCC** - James River Correctional Center. **MRCC** - Missouri River Correctional Center. **HRCC** - Heart River Correctional Center. **DWCRC** - Dakota Women's Correctional Rehabilitation Center (New England). **BTC** - Bismarck Transition Center. **CPP** - Community Placement Program. **MTP** - Male Transition Program (Fargo & Mandan). **FTP** - Female Transition Program (Fargo & Mandan). **GFC** - Grand Forks Centre. **LRRP** - Lake Region Re-entry Program (Devils Lake).

DOCR Adult Services Prison Population Information

Prison Population on December 31, 2022 (Male Only)

TOTAL COUNT: 1584

NDSP 776, JRCC 469, MRCC 183, Non Traditional Beds 156

Non-Traditional Bed Breakdown:

Correctional Centers (Jails) 26, Interstate Compact 15, BTC 58, GFC 15, MTPFAR 32, MTPMDN 10

Year	2017	2018	2019	2020	2021	2022
Admissions - Calendar Year	1304	1231	1220	738	1205	1149
Releases - Calendar Year	1358	1256	1134	1084	955	1054
Prison Count on December 31	1524	1499	1585	1239	1489	1584

Prison Count on December 31 (Crime Type)

Offense	2017	2018	2019	2020	2021	2022
Violent Offenders (Excluding Sexual)	532	530	585	531	603	653
Sex Offenders	290	296	297	286	302	326
Property and Other Public Order Offenders	295	279	302	174	265	284
Drug & Alcohol Offenders	407	394	401	248	319	321
Drug - Deliver, Manufacture or Intent	239	237	231	165	208	210
Drug - Possession Only	130	129	138	64	96	90
Alcohol - DUI, APC	38	28	32	19	15	21

Prison Count on December 31 (Minimum Mandatory)

Offense	2017	2018	2019	2020	2021	2022
Breaking/Unlawful Entry Into a Motor Vehicle	1	0	0	0	0	0
DUI/Actual Physical Control	2	0	0	0	0	0
Driving Under Suspension	0	0	0	0	0	0
Refusing to Submit to Chemical Testing	0	0	0	0	0	0
Drug Offenses (Not Alcohol)	23	14	7	6	10	13
Reckless Endangerment	4	2	5	6	7	5
Aggravated Assault	11	15	19	19	20	25
Burglary With Weapon	4	4	4	3	4	4
Felonious Restraint	1	0	1	1	0	0
Kidnapping	0	0	0	0	0	0
Sex Offense	21	17	12	15	17	16
Terrorizing	16	14	19	16	15	16
Robbery	12	16	18	17	18	16
Criminal Vehicular Injury	1	0	0	0	0	0
Negligent Homicide/Criminal Vehicular Homicide	2	3	2	2	2	2
Manslaughter	1	1	1	3	3	3
Murder/Attempted Murder*	22	25	30	28	40	45
Felon in Possession of a Firearm	0	0	0	0	0	0
Offender Registration Violation	2	0	0	0	0	0
Total	123	111	118	116	136	145

* There are 91 males with a Life sentence (not all are minimum mandatory sentences)

9.15% of the male prison population on December 31, 2022 had a minimum mandatory sentence.

Prison Count on December 31 (85% Truth-In-Sentencing)

	2017	2018	2019	2020	2021	2022
Number of Offenders Having 85% TIS	251	244	228	231	275	266
Average Sentence In Years (excludes Life)	12.09	12.98	15.87	16.05	16.14	16.20

DOCR Adult Services Prison Population Information (Male Only)

Average Prison Population, Admissions, Releases by Fiscal Year

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Average Daily Population	1581.66	1555.83	1509.22	1502.22	1293.12	1494.02
Admissions	1309	1276	1213	910	1077	1137
Releases	1278	1372	1165	1201	887	1046

Number Of Fiscal Year Admissions by Crime Type

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
All Males	1309	1276	1213	910	1077	1137
Violent Offenders (Non-Sexual)	307	301	296	239	347	332
Sex Offenders	97	75	87	65	83	81
Drug & Alcohol Offenders	552	543	487	353	385	397
Property and Other Public Order Offenders	353	357	343	253	262	327

Average Sentence Imposed By Court (Fiscal Year, Crime Type, In Years, Excludes Life Sentences)

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
All Males	2.88	2.52	2.70	2.95	2.94	2.91
Violent Offenders (Non-Sexual)	3.32	2.99	2.66	3.33	3.08	3.54
Sex Offenders	5.81	5.51	6.09	8.16	5.78	6.62
Drug & Alcohol Offenders	2.53	2.41	2.50	2.54	2.67	2.51
Property and Other Public Order Offenders	2.23	2.20	2.17	2.26	2.26	2.24

Number Of Fiscal Year Admissions By Length Of Court Imposed Sentence

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Less Than One Year	23	32	29	30	22	26
One Year to Less Than Five Years	1090	1071	1035	741	906	954
Five Years to Less Than Ten Years	149	134	109	92	100	111
Ten Years to Less Than Twenty Years	27	23	26	28	34	22
Twenty Years or More	20	16	14	19	15	24

NOTE: The average sentence is that sentence imposed by the court. It does not take into account such things as good time, credit for time served, parole relief or any other method of shortening the sentence except Pardon Advisory Board recommendations adopted by the Governor (which can actually change the sentence). The average sentence is reported in months to two decimal points.

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PROPOSED AMENDMENTS TO SENATE BILL 2107

Page 1, line 3, after "12.1-32-07.4," insert " 12.1-32-02.2,"

Page 1, lines 5, remove "to repeal section 12.1-23-02.1 of the North Dakota Century Code, relating to mandatory prison"

Page 1, line 6, remove "terms for certain offense;"

Page 2, line 3, remove "must be consecutive" and insert immediately thereafter "may not be served concurrently"

Page 2, line 4, remove "a" and insert immediately thereafter "at least the presumed minimum"

Page 2, line 25, after "and" insert " ,"

Page 2, line 25, after "conviction" insert " ,"

Page 2, line 26, remove "must be consecutive" and insert immediately thereafter "may not be served concurrently"

Page 2, line 27, remove "a" and insert immediately thereafter "at least the presumptive minimum"

Page 3, after line 6, insert:

SECTION 4. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and enacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:
 - a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, or destructive device, ~~or firearm~~; or
 - b. The offender possesses or has within immediate reach and control a dangerous weapon, explosive, or destructive device, ~~or firearm~~ while in the course of committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.
2. This requirement applies only when possession of a dangerous weapon, explosive, or destructive device, ~~or firearm~~ has been charged and admitted or

found to be true in the manner provided by law, and must be imposed as follows:

- a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
 - b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.
3. This section applies even when being armed is an element of the offense for which the offender is convicted.
 4. An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence.

Page 3, line 7, remove "4" and insert immediately thereafter "5"

Page 3, line 15, after "of" insert "section"

Page 4, line 1, remove "5" and insert immediately thereafter "6"

Page 4, line 23, remove "must be"

Page 4, line 24, remove "consecutive" and insert immediately thereafter "may not be served concurrently"

Page 4, line 25, remove "a" and insert immediately thereafter "at least the minimum presumptive sentence"

Page 4, line 27, remove "6" and insert immediately thereafter "7"

Page 5, line 28, after "justice" insert "is prohibited from owning a firearm or having one in possession or under control"

Page 5, line 30, after "19-03.1-11" insert "is prohibited from owning a firearm or having one in possession or under control"

Page 5, line 31, after "States" insert "is prohibited from owning a firearm or having one in possession or under control"

Page 6, line 2, after "violence" insert "is prohibited from owning a firearm or having one in possession or under control. For the purposes of this section a misdemeanor crime of domestic violence is defined as an individual who willfully causes bodily injury against a person who:"

- (1) Is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;
- (2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; or
- (3) Shares a child in common with the victim”

Page 6, line 4, after “conditions” insert “is prohibited from owning a firearm or having one in possession or under control”

Page 6, line 5, remove “who” and insert immediately thereafter “is prohibited from owning a firearm without having one in possession or under control if that person”

Page 6, line 17, remove “subdivision” and insert immediately thereafter “subdivisions”

Page 6, line 17, after “a” remove “or.”

Page 6, line 18, after “d” insert “of subsection 1”

Page 6, line 20, after “prior” insert “felony”

Page 6, line 22, after “12.1-18” remove “, 12.1-19”

Page 6 line 22, after “12.1-21” insert “-01”

Page 6, line 22, after “12.1-22” remove “, 12.1-23, 12.1-24, 12.1-25,”

Page 6, line 24, after “States” remove “, or a tribal court.”

Page 6, line 26, remove “2.” and insert immediately thereafter “4.”

Page 7, line 14, remove “3.” and insert immediately thereafter “5.”

Page 7, line 26, remove “7” and insert immediately thereafter “8.”

Page 8, line 10, after “rifle,” remove “or is equipped with a silencer,”

Page 8, line 23, after “commuted.” Insert “For the purpose of this subsection, confinement does not include placement in a half-way house, treatment facility, or other community placement.”

Page 8, line 24, remove “subsection, the term” and insert immediately thereafter “section,”

Page 8, line 29, after "12.01-22-01," insert "or"

Page 8 line 29, remove ", 12.1-22-03," and insert immediately thereafter ".

Page 8 line, remove line 30

Renumber accordingly

23.8013.01000
Sixty-eighth
Legislative Assembly
of North Dakota
Introduced by
Judiciary Committee

(At the request of the Attorney General)

A BILL for an Act to create and enact sections 12.1-17-14 and 62.1-02-15 of the North Dakota Century Code, relating to shooting offenses and drug trafficking; to amend and reenact sections 12.1-08-02, 12.1-17-01, 12.1-32-02.1, 12.1-32-07.4, 39-10-71, and 62.1-02-01 of the North Dakota Century Code, relating to sentences for crimes committed with firearms and for fleeing law enforcement; ~~to repeal section 12.1-23-02.1 of the North Dakota Century Code, relating to mandatory prison terms for certain offenses~~; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-02. Preventing arrest or discharge of other duties.

1. A person is guilty of a class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another for a misdemeanor or infraction, or from discharging any other official duty, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty. A person is guilty of a class C felony if, with intent to prevent a public servant from effecting an arrest of himself or another for a class A, B, or C felony, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting such an arrest.

2. It is a defense to a prosecution under this section that the public servant was not acting lawfully, but it is no defense that the defendant mistakenly believed that the public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully.

3. A conviction under this section carries a presumption of a jail sentence of at least fourteen days and, if there is an underlying conviction, the presumed jail sentence ~~must be consecutive~~ may not be served concurrently to any jail sentence for the underlying conviction. If the sentencing court does not impose ~~at least the presumed minimum~~ term of imprisonment, the court shall justify the reason for a departure from the presumptive jail sentence within the judgment.

SECTION 2. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
 - a. Willfully causes bodily injury to another human being; or
 - b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
 - a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.
 - b. A class B misdemeanor except as provided in subdivision a.
3. A conviction under subdivision a of subsection 2 of this section carries a presumption of a jail sentence of at least thirty days and, if there is an underlying conviction, the presumption ~~must be consecutive~~ may not be served concurrently to any jail sentence for the underlying conviction. If the sentencing court does not impose ~~a~~ at least the presumptive minimum term of imprisonment, the court shall justify the reasoning for a departure from the presumptive jail sentence within the judgment.

SECTION 3. Section 12.1-17-14 of the North Dakota Century Code is created and enacted as follows:

12.1-17-14. Shooting at inhabited dwelling or camper; or occupied structure, vehicle, or aircraft - Penalty.

Any person who willfully discharges a firearm at an inhabited dwelling, occupied structure, occupied motor vehicle, occupied aircraft, or inhabited camper is guilty of a class B felony. As used in this section, "inhabited" means currently used for dwelling purposes, whether occupied or not.

SECTION 4. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

2.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:
 - a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, ~~or~~ destructive device, ~~or~~ firearm; or
 - b. The offender possesses or has within immediate reach and control a dangerous weapon, explosive, ~~or~~ destructive device, ~~or~~ firearm while in the course of committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.
2. This requirement applies only when possession of a dangerous weapon, explosive, ~~or~~ destructive device, ~~or~~ firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:

- a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
- b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

3. This section applies even when being armed is an element of the offense for which the offender is convicted.

4. An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence.

SECTION 4.5. AMENDMENT. Section 12.1-32-07.4 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-07.4. Presumptive probation.

1. The sentencing court shall sentence an individual who has pled guilty to, or has been found guilty 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 subject to registration under section 12.1-32-15; an offense involving a firearm or dangerous weapon, explosive, or incendiary device; an offense in violation of section 12.1 - 08 - 02, subdivision a of subsection 2 of section 12.1 - 17 - 01, or 39 - 10 - 71; or if a mandatory term of incarceration is required by law.

2. The sentencing court may impose a sentence of imprisonment if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation.

Aggravating factors include:

- a. That the individual has pled guilty to, or has been found guilty of, a felony offense or class A misdemeanor offense prior to the date of the commission of the offense or offenses charged in the complaint, information, or indictment;
- b. The age and vulnerability of the victim, whether the individual was in a position of responsibility or trust over the victim, or whether the individual abused a public position of responsibility or trust; or
- c. If the individual used threats or coercion in the commission of the offense.

3. 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 if execution of the sentence is suspended.

SECTION 5.6. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

39-10-71. Fleeing or attempting to elude a peace officer - Penalty.

1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a:

- a. Class A misdemeanor for a first offense and a class C felony for a subsequent offense within three years;
- b. Class C felony if the driver violates this section while willfully fleeing during or after the commission of a felony; or

c. Class C felony if, at any time during the flight or pursuit, the driver willfully operates the vehicle in a manner constituting an inherent risk of death or serious bodily injury to a third person.

2. A signal complies with this section if the signal is perceptible to the driver and:
- If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
 - If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.

3. A conviction under this section carries a presumption of a jail sentence of at least thirty days and, if there is an underlying conviction, the presumed jail sentence ~~must be consecutive~~ may not be served concurrently to any jail sentence for the underlying conviction. If the sentencing court does not impose ~~at least the presumptive minimum~~ term of imprisonment, the court shall justify the reason for a departure from the presumptive jail sentence within the judgment.

SECTION 6-7. AMENDMENT. Section 62.1-02-01 of the North Dakota Century Code is amended and reenacted as follows:

62.1-02-01. Persons who are not to possess firearms - Penalty.

- A person who has been convicted anywhere of a felony offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent felony offense of another state or the federal government is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of ten years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.
 - A person who has been convicted anywhere of a felony offense of this or another state or the federal government not provided for in subdivision a or who has been convicted of a class A misdemeanor offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another state or the federal government and the offense was committed while using or possessing a firearm, a dangerous weapon, or, as defined in section 12.1-01-04, a destructive device or an explosive, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of five years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.
 - A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in this state or elsewhere by a court of competent jurisdiction, other than a person who has had the petition that provided the basis for the diagnosis, confinement, or commitment dismissed under section 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or as a mentally deficient individual, is prohibited from purchasing a firearm or having one in possession or under control. This limitation does not apply to a person who has not suffered from the disability for the previous three years or who has successfully petitioned for relief under section 62.1-02-01.2.
 - A person under the age of eighteen years may not possess a handgun except that such a person, while under the direct supervision of an adult, may possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

e. A person who is a fugitive from justice is prohibited from owning a firearm or having one in possession or under control.

f. A person who is an unlawful user of or addicted to any controlled substance as defined in sections 19 - 03.1 - 05, 19 - 03.1 - 07, 19 - 03.1 - 09, or 19 - 03.1 - 11 is prohibited from owning a firearm or having one in possession or under control.

g. A person who, being an alien, is illegally or unlawfully in the United States is prohibited from owning a firearm or having one in possession or under control.

h. A person who has been convicted in any court of a misdemeanor crime of domestic violence is prohibited from owning a firearm or having on in possession or under control. For the purposes of this section a misdemeanor crime of domestic violence is defined as an individual who willfully causes bodily injury against a person who:

- (1) is a current or former spouse of intimate partner of the victim, or person similarly situated to a spouse of the victim;
- (2) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; or
- (3) shares a child in common with the victim.

i. A person who has been discharged from the armed forces under dishonorable conditions is prohibited from owning a firearm or having one in possession or under control.

j. A person who is prohibited from owning a firearm or having one in possession or under control if that person is subject to a court order that:

- (1) Was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
- (2) Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - (a) Includes a finding the person represents a credible threat to the physical safety of the intimate partner or child; or
 - (b) By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

2. A person who violates ~~subdivision~~ subdivisions a ~~or~~, b, e, f, g, h, i, or j of subsection 1 is guilty of a class C felony, and a person who violates subdivision c or d of subsection 1 is guilty of a class A misdemeanor.

3. A person who violates subdivision a or b of subsection 1 and has three or more prior felony convictions on separate occasions under any provisions in chapter 12.1 - 16, 12.1 - 17, 12.1 - 18, ~~12.1 - 19~~, 12.1 - 20, 12.1 - 21-01, 12.1 - 22, ~~12.1 - 23~~, ~~12.1 - 24~~, ~~12.1 - 25~~, or subsection 1 of 19 - 03.1 - 23, or a similar offense from another court in North Dakota, a court of record in the United States, ~~or a tribal court~~, is guilty of a class B felony, and the court shall impose a minimum sentence of five years' imprisonment.

2.4. For the purposes of this section, "conviction" means a determination that the person committed one of the above-mentioned crimes upon a verdict of guilt, a plea of guilty, or a plea of nolo contendere even though:

- a. The court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02;
- b. The court deferred imposition of sentence in accordance with subsection 4 of

section 12.1-32-02;

- c. The court placed the person on probation;
- d. The person's conviction has been reduced in accordance with subsection 9 of section 12.1-32-02 or section 12.1-32-07.1;
- e. Sentence dispositions, sentence reductions, or offense determinations equivalent to this section were imposed or granted by a court, board, agency, or law of another state or the federal government; or
- f. The person committed an offense equivalent to an offense described in subdivision a or b of subsection 1 when that person was subject to juvenile adjudication or proceedings and a determination of a court under chapter 27-20.4 or of a court of another state or the federal government was made that the person committed the delinquent act or offense.

~~3.5~~ A felon who is not sentenced under section 12.1-32-09.1 may possess a rifle that has a barrel sixteen inches [40.72 centimeters] or longer or a shotgun that has a barrel eighteen inches [45.72 centimeters] or longer and which is one of the following:

- a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured before 1899.
- b. A replica of any firearm described in subdivision a, if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.
- c. A muzzleloading rifle or muzzleloading shotgun designed to use black powder or a black powder substitute and which cannot use fixed ammunition.

SECTION 7.8. Section 62.1-02-15 of the North Dakota Century Code is created and enacted as follows:

62.1-02-15. Possession of a firearm in furtherance of a felony crime of violence or drug trafficking crime.

1. Any person who, during and in relation to any felony crime of violence or drug trafficking crime, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, is guilty of a class B felony and, consecutive to the punishment provided for the felony crime of violence or drug trafficking crime:

- a. Must be sentenced to a term of imprisonment of not less than three years;
- b. Must be sentenced to a term of imprisonment of not less than five years if the firearm is brandished; or
- c. Must be sentenced to a term of imprisonment of not less than seven years if the firearm is discharged.

2. If the firearm possessed by a person convicted of a violation of this section is a short-barreled rifle, short-barreled shotgun, machine gun, submachine gun, or fully automatic rifle, ~~or is equipped with a silencer,~~ the person must be sentenced to a term of imprisonment of not less than seven years.

3. For a violation of this section which occurs after a previous conviction under this section has become final, the person is guilty of a class A felony and must be sentenced to a term of imprisonment of not less than ten years.

4. Notwithstanding any other provision of law:

a. A term of imprisonment imposed on a person under this section may not run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the felony crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed; and

b. An offender who is convicted of a crime under this section is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted. For the purposes of this subsection, confinement does not include placement in a half-way house, treatment facility, or other community placement.

5. For purposes of this ~~subsection~~section, ~~the term~~ "drug trafficking crime" means a violation of subsection 1 or 3 of section 19 - 03.1 - 23 .

6. For the purpose of this ~~subsection~~section, ~~the term~~ "felony crime of violence" means a felony violation of section 12.1 - 16 - 01, 12.1 - 16 - 02, 12.1 - 16 - 03, 12.1 - 17 - 01.2, 12.1 - 17 - 02, 12.1 - 17 - 03, 12.1 - 17 - 04, 12.1 - 17 - 12, 12.1 - 18 - 01, 12.1 - 18 - 02, 12.1 - 20 - 03, 12.1 - 20 - 04, 12.1 - 20 - 07, 12.1 - 20 - 12.3, 12.1 - 21 - 01, 12.1 - 21 - 02, 12.1 - 22 - 01, or 12.1 - 22 - 02, ~~12.1 - 22 - 03, 12.1 - 22 - 04, 12.1 - 23 - 02, or 12.1 - 23 - 06.~~

7. For the purposes of this subsection, the term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

~~**SECTION 8. REPEAL.** Section 12.1-23-02.1 of the North Dakota Century Code is repealed.~~



North Dakota Chiefs of Police Association

Working together to make safe communities throughout North Dakota

President:
Chief Jason Ziegler
Mandan, ND

1st Vice:
Chief Andy Tunheim
Wishek, ND

2nd Vice:
Chief David Peterson
Williston, ND

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Chief Frank Senn
Beulah, ND

Secretary:
Chief Robyn Krile
Lincoln, ND

To: Senate Majority Leader David Hogue
Senator Diane Larson (Chair, Senate Judiciary Committee)
House Majority Leader Mike Lefor
Representative Lawrence Klemin (Chair, House Judiciary Committee)

From: The Chiefs of Police Association of North Dakota

Date: January 24, 2023

Re: Request Support of SB2107

The members of the Chiefs of Police Association of North Dakota strongly support the Attorney General's targeted tough on violent crime agenda in SB2107 to help make North Dakota a safer place for everyone and to address the escalating violence in our state. This bill sends a clear message to violent offenders and crime victims that North Dakota will hold offenders accountable for their crimes.

First, the bill creates presumed sentences of:

- 14 days in jail for preventing arrest when the individual creates a substantial risk of bodily injury to a law enforcement officer or another individual.
- 30 days in jail for simple assault on a police officer, correctional institution employee, employee of the state hospital, a person engaged in a judicial proceeding, a firefighter, an EMS provider, or an emergency department worker.
- 30 days in jail for fleeing from a police officer in a motor vehicle.

For any of these offenses, the Court has discretion to provide for a lesser sentence if the Court provides the reasoning for departure in writing. If you talk to any law enforcement officer in the state, he or she would likely tell you that there has been a substantial increase in assaults on police officers and fleeing from police officers in recent years.

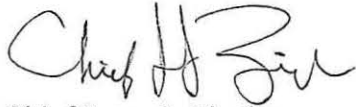
The bill also eliminates presumed probation for offenders serving sentences for preventing arrest, simple assault on a police officer, and fleeing from a police office in a motor vehicle.

The bill also creates a class B felony for discharging a firearm at an inhabited dwelling or camper and adds selected provisions to the list of individuals not allowed to possess a firearm. Those provisions are similar to what is in existing federal law.

Finally, the bill creates mandatory minimum sentences for felony crimes of violence and trafficking when those crimes involve a firearm.

The Chiefs of Police respectfully request you support SB 2107 and join them in fighting for a safer North Dakota.

Respectfully,



Chief Jason J. Ziegler
President of the COPAND



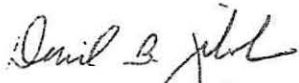
CHIEF FRANK A. SENN
BEULAH POLICE DEPARTMENT



Chief Robyn Krieb
Lincoln Police Department



Chief of Police
Bismarck Police Dept.



CHIEF OF POLICE
FARGO POLICE DEPT.



Chief of Police
West Fargo Police Dept.



North Dakota Peace Officers Association

1100 North 4th Street Suite #100 Grand Forks, ND 58203
 Phone (701) 739-3742 email ndpoa2011@outlook.com
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 Michael Ness
 Grand Forks

TO: Senate Majority Leader David Hogue
 Senator Diane Larson (Chair, Senate Judiciary Committee)
 House Majority Leader Mike Lefor
 Representative Lawrence Klemin (Chair, House Judiciary Committee)

From: The North Dakota Peace Officers Association

Date: January 24, 2023

Re: Support of Senate Bill 2107

The members of the North Dakota Peace Officers Association strongly support Attorney General Drew Wrigley's "tough on violent crime" agenda that is targeting specific offenses to help make North Dakota a safer place. Over the years, North Dakota has seen a constant escalation in violent crime (see table below). This bill sends a clear message to violent offenders and crime victims that North Dakota will hold individuals accountable for their crimes.

This bill creates presumed sentences for varying offenses that put the public and emergency personnel at risk of serious injury or death. One of the offenses is "preventing arrest"; when a suspect creates a substantial risk of bodily injury to another individual or a law enforcement officer when they are trying to physically arrest a suspect. It also addresses instances such as when a suspect assaults: police officers, correctional institution employees, employees of the state hospital, persons engaged in a judicial proceeding, firefighters, EMS providers, or other emergency workers.

The bill eliminates presumed probation for offenders serving sentences for: preventing arrest, simple assault on a police officer, and fleeing from a police officer in a motor vehicle. One of the most dangerous acts a suspect can do is flee from law enforcement while in a motor vehicle. The decision to evade capture puts members of the public at risk.

This bill creates a class B-Felony for discharging a firearm at an inhabited dwelling or camper and adds selected provisions to the list of individuals not allowed to possess a firearm. Those provisions are similar to what is in existing federal law.

Finally, the bill creates mandatory minimum sentences for felony crimes of violence or human trafficking when those crimes involve a firearm.



North Dakota Peace Officers Association

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Michael Ness
Grand Forks

Violent Crime in North Dakota (5 years)

Year	All violent crimes
2016	1642
2017	1767
2018	1833
2019	1871
2020	1959

*Murder, Sex Assault, Robbery, Agg. Assault, and Human Trafficking

*The information in this chart was obtained by the North Dakota Attorney General's Office website.

The North Dakota Peace Officers Association respectfully requests your support for Senate Bill 2107 in helping to protect the citizens of the state and the professionals who are tasked with dealing with violent offenders.

Respectfully,

Adam Dvorak
President of North Dakota Peace Officer Association

23.8013.01002
Title.

Prepared by the Legislative Council staff for
Senator Paulson
January 31, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2107

Page 1, line 3, after the second comma insert "12.1-32-02.1,"

Page 1, remove line 5

Page 1, line 6, remove "terms for certain offenses;"

Page 2, line 3, replace "must be consecutive" with "may not be served concurrently"

Page 2, line 4, replace "a" with "at least the presumed minimum"

Page 2, line 26, replace "must be consecutive" with "may not be served concurrently"

Page 2, line 27, replace "a" with "at least the presumptive minimum"

Page 3, after line 6, insert:

"SECTION 4. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:
 - a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, or destructive device, ~~or firearm~~; or
 - b. The offender possesses or has within immediate reach and control a dangerous weapon, explosive, or destructive device, ~~or firearm~~ while in the course of committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.
2. This requirement applies only when possession of a dangerous weapon, explosive, or destructive device, ~~or firearm~~ has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:
 - a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
 - b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.
3. This section applies even when being armed is an element of the offense for which the offender is convicted.

4. An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence."

Page 3, line 15, after the first "of" insert "section"

Page 3, line 15, after "or" insert "section"

Page 4, line 23, remove "must be"

Page 4, line 24, replace "consecutive" with "may not be served concurrently"

Page 4, line 25, replace the first "a" with "at least the presumptive minimum"

Page 5, line 28, after "justice" insert "is prohibited from owning a firearm or having a firearm in possession or under control"

Page 5, line 29, remove "A person who is an unlawful user of or addicted to any controlled substance as"

Page 5, remove line 30

Page 5, line 31, remove "g."

Page 5, line 31, after "States" insert "is prohibited from owning a firearm or having a firearm in possession or under control"

Page 6, line 1, replace "h." with "g."

Page 6, line 2, after "violence" insert "is prohibited from owning a firearm or having a firearm in possession or under control. For the purposes of this section a "misdemeanor crime of domestic violence" means the willful infliction of bodily injury against an individual who:

- (1) Is a current or former spouse or intimate partner of the victim, or individual similarly situated to a spouse of the victim;
- (2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; or
- (3) Shares a child in common with the victim"

Page 6, line 3, replace "i." with "h."

Page 6, line 4, after "conditions" insert "is prohibited from owning a firearm or having a firearm in possession or under control"

Page 6, line 5, replace "j." with "i."

Page 6, line 5, replace "who" with "is prohibited from owning a firearm or having a firearm in possession or under control if that person"

Page 6, line 17, remove the overstrike over "subdivision"

Page 6, line 17, remove "subdivisions"

Page 6, line 17, after the sixth underscored comma insert "or"

Page 6, line 17, remove ", or j"

Page 6, line 18, after "d" insert "of subsection 1"

Page 6, line 20, after "prior" insert "felony"

Page 6, line 22, replace "12.1-19," with "or"

Page 6, line 22, replace "12.1-21" with "or section 12.1-21-01"

Page 6, line 22, after the fourth underscored comma insert "or chapter"

Page 6, line 22, remove "12.1-23, 12.1-24, 12.1-25,"

Page 6, line 23, replace the second underscored comma with "or"

Page 6, line 24, remove ", or a tribal court"

Page 7, line 14, after "5." insert "For purposes of subsection 1, unless the pardon, expungement, or restoration of civil rights expressly provides that a person may not ship, transport, possess, or receive firearms, a person is not considered to have been convicted of a crime under subdivision a, b, or g of subsection 1 if:

- a. The conviction has been expunged or set aside; or
- b. The conviction is for an offense for which the person has been pardoned or has had civil rights restored if the law of the applicable jurisdiction provides for the loss of civil rights for the offense.

6."

Page 8, line 10, remove "or is equipped with a silencer,"

Page 8, line 23, after the underscored period insert "For purposes of this subsection, confinement does not include placement in a halfway house, treatment facility, or other community placement."

Page 8, line 24, replace "subsection" with "section"

Page 8, line 24, remove "the term"

Page 8, line 26, replace "subsection" with "section"

Page 8, line 26, remove "the term"

Page 8, line 29, after the fifth underscored comma insert "or"

Page 8, line 29, remove ", 12.1-22-03,"

Page 8, line 30, remove "12.1-22-04, 12.1-23-02, or 12.1-23-06"

Page 8, after line 30, insert:

"7. For purposes of this section, "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another individual, in order to intimidate that individual, regardless of whether the firearm is directly visible to that individual."

Page 8, remove line 31

Re-number accordingly

23.8013.01002

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2107

Introduced by

Judiciary Committee

(At the request of the Attorney General)

1 A BILL for an Act to create and enact sections 12.1-17-14 and 62.1-02-15 of the North Dakota
 2 Century Code, relating to shooting offenses and drug trafficking; to amend and reenact sections
 3 12.1-08-02, 12.1-17-01, 12.1-32-02.1, 12.1-32-07.4, 39-10-71, and 62.1-02-01 of the North
 4 Dakota Century Code, relating to sentences for crimes committed with firearms and for fleeing
 5 law enforcement; ~~to repeal section 12.1-23-02.1 of the North Dakota Century Code, relating to~~
 6 ~~mandatory prison terms for certain offenses~~; and to provide a penalty.

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

8 **SECTION 1. AMENDMENT.** Section 12.1-08-02 of the North Dakota Century Code is
 9 amended and reenacted as follows:

10 **12.1-08-02. Preventing arrest or discharge of other duties.**

- 11 1. A person is guilty of a class A misdemeanor if, with intent to prevent a public servant
 12 from effecting an arrest of himself or another for a misdemeanor or infraction, or from
 13 discharging any other official duty, he creates a substantial risk of bodily injury to the
 14 public servant or to anyone except himself, or employs means justifying or requiring
 15 substantial force to overcome resistance to effecting the arrest or the discharge of the
 16 duty. A person is guilty of a class C felony if, with intent to prevent a public servant
 17 from effecting an arrest of himself or another for a class A, B, or C felony, he creates a
 18 substantial risk of bodily injury to the public servant or to anyone except himself, or
 19 employs means justifying or requiring substantial force to overcome resistance to
 20 effecting such an arrest.
- 21 2. It is a defense to a prosecution under this section that the public servant was not
 22 acting lawfully, but it is no defense that the defendant mistakenly believed that the
 23 public servant was not acting lawfully. A public servant executing a warrant or other
 24 process in good faith and under color of law shall be deemed to be acting lawfully.

1 3. A conviction under this section carries a presumption of a jail sentence of at least
2 fourteen days and, if there is an underlying conviction, the presumed jail sentence
3 ~~must be consecutive~~ may not be served concurrently to any jail sentence for the
4 underlying conviction. If the sentencing court does not impose ~~a~~ at least the presumed
5 minimum term of imprisonment, the court shall justify the reason for a departure from
6 the presumptive jail sentence within the judgment.

7 **SECTION 2. AMENDMENT.** Section 12.1-17-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **12.1-17-01. Simple assault.**

10 1. A person is guilty of an offense if that person:

11 a. Willfully causes bodily injury to another human being; or

12 b. Negligently causes bodily injury to another human being by means of a firearm,
13 destructive device, or other weapon, the use of which against a human being is
14 likely to cause death or serious bodily injury.

15 2. The offense is:

16 a. A class C felony when the victim is a peace officer or correctional institution
17 employee acting in an official capacity, which the actor knows to be a fact; an
18 employee of the state hospital acting in the course and scope of employment,
19 which the actor knows to be a fact, and the actor is an individual committed to or
20 detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a
21 judicial proceeding; or a member of a municipal or volunteer fire department or
22 emergency medical services personnel unit or emergency department worker in
23 the performance of the member's duties.

24 b. A class B misdemeanor except as provided in subdivision a.

25 3. A conviction under subdivision a of subsection 2 of this section carries a presumption
26 of a jail sentence of at least thirty days and if there is an underlying conviction the
27 presumption ~~must be consecutive~~ may not be served concurrently to any jail sentence
28 for the underlying conviction. If the sentencing court does not impose ~~a~~ at least the
29 presumptive minimum term of imprisonment, the court shall justify the reasoning for a
30 departure from the presumptive jail sentence within the judgment.

1 **SECTION 3.** Section 12.1-17-14 of the North Dakota Century Code is created and enacted
2 as follows:

3 **12.1-17-14. Shooting at inhabited dwelling or camper; or occupied structure, vehicle,**
4 **or aircraft - Penalty.**

5 Any person who willfully discharges a firearm at an inhabited dwelling, occupied structure,
6 occupied motor vehicle, occupied aircraft, or inhabited camper is guilty of a class B felony. As
7 used in this section, "inhabited" means currently used for dwelling purposes, whether occupied
8 or not.

9 **SECTION 4. AMENDMENT.** Section 12.1-32-02.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **12.1-32-02.1. Mandatory prison terms for armed offenders.**

- 12 1. Notwithstanding any other provision of this title, a term of imprisonment must be
13 imposed upon an offender and served without benefit of parole when:
- 14 a. In the course of committing an offense, the offender inflicts or attempts to inflict
15 bodily injury upon another, threatens or menaces another with imminent bodily
16 injury with a dangerous weapon, explosive, or destructive device, ~~or firearm~~; or
17 b. The offender possesses or has within immediate reach and control a dangerous
18 weapon, explosive, or destructive device, ~~or firearm~~ while in the course of
19 committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.
- 20 2. This requirement applies only when possession of a dangerous weapon, explosive, or
21 destructive device, ~~or firearm~~ has been charged and admitted or found to be true in
22 the manner provided by law, and must be imposed as follows:
- 23 a. If the offense for which the offender is convicted is a class AA, class A, or class B
24 felony, the court shall impose a minimum sentence of four years' imprisonment.
25 b. If the offense for which the offender is convicted is a class C felony, the court
26 shall impose a minimum sentence of two years' imprisonment.
- 27 3. This section applies even when being armed is an element of the offense for which the
28 offender is convicted.
- 29 4. An offender serving a sentence subject to this section may be eligible to participate in
30 a release program under section 12-48.1-02 during the last six months of the
31 offender's sentence.

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

3 **12.1-32-07.4. Presumptive probation.**

- 4 1. The sentencing court shall sentence an individual who has pled guilty to, or has been
5 found guilty of, a class C felony offense or class A misdemeanor offense to a term of
6 probation at the time of initial sentencing, except for an offense involving domestic
7 violence; an offense subject to registration under section 12.1-32-15; an offense
8 involving a firearm or dangerous weapon, explosive, or incendiary device; an offense
9 in violation of [section 12.1-08-02](#), subdivision a of subsection 2 of section 12.1-17-01,
10 or [section 39-10-71](#); or if a mandatory term of incarceration is required by law.
- 11 2. The sentencing court may impose a sentence of imprisonment if the sentencing court
12 finds there are aggravating factors present to justify a departure from presumptive
13 probation. Aggravating factors include:
- 14 a. That the individual has pled guilty to, or has been found guilty of, a felony
15 offense or class A misdemeanor offense prior to the date of the commission of
16 the offense or offenses charged in the complaint, information, or indictment;
- 17 b. The age and vulnerability of the victim, whether the individual was in a position of
18 responsibility or trust over the victim, or whether the individual abused a public
19 position of responsibility or trust; or
- 20 c. If the individual used threats or coercion in the commission of the offense.
- 21 3. This section does not preclude the sentencing court from deferring imposition of
22 sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an
23 individual to a term of incarceration with credit for time spent in custody if execution of
24 the sentence is suspended.

25 **SECTION 6. AMENDMENT.** Section 39-10-71 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **39-10-71. Fleeing or attempting to elude a peace officer - Penalty.**

- 28 1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or
29 who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or
30 peace officer, when given a visual or audible signal to bring the vehicle to a stop, is
31 guilty of a:

- 1 a. Class A misdemeanor for a first offense and a class C felony for a subsequent
2 offense within three years;
- 3 b. Class C felony if the driver violates this section while willfully fleeing during or
4 after the commission of a felony; or
- 5 c. Class C felony if, at any time during the flight or pursuit, the driver willfully
6 operates the vehicle in a manner constituting an inherent risk of death or serious
7 bodily injury to a third person.
- 8 2. A signal complies with this section if the signal is perceptible to the driver and:
- 9 a. If given from a vehicle, the signal is given by hand, voice, emergency light, or
10 siren, and the stopping vehicle is appropriately marked showing it to be an official
11 police vehicle; or
- 12 b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or
13 siren, and the officer is in uniform or prominently displays the officer's badge of
14 office.
- 15 3. A conviction under this section carries a presumption of a jail sentence of at least thirty
16 days and, if there is an underlying conviction, the presumed jail sentence ~~must be~~
17 ~~consecutive~~ may not be served concurrently to any jail sentence for the underlying
18 conviction. If the sentencing court does not impose ~~a~~ at least the presumptive minimum
19 term of imprisonment, the court shall justify the reason for a departure from the
20 presumptive jail sentence within the judgment.

21 **SECTION 7. AMENDMENT.** Section 62.1-02-01 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **62.1-02-01. Persons who are not to possess firearms - Penalty.**

- 24 1. a. A person who has been convicted anywhere of a felony offense involving
25 violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an
26 equivalent felony offense of another state or the federal government is prohibited
27 from owning a firearm or having one in possession or under control from the date
28 of conviction and continuing for a period of ten years after the date of conviction
29 or the date of release from incarceration, parole, or probation, whichever is latest.
- 30 b. A person who has been convicted anywhere of a felony offense of this or another
31 state or the federal government not provided for in subdivision a or who has been

1 convicted of a class A misdemeanor offense involving violence or intimidation in
2 violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another
3 state or the federal government and the offense was committed while using or
4 possessing a firearm, a dangerous weapon, or, as defined in section 12.1-01-04,
5 a destructive device or an explosive, is prohibited from owning a firearm or
6 having one in possession or under control from the date of conviction and
7 continuing for a period of five years after the date of conviction or the date of
8 release from incarceration, parole, or probation, whichever is latest.

9 c. A person who is or has ever been diagnosed and confined or committed to a
10 hospital or other institution in this state or elsewhere by a court of competent
11 jurisdiction, other than a person who has had the petition that provided the basis
12 for the diagnosis, confinement, or commitment dismissed under section
13 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another
14 jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or
15 as a mentally deficient individual, is prohibited from purchasing a firearm or
16 having one in possession or under control. This limitation does not apply to a
17 person who has not suffered from the disability for the previous three years or
18 who has successfully petitioned for relief under section 62.1-02-01.2.

19 d. A person under the age of eighteen years may not possess a handgun except
20 that such a person, while under the direct supervision of an adult, may possess a
21 handgun for the purposes of firearm safety training, target shooting, or hunting.

22 e. A person who is a fugitive from justice is prohibited from owning a firearm or
23 having a firearm in possession or under control.

24 f. ~~A person who is an unlawful user of or addicted to any controlled substance as~~
25 ~~defined in sections 19-03.1-05, 19-03.1-07, 19-03.1-09, or 19-03.1-11.~~

26 ~~g.~~ A person who, being an alien, is illegally or unlawfully in the United States is
27 prohibited from owning a firearm or having a firearm in possession or under
28 control.

29 ~~h-g.~~ A person who has been convicted in any court of a misdemeanor crime of
30 domestic violence is prohibited from owning a firearm or having a firearm in
31 possession or under control. For the purposes of this section a "misdemeanor

1 crime of domestic violence" means the willful infliction of bodily injury against an
2 individual who:

3 (1) Is a current or former spouse or intimate partner of the victim, or individual
4 similarly situated to a spouse of the victim;

5 (2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate
6 partner; or

7 (3) Shares a child in common with the victim.

8 i.h. A person who has been discharged from the armed forces under dishonorable
9 conditions is prohibited from owning a firearm or having a firearm in possession
10 or under control.

11 j.i. A person ~~who~~ is prohibited from owning a firearm or having a firearm in
12 possession or under control if that person is subject to a court order that:

13 (1) Was issued after a hearing of which such person received actual notice, and
14 at which such person had an opportunity to participate;

15 (2) Restrains the person from harassing, stalking, or threatening an intimate
16 partner of the person or child of the intimate partner or person, or engaging
17 in other conduct that would place an intimate partner in reasonable fear of
18 bodily injury to the partner or child; and

19 (3) (a) Includes a finding the person represents a credible threat to the
20 physical safety of the intimate partner or child; or

21 (b) By its terms explicitly prohibits the use, attempted use, or threatened
22 use of physical force against the intimate partner or child that would
23 reasonably be expected to cause bodily injury.

24 2. A person who violates ~~subdivision~~ ~~subdivisions~~ a or, b, e, f, g, h, or i, ~~or j~~ of subsection
25 1 is guilty of a class C felony, and a person who violates subdivision c or d of
26 subsection 1 is guilty of a class A misdemeanor.

27 3. A person who violates subdivision a or b of subsection 1 and has three or more prior
28 felony convictions on separate occasions under any provisions in chapter 12.1-16,
29 12.1-17, 12.1-18, ~~12.1-19~~, or 12.1-20, ~~12.1-21~~ or section 12.1-21-01, or chapter
30 12.1-22, ~~12.1-23~~, ~~12.1-24~~, ~~12.1-25~~, or subsection 1 of 19-03.1-23, or a similar offense
31 from another court in North Dakota, or a court of record in the United States, ~~or a tribal~~

1 court, is guilty of a class B felony, and the court shall impose a minimum sentence of
2 five years' imprisonment.

3 2.4. For the purposes of this section, "conviction" means a determination that the person
4 committed one of the above-mentioned crimes upon a verdict of guilt, a plea of guilty,
5 or a plea of nolo contendere even though:

- 6 a. The court suspended execution of sentence in accordance with subsection 3 of
7 section 12.1-32-02;
- 8 b. The court deferred imposition of sentence in accordance with subsection 4 of
9 section 12.1-32-02;
- 10 c. The court placed the person on probation;
- 11 d. The person's conviction has been reduced in accordance with subsection 9 of
12 section 12.1-32-02 or section 12.1-32-07.1;
- 13 e. Sentence dispositions, sentence reductions, or offense determinations equivalent
14 to this section were imposed or granted by a court, board, agency, or law of
15 another state or the federal government; or
- 16 f. The person committed an offense equivalent to an offense described in
17 subdivision a or b of subsection 1 when that person was subject to juvenile
18 adjudication or proceedings and a determination of a court under chapter 27-20.4
19 or of a court of another state or the federal government was made that the
20 person committed the delinquent act or offense.

21 3.5. For purposes of subsection 1, unless the pardon, expungement, or restoration of civil
22 rights expressly provides that a person may not ship, transport, possess, or receive
23 firearms, a person is not considered to have been convicted of a crime under
24 subdivision a, b, or g of subsection 1 if:

- 25 a. The conviction has been expunged or set aside; or
- 26 b. The conviction is for an offense for which the person has been pardoned or has
27 had civil rights restored if the law of the applicable jurisdiction provides for the
28 loss of civil rights for the offense.

29 6. A felon who is not sentenced under section 12.1-32-09.1 may possess a rifle that has
30 a barrel sixteen inches [40.72 centimeters] or longer or a shotgun that has a barrel
31 eighteen inches [45.72 centimeters] or longer and which is one of the following:

- 1 a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or
2 similar type of ignition system, manufactured before 1899.
- 3 b. A replica of any firearm described in subdivision a, if the replica is not designed
4 or redesigned for using rimfire or conventional centerfire fixed ammunition or
5 uses rimfire or conventional centerfire fixed ammunition that is no longer
6 manufactured in the United States and which is not readily available in the
7 ordinary channels of commercial trade.
- 8 c. A muzzleloading rifle or muzzleloading shotgun designed to use black powder or
9 a black powder substitute and which cannot use fixed ammunition.

10 **SECTION 8.** Section 62.1-02-15 of the North Dakota Century Code is created and enacted
11 as follows:

12 **62.1-02-15. Possession of a firearm in furtherance of a felony crime of violence or**
13 **drug trafficking crime.**

- 14 1. Any person who, during and in relation to any felony crime of violence or drug
15 trafficking crime, uses or carries a firearm, or who, in furtherance of any such crime,
16 possesses a firearm, is guilty of a class B felony and, consecutive to the punishment
17 provided for the felony crime of violence or drug trafficking crime:
 - 18 a. Must be sentenced to a term of imprisonment of not less than three years;
 - 19 b. Must be sentenced to a term of imprisonment of not less than five years if the
20 firearm is brandished; or
 - 21 c. Must be sentenced to a term of imprisonment of not less than seven years if the
22 firearm is discharged.
- 23 2. If the firearm possessed by a person convicted of a violation of this section is a short-
24 barreled rifle, short-barreled shotgun, machine gun, submachine gun, or fully
25 automatic rifle, ~~or is equipped with a silencer,~~ the person must be sentenced to a term
26 of imprisonment of not less than seven years.
- 27 3. For a violation of this section which occurs after a previous conviction under this
28 section has become final, the person is guilty of a class A felony and must be
29 sentenced to a term of imprisonment of not less than ten years.
- 30 4. Notwithstanding any other provision of law:

1 a. A term of imprisonment imposed on a person under this section may not run
2 concurrently with any other term of imprisonment imposed on the person,
3 including any term of imprisonment imposed for the felony crime of violence or
4 drug trafficking crime during which the firearm was used, carried, or possessed;
5 and

6 b. An offender who is convicted of a crime under this section is not eligible for
7 release from confinement on any basis until eighty-five percent of the sentence
8 imposed by the court has been served or the sentence is commuted. For
9 purposes of this subsection, confinement does not include placement in a
10 halfway house, treatment facility, or other community placement.

11 5. For purposes of this ~~subsection~~section, the term "drug trafficking crime" means a
12 violation of subsection 1 or 3 of section 19-03.1-23.

13 6. For the purpose of this ~~subsection~~section, the term "felony crime of violence" means a
14 felony violation of section 12.1-16-01, 12.1-16-02, 12.1-16-03, 12.1-17-01.2,
15 12.1-17-02, 12.1-17-03, 12.1-17-04, 12.1-17-12, 12.1-18-01, 12.1-18-02, 12.1-20-03,
16 12.1-20-04, 12.1-20-07, 12.1-20-12.3, 12.1-21-01, 12.1-21-02, 12.1-22-01, or
17 12.1-22-02, ~~12.1-22-03, 12.1-22-04, 12.1-23-02, or 12.1-23-06.~~

18 7. For purposes of this section, "brandish" means, with respect to a firearm, to display all
19 or part of the firearm, or otherwise make the presence of the firearm known to another
20 individual, in order to intimidate that individual, regardless of whether the firearm is
21 directly visible to that individual.

22 ~~**SECTION 8. REPEAL.** Section 12.1-23-02.1 of the North Dakota Century Code is repealed.~~

23.8013.01004
Title.

Prepared by the Legislative Council staff for
Senator Paulson
February 6, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2107

Page 1, line 3, after the second comma insert "12.1-32-02.1,"

Page 1, remove line 5

Page 1, line 6, remove "terms for certain offenses;"

Page 2, line 3, replace "must be consecutive" with "may not be served concurrently"

Page 2, line 4, replace "a" with "at least the presumed minimum"

Page 2, line 26, replace "must be consecutive" with "may not be served concurrently"

Page 2, line 27, replace "a" with "at least the presumptive minimum"

Page 3, after line 6, insert:

"SECTION 4. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:
 - a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, or destructive device, ~~or firearm~~; or
 - b. The offender possesses or has within immediate reach and control a dangerous weapon, explosive, or destructive device, ~~or firearm~~ while in the course of committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.
2. This requirement applies only when possession of a dangerous weapon, explosive, or destructive device, ~~or firearm~~ has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:
 - a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
 - b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.
3. This section applies even when being armed is an element of the offense for which the offender is convicted.

4. An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence."

Page 3, line 15, after the first "of" insert "section"

Page 3, line 15, after "or" insert "section"

Page 4, line 23, remove "must be"

Page 4, line 24, replace "consecutive" with "may not be served concurrently"

Page 4, line 25, replace the first "a" with "at least the presumptive minimum"

Page 5, line 28, after "justice" insert "is prohibited from owning a firearm or having a firearm in possession or under control"

Page 5, line 29, remove "A person who is an unlawful user of or addicted to any controlled substance as"

Page 5, remove line 30

Page 5, line 31, remove "g."

Page 5, line 31, after "States" insert "is prohibited from owning a firearm or having a firearm in possession or under control"

Page 6, line 1, replace "h." with "g."

Page 6, line 2, after "violence" insert "is prohibited from owning a firearm or having a firearm in possession or under control. For the purposes of this section a "misdemeanor crime of domestic violence" means the willful infliction of bodily injury against an individual who:

- (1) Is a current or former spouse or intimate partner of the victim, or individual similarly situated to a spouse of the victim;
- (2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; or
- (3) Shares a child in common with the victim"

Page 6, line 3, replace "i." with "h."

Page 6, line 4, after "conditions" insert "is prohibited from owning a firearm or having a firearm in possession or under control"

Page 6, line 5, replace "j." with "i."

Page 6, line 5, replace "who" with "is prohibited from owning a firearm or having a firearm in possession or under control if that person"

Page 6, line 17, remove the overstrike over "subdivision"

Page 6, line 17, remove "subdivisions"

Page 6, line 17, after the sixth underscored comma insert "or"

Page 6, line 17, remove ", or j"

Page 6, line 18, after "d" insert "of subsection 1"

Page 6, line 20, after "prior" insert "felony"

Page 6, line 22, replace "12.1-19," with "or"

Page 6, line 22, replace "12.1-21" with "section 12.1-21-01"

Page 6, line 22, after the fourth underscored comma insert "chapter"

Page 6, line 22, remove "12.1-23, 12.1-24, 12.1-25, or"

Page 6, line 23, replace the second underscored comma with "or"

Page 6, line 24, remove ", or a tribal court"

Page 7, line 14, after "5." insert "For purposes of subsection 1, unless the pardon, expungement, or restoration of civil rights expressly provides that a person may not ship, transport, possess, or receive firearms, a person is not considered to have been convicted of a crime under subdivision a, b, or g of subsection 1 if:

- a. The conviction has been expunged or set aside; or
- b. The conviction is for an offense for which the person has been pardoned or has had civil rights restored if the law of the applicable jurisdiction provides for the loss of civil rights for the offense.

6."

Page 8, line 1, replace "and, consecutive" with ". A conviction under this section carries a presumptive minimum term of imprisonment which may not run concurrently"

Page 8, line 2, after the second "crime" insert ". The presumptive minimum term of imprisonment is"

Page 8, line 3, replace "Must be sentenced to a term of imprisonment of not" with "Not"

Page 8, line 4, replace "Must be sentenced to a term of imprisonment of not" with "Not"

Page 8, line 6, replace "Must be sentenced to a term of imprisonment of not" with "Not"

Page 8, line 10, remove "or is equipped with a silencer,"

Page 8, line 10, replace "person must be sentenced to a" with "presumptive minimum"

Page 8, line 11, replace the second "of" with "is"

Page 8, line 13, remove "must be"

Page 8, line 14, replace "sentenced to a" with "the presumptive minimum"

Page 8, line 14, replace the second "of" with "is"

Page 8, remove line 20

Page 8, line 23, after the underscored period insert "For purposes of this subsection, confinement does not include placement in a halfway house, treatment facility, or other community placement; and

- c. If the sentencing court does not impose at least the presumptive minimum term of imprisonment for an offense under this section, the

court shall justify the reasoning for a departure from the presumptive minimum sentence within the judgment."

Page 8, line 24, replace "subsection, the term "drug"" with "section:

- a. "Brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another individual, in order to intimidate that individual, regardless of whether the firearm is directly visible to that individual.
- b. "Drug"

Page 8, line 26, replace "6. For the purpose of this subsection, the term "felony"" with "c. "Felony"

Page 8, line 29, after the fifth underscored comma insert "or"

Page 8, line 29, remove ", 12.1-22-03,"

Page 8, line 30, remove "12.1-22-04, 12.1-23-02, or 12.1-23-06"

Page 8, remove line 31

Renumber accordingly

23.8013.01004

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2107

Introduced by

Judiciary Committee

(At the request of the Attorney General)

1 A BILL for an Act to create and enact sections 12.1-17-14 and 62.1-02-15 of the North Dakota
 2 Century Code, relating to shooting offenses and drug trafficking; to amend and reenact sections
 3 12.1-08-02, 12.1-17-01, 12.1-32-02.1, 12.1-32-07.4, 39-10-71, and 62.1-02-01 of the North
 4 Dakota Century Code, relating to sentences for crimes committed with firearms and for fleeing
 5 law enforcement; ~~to repeal section 12.1-23-02.1 of the North Dakota Century Code, relating to~~
 6 ~~mandatory prison terms for certain offenses~~; and to provide a penalty.

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

8 **SECTION 1. AMENDMENT.** Section 12.1-08-02 of the North Dakota Century Code is
 9 amended and reenacted as follows:

10 **12.1-08-02. Preventing arrest or discharge of other duties.**

- 11 1. A person is guilty of a class A misdemeanor if, with intent to prevent a public servant
 12 from effecting an arrest of himself or another for a misdemeanor or infraction, or from
 13 discharging any other official duty, he creates a substantial risk of bodily injury to the
 14 public servant or to anyone except himself, or employs means justifying or requiring
 15 substantial force to overcome resistance to effecting the arrest or the discharge of the
 16 duty. A person is guilty of a class C felony if, with intent to prevent a public servant
 17 from effecting an arrest of himself or another for a class A, B, or C felony, he creates a
 18 substantial risk of bodily injury to the public servant or to anyone except himself, or
 19 employs means justifying or requiring substantial force to overcome resistance to
 20 effecting such an arrest.
- 21 2. It is a defense to a prosecution under this section that the public servant was not
 22 acting lawfully, but it is no defense that the defendant mistakenly believed that the
 23 public servant was not acting lawfully. A public servant executing a warrant or other
 24 process in good faith and under color of law shall be deemed to be acting lawfully.

1 3. A conviction under this section carries a presumption of a jail sentence of at least
2 fourteen days and, if there is an underlying conviction, the presumed jail sentence
3 ~~must be consecutive~~ may not be served concurrently to any jail sentence for the
4 underlying conviction. If the sentencing court does not impose ~~a~~ at least the presumed
5 minimum term of imprisonment, the court shall justify the reason for a departure from
6 the presumptive jail sentence within the judgment.

7 **SECTION 2. AMENDMENT.** Section 12.1-17-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **12.1-17-01. Simple assault.**

10 1. A person is guilty of an offense if that person:

11 a. Willfully causes bodily injury to another human being; or

12 b. Negligently causes bodily injury to another human being by means of a firearm,
13 destructive device, or other weapon, the use of which against a human being is
14 likely to cause death or serious bodily injury.

15 2. The offense is:

16 a. A class C felony when the victim is a peace officer or correctional institution
17 employee acting in an official capacity, which the actor knows to be a fact; an
18 employee of the state hospital acting in the course and scope of employment,
19 which the actor knows to be a fact, and the actor is an individual committed to or
20 detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a
21 judicial proceeding; or a member of a municipal or volunteer fire department or
22 emergency medical services personnel unit or emergency department worker in
23 the performance of the member's duties.

24 b. A class B misdemeanor except as provided in subdivision a.

25 3. A conviction under subdivision a of subsection 2 of this section carries a presumption
26 of a jail sentence of at least thirty days and if there is an underlying conviction the
27 presumption ~~must be consecutive~~ may not be served concurrently to any jail sentence
28 for the underlying conviction. If the sentencing court does not impose ~~a~~ at least the
29 presumptive minimum term of imprisonment, the court shall justify the reasoning for a
30 departure from the presumptive jail sentence within the judgment.

1 **SECTION 3.** Section 12.1-17-14 of the North Dakota Century Code is created and enacted
2 as follows:

3 **12.1-17-14. Shooting at inhabited dwelling or camper; or occupied structure, vehicle,**
4 **or aircraft - Penalty.**

5 Any person who willfully discharges a firearm at an inhabited dwelling, occupied structure,
6 occupied motor vehicle, occupied aircraft, or inhabited camper is guilty of a class B felony. As
7 used in this section, "inhabited" means currently used for dwelling purposes, whether occupied
8 or not.

9 **SECTION 4. AMENDMENT.** Section 12.1-32-02.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **12.1-32-02.1. Mandatory prison terms for armed offenders.**

- 12 1. Notwithstanding any other provision of this title, a term of imprisonment must be
13 imposed upon an offender and served without benefit of parole when:
- 14 a. In the course of committing an offense, the offender inflicts or attempts to inflict
15 bodily injury upon another, threatens or menaces another with imminent bodily
16 injury with a dangerous weapon, explosive, or destructive device, ~~or firearm~~; or
17 b. The offender possesses or has within immediate reach and control a dangerous
18 weapon, explosive, or destructive device, ~~or firearm~~ while in the course of
19 committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.
- 20 2. This requirement applies only when possession of a dangerous weapon, explosive, or
21 destructive device, ~~or firearm~~ has been charged and admitted or found to be true in
22 the manner provided by law, and must be imposed as follows:
- 23 a. If the offense for which the offender is convicted is a class AA, class A, or class B
24 felony, the court shall impose a minimum sentence of four years' imprisonment.
25 b. If the offense for which the offender is convicted is a class C felony, the court
26 shall impose a minimum sentence of two years' imprisonment.
- 27 3. This section applies even when being armed is an element of the offense for which the
28 offender is convicted.
- 29 4. An offender serving a sentence subject to this section may be eligible to participate in
30 a release program under section 12-48.1-02 during the last six months of the
31 offender's sentence.

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

3 **12.1-32-07.4. Presumptive probation.**

- 4 1. The sentencing court shall sentence an individual who has pled guilty to, or has been
5 found guilty of, a class C felony offense or class A misdemeanor offense to a term of
6 probation at the time of initial sentencing, except for an offense involving domestic
7 violence; an offense subject to registration under section 12.1-32-15; an offense
8 involving a firearm or dangerous weapon, explosive, or incendiary device; an offense
9 in violation of [section 12.1-08-02](#), subdivision a of subsection 2 of section 12.1-17-01,
10 or [section 39-10-71](#); or if a mandatory term of incarceration is required by law.
- 11 2. The sentencing court may impose a sentence of imprisonment if the sentencing court
12 finds there are aggravating factors present to justify a departure from presumptive
13 probation. Aggravating factors include:
- 14 a. That the individual has pled guilty to, or has been found guilty of, a felony
15 offense or class A misdemeanor offense prior to the date of the commission of
16 the offense or offenses charged in the complaint, information, or indictment;
- 17 b. The age and vulnerability of the victim, whether the individual was in a position of
18 responsibility or trust over the victim, or whether the individual abused a public
19 position of responsibility or trust; or
- 20 c. If the individual used threats or coercion in the commission of the offense.
- 21 3. This section does not preclude the sentencing court from deferring imposition of
22 sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an
23 individual to a term of incarceration with credit for time spent in custody if execution of
24 the sentence is suspended.

25 **SECTION 6. AMENDMENT.** Section 39-10-71 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **39-10-71. Fleeing or attempting to elude a peace officer - Penalty.**

- 28 1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or
29 who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or
30 peace officer, when given a visual or audible signal to bring the vehicle to a stop, is
31 guilty of a:

- 1 a. Class A misdemeanor for a first offense and a class C felony for a subsequent
2 offense within three years;
- 3 b. Class C felony if the driver violates this section while willfully fleeing during or
4 after the commission of a felony; or
- 5 c. Class C felony if, at any time during the flight or pursuit, the driver willfully
6 operates the vehicle in a manner constituting an inherent risk of death or serious
7 bodily injury to a third person.
- 8 2. A signal complies with this section if the signal is perceptible to the driver and:
- 9 a. If given from a vehicle, the signal is given by hand, voice, emergency light, or
10 siren, and the stopping vehicle is appropriately marked showing it to be an official
11 police vehicle; or
- 12 b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or
13 siren, and the officer is in uniform or prominently displays the officer's badge of
14 office.
- 15 3. A conviction under this section carries a presumption of a jail sentence of at least thirty
16 days and, if there is an underlying conviction, the presumed jail sentence ~~must be~~
17 ~~consecutive~~ may not be served concurrently to any jail sentence for the underlying
18 conviction. If the sentencing court does not impose ~~a~~ at least the presumptive minimum
19 term of imprisonment, the court shall justify the reason for a departure from the
20 presumptive jail sentence within the judgment.

21 **SECTION 7. AMENDMENT.** Section 62.1-02-01 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **62.1-02-01. Persons who are not to possess firearms - Penalty.**

- 24 1. a. A person who has been convicted anywhere of a felony offense involving
25 violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an
26 equivalent felony offense of another state or the federal government is prohibited
27 from owning a firearm or having one in possession or under control from the date
28 of conviction and continuing for a period of ten years after the date of conviction
29 or the date of release from incarceration, parole, or probation, whichever is latest.
- 30 b. A person who has been convicted anywhere of a felony offense of this or another
31 state or the federal government not provided for in subdivision a or who has been

1 convicted of a class A misdemeanor offense involving violence or intimidation in
2 violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another
3 state or the federal government and the offense was committed while using or
4 possessing a firearm, a dangerous weapon, or, as defined in section 12.1-01-04,
5 a destructive device or an explosive, is prohibited from owning a firearm or
6 having one in possession or under control from the date of conviction and
7 continuing for a period of five years after the date of conviction or the date of
8 release from incarceration, parole, or probation, whichever is latest.

9 c. A person who is or has ever been diagnosed and confined or committed to a
10 hospital or other institution in this state or elsewhere by a court of competent
11 jurisdiction, other than a person who has had the petition that provided the basis
12 for the diagnosis, confinement, or commitment dismissed under section
13 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another
14 jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or
15 as a mentally deficient individual, is prohibited from purchasing a firearm or
16 having one in possession or under control. This limitation does not apply to a
17 person who has not suffered from the disability for the previous three years or
18 who has successfully petitioned for relief under section 62.1-02-01.2.

19 d. A person under the age of eighteen years may not possess a handgun except
20 that such a person, while under the direct supervision of an adult, may possess a
21 handgun for the purposes of firearm safety training, target shooting, or hunting.

22 e. A person who is a fugitive from justice is prohibited from owning a firearm or
23 having a firearm in possession or under control.

24 f. ~~A person who is an unlawful user of or addicted to any controlled substance as~~
25 ~~defined in sections 19-03.1-05, 19-03.1-07, 19-03.1-09, or 19-03.1-11.~~

26 ~~g.~~ A person who, being an alien, is illegally or unlawfully in the United States is
27 prohibited from owning a firearm or having a firearm in possession or under
28 control.

29 ~~h-g.~~ A person who has been convicted in any court of a misdemeanor crime of
30 domestic violence is prohibited from owning a firearm or having a firearm in
31 possession or under control. For the purposes of this section a "misdemeanor

1 crime of domestic violence" means the willful infliction of bodily injury against an

2 individual who:

3 (1) Is a current or former spouse or intimate partner of the victim, or individual

4 similarly situated to a spouse of the victim;

5 (2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate

6 partner; or

7 (3) Shares a child in common with the victim.

8 i.h. A person who has been discharged from the armed forces under dishonorable
9 conditions is prohibited from owning a firearm or having a firearm in possession
10 or under control.

11 j.i. A person who is prohibited from owning a firearm or having a firearm in
12 possession or under control if that person is subject to a court order that:

13 (1) Was issued after a hearing of which such person received actual notice, and
14 at which such person had an opportunity to participate;

15 (2) Restrains the person from harassing, stalking, or threatening an intimate
16 partner of the person or child of the intimate partner or person, or engaging
17 in other conduct that would place an intimate partner in reasonable fear of
18 bodily injury to the partner or child; and

19 (3) (a) Includes a finding the person represents a credible threat to the
20 physical safety of the intimate partner or child; or

21 (b) By its terms explicitly prohibits the use, attempted use, or threatened
22 use of physical force against the intimate partner or child that would
23 reasonably be expected to cause bodily injury.

24 2. A person who violates ~~subdivision~~ subdivisions a or b, e, f, g, h, or i, ~~or j~~ of subsection
25 1 is guilty of a class C felony, and a person who violates subdivision c or d of
26 subsection 1 is guilty of a class A misdemeanor.

27 3. A person who violates subdivision a or b of subsection 1 and has three or more prior
28 felony convictions on separate occasions under any provisions in chapter 12.1-16,
29 12.1-17, 12.1-18, ~~12.1-19, or~~ 12.1-20, ~~12.1-21~~ section 12.1-21-01, chapter 12.1-22,
30 ~~12.1-23, 12.1-24, 12.1-25, or~~ subsection 1 of 19-03.1-23, or a similar offense from
31 another court in North Dakota, or a court of record in the United States, ~~or a tribal~~

1 court, is guilty of a class B felony, and the court shall impose a minimum sentence of
2 five years' imprisonment.

3 2.4. For the purposes of this section, "conviction" means a determination that the person
4 committed one of the above-mentioned crimes upon a verdict of guilt, a plea of guilty,
5 or a plea of nolo contendere even though:

- 6 a. The court suspended execution of sentence in accordance with subsection 3 of
7 section 12.1-32-02;
- 8 b. The court deferred imposition of sentence in accordance with subsection 4 of
9 section 12.1-32-02;
- 10 c. The court placed the person on probation;
- 11 d. The person's conviction has been reduced in accordance with subsection 9 of
12 section 12.1-32-02 or section 12.1-32-07.1;
- 13 e. Sentence dispositions, sentence reductions, or offense determinations equivalent
14 to this section were imposed or granted by a court, board, agency, or law of
15 another state or the federal government; or
- 16 f. The person committed an offense equivalent to an offense described in
17 subdivision a or b of subsection 1 when that person was subject to juvenile
18 adjudication or proceedings and a determination of a court under chapter 27-20.4
19 or of a court of another state or the federal government was made that the
20 person committed the delinquent act or offense.

21 3.5. For purposes of subsection 1, unless the pardon, expungement, or restoration of civil
22 rights expressly provides that a person may not ship, transport, possess, or receive
23 firearms, a person is not considered to have been convicted of a crime under
24 subdivision a, b, or g of subsection 1 if:

- 25 a. The conviction has been expunged or set aside; or
- 26 b. The conviction is for an offense for which the person has been pardoned or has
27 had civil rights restored if the law of the applicable jurisdiction provides for the
28 loss of civil rights for the offense.

29 6. A felon who is not sentenced under section 12.1-32-09.1 may possess a rifle that has
30 a barrel sixteen inches [40.72 centimeters] or longer or a shotgun that has a barrel
31 eighteen inches [45.72 centimeters] or longer and which is one of the following:

- 1 a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or
2 similar type of ignition system, manufactured before 1899.
- 3 b. A replica of any firearm described in subdivision a, if the replica is not designed
4 or redesigned for using rimfire or conventional centerfire fixed ammunition or
5 uses rimfire or conventional centerfire fixed ammunition that is no longer
6 manufactured in the United States and which is not readily available in the
7 ordinary channels of commercial trade.
- 8 c. A muzzleloading rifle or muzzleloading shotgun designed to use black powder or
9 a black powder substitute and which cannot use fixed ammunition.

10 **SECTION 8.** Section 62.1-02-15 of the North Dakota Century Code is created and enacted
11 as follows:

12 **62.1-02-15. Possession of a firearm in furtherance of a felony crime of violence or**
13 **drug trafficking crime.**

- 14 1. Any person who, during and in relation to any felony crime of violence or drug
15 trafficking crime, uses or carries a firearm, or who, in furtherance of any such crime,
16 possesses a firearm, is guilty of a class B felony ~~and, consecutive.~~ A conviction under
17 this section carries a presumptive minimum term of imprisonment which may not run
18 concurrently to the punishment provided for the felony crime of violence or drug
19 trafficking crime. The presumptive minimum term of imprisonment is:
 - 20 a. ~~Must be sentenced to a term of imprisonment of not~~Not less than three years;
 - 21 b. ~~Must be sentenced to a term of imprisonment of not~~Not less than five years if the
22 firearm is brandished; or
 - 23 c. ~~Must be sentenced to a term of imprisonment of not~~Not less than seven years if
24 the firearm is discharged.
- 25 2. If the firearm possessed by a person convicted of a violation of this section is a short-
26 barreled rifle, short-barreled shotgun, machine gun, submachine gun, or fully
27 automatic rifle, ~~or is equipped with a silencer,~~ the person must be sentenced to
28 a presumptive minimum term of imprisonment ~~of~~is not less than seven years.
- 29 3. For a violation of this section which occurs after a previous conviction under this
30 section has become final, the person is guilty of a class A felony and ~~must be~~

1 ~~sentenced to at the presumptive minimum~~ term of imprisonment ~~of~~ not less than ten
2 years.

3 4. Notwithstanding any other provision of law:

4 a. A term of imprisonment imposed on a person under this section may not run
5 concurrently with any other term of imprisonment imposed on the person,
6 including any term of imprisonment imposed for the felony crime of violence or
7 drug trafficking crime during which the firearm was used, carried, or possessed;

8 ~~and~~

9 b. An offender who is convicted of a crime under this section is not eligible for
10 release from confinement on any basis until eighty-five percent of the sentence
11 imposed by the court has been served or the sentence is commuted. For
12 purposes of this subsection, confinement does not include placement in a
13 halfway house, treatment facility, or other community placement; and

14 c. If the sentencing court does not impose at least the presumptive minimum term
15 of imprisonment for an offense under this section, the court shall justify the
16 reasoning for a departure from the presumptive minimum sentence within the
17 judgment.

18 5. For purposes of this subsection, the term "drug section:

19 a. "Brandish" means, with respect to a firearm, to display all or part of the firearm, or
20 otherwise make the presence of the firearm known to another individual, in order
21 to intimidate that individual, regardless of whether the firearm is directly visible to
22 that individual.

23 b. "Drug trafficking crime" means a violation of subsection 1 or 3 of section
24 19-03.1-23.

25 ~~6. For the purpose of this subsection, the term "felony~~

26 c. "Felony crime of violence" means a felony violation of section 12.1-16-01,
27 12.1-16-02, 12.1-16-03, 12.1-17-01.2, 12.1-17-02, 12.1-17-03, 12.1-17-04,
28 12.1-17-12, 12.1-18-01, 12.1-18-02, 12.1-20-03, 12.1-20-04, 12.1-20-07,
29 12.1-20-12.3, 12.1-21-01, 12.1-21-02, 12.1-22-01, or 12.1-22-02, ~~12.1-22-03,~~
30 ~~12.1-22-04, 12.1-23-02, or 12.1-23-06.~~

31 ~~SECTION 8. REPEAL. Section 12.1-23-02.1 of the North Dakota Century Code is repealed.~~

23.8013.03001

FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2107

Introduced by

Judiciary Committee

(At the request of the Attorney General)

1 A BILL for an Act to create and enact sections 12.1-17-14 and 62.1-02-15 of the North Dakota
 2 Century Code, relating to shooting offenses and drug trafficking; to amend and reenact sections
 3 12.1-08-02, 12.1-17-01, 12.1-32-02.1, 12.1-32-07.4, 39-10-71, and 62.1-02-01 of the North
 4 Dakota Century Code, relating to sentences for crimes committed with firearms and for fleeing
 5 law enforcement; and to provide a penalty.

6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

7 **SECTION 1. AMENDMENT.** Section 12.1-08-02 of the North Dakota Century Code is
 8 amended and reenacted as follows:

9 **12.1-08-02. Preventing arrest or discharge of other duties.**

- 10 1. A person is guilty of a class A misdemeanor if, with intent to prevent a public servant
 11 from effecting an arrest of himself or another for a misdemeanor or infraction, or from
 12 discharging any other official duty, he creates a substantial risk of bodily injury to the
 13 public servant or to anyone except himself, or employs means justifying or requiring
 14 substantial force to overcome resistance to effecting the arrest or the discharge of the
 15 duty. A person is guilty of a class C felony if, with intent to prevent a public servant
 16 from effecting an arrest of himself or another for a class A, B, or C felony, he creates a
 17 substantial risk of bodily injury to the public servant or to anyone except himself, or
 18 employs means justifying or requiring substantial force to overcome resistance to
 19 effecting such an arrest.
- 20 2. It is a defense to a prosecution under this section that the public servant was not
 21 acting lawfully, but it is no defense that the defendant mistakenly believed that the
 22 public servant was not acting lawfully. A public servant executing a warrant or other
 23 process in good faith and under color of law shall be deemed to be acting lawfully.

1 3. A conviction under this section carries a presumption of a jail sentence of at least
2 fourteen days and, if there is an underlying conviction, the presumed jail sentence may
3 not be served concurrently to any jail sentence for the underlying conviction. If the
4 sentencing court does not impose at least the presumed minimum term of
5 imprisonment, the court shall justify the reason for a departure from the presumptive
6 jail sentence within the judgment.

7 **SECTION 2. AMENDMENT.** Section 12.1-17-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **12.1-17-01. Simple assault.**

- 10 1. A person is guilty of an offense if that person:
- 11 a. Willfully causes bodily injury to another human being; or
- 12 b. Negligently causes bodily injury to another human being by means of a firearm,
- 13 destructive device, or other weapon, the use of which against a human being is
- 14 likely to cause death or serious bodily injury.
- 15 2. The offense is:
- 16 a. A class C felony when the victim is a peace officer or correctional institution
- 17 employee acting in an official capacity, which the actor knows to be a fact; an
- 18 employee of the state hospital acting in the course and scope of employment,
- 19 which the actor knows to be a fact, and the actor is an individual committed to or
- 20 detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a
- 21 judicial proceeding; or a member of a municipal or volunteer fire department or
- 22 emergency medical services personnel unit or emergency department worker in
- 23 the performance of the member's duties.
- 24 b. A class B misdemeanor except as provided in subdivision a.
- 25 3. A conviction under subdivision a of subsection 2 of this section carries a presumption
26 of a jail sentence of at least thirty days and if there is an underlying conviction the
27 presumption may not be served concurrently to any jail sentence for the underlying
28 conviction. If the sentencing court does not impose at least the presumptive minimum
29 term of imprisonment, the court shall justify the reasoning for a departure from the
30 presumptive jail sentence within the judgment.

1 **SECTION 3.** Section 12.1-17-14 of the North Dakota Century Code is created and enacted
2 as follows:

3 **12.1-17-14. Shooting at inhabited dwelling or camper; or occupied structure, vehicle,**
4 **or aircraft - Penalty.**

5 Any person who willfully discharges a firearm at an inhabited dwelling, occupied structure,
6 occupied motor vehicle, occupied aircraft, or inhabited camper is guilty of a class B felony. As
7 used in this section, "inhabited" means currently used for dwelling purposes, whether occupied
8 or not.

9 **SECTION 4. AMENDMENT.** Section 12.1-32-02.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **12.1-32-02.1. Mandatory prison terms for armed offenders.**

- 12 1. Notwithstanding any other provision of this title, a term of imprisonment must be
13 imposed upon an offender and served without benefit of parole when:
- 14 a. In the course of committing an offense, the offender inflicts or attempts to inflict
15 bodily injury upon another, threatens or menaces another with imminent bodily
16 injury with a dangerous weapon, explosive, or destructive device, ~~or firearm~~; or
17 b. The offender possesses or has within immediate reach and control a dangerous
18 weapon, explosive, or destructive device, ~~or firearm~~ while in the course of
19 committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.
- 20 2. This requirement applies only when possession of a dangerous weapon, explosive, or
21 destructive device, ~~or firearm~~ has been charged and admitted or found to be true in
22 the manner provided by law, and must be imposed as follows:
- 23 a. If the offense for which the offender is convicted is a class AA, class A, or class B
24 felony, the court shall impose a minimum sentence of four years' imprisonment.
25 b. If the offense for which the offender is convicted is a class C felony, the court
26 shall impose a minimum sentence of two years' imprisonment.
- 27 3. This section applies even when being armed is an element of the offense for which the
28 offender is convicted.
- 29 4. An offender serving a sentence subject to this section may be eligible to participate in
30 a release program under section 12-48.1-02 during the last six months of the
31 offender's sentence.

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

3 **12.1-32-07.4. Presumptive probation.**

- 4 1. The sentencing court shall sentence an individual who has pled guilty to, or has been
5 found guilty of, a class C felony offense or class A misdemeanor offense to a term of
6 probation at the time of initial sentencing, except for an offense involving domestic
7 violence; an offense subject to registration under section 12.1-32-15; an offense
8 involving a firearm or dangerous weapon, explosive, or incendiary device; an offense
9 in violation of section 12.1-08-02, subdivision a of subsection 2 of section 12.1-17-01,
10 or section 39-10-71; or if a mandatory term of incarceration is required by law.
- 11 2. The sentencing court may impose a sentence of imprisonment if the sentencing court
12 finds there are aggravating factors present to justify a departure from presumptive
13 probation. Aggravating factors include:
- 14 a. That the individual has plead guilty to, or has been found guilty of, a felony
15 offense or class A misdemeanor offense prior to the date of the commission of
16 the offense or offenses charged in the complaint, information, or indictment;
- 17 b. The age and vulnerability of the victim, whether the individual was in a position of
18 responsibility or trust over the victim, or whether the individual abused a public
19 position of responsibility or trust; or
- 20 c. If the individual used threats or coercion in the commission of the offense.
- 21 3. This section does not preclude the sentencing court from deferring imposition of
22 sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an
23 individual to a term of incarceration with credit for time spent in custody if execution of
24 the sentence is suspended.

25 **SECTION 6. AMENDMENT.** Section 39-10-71 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **39-10-71. Fleeing or attempting to elude a peace officer - Penalty.**

- 28 1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or
29 who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or
30 peace officer, when given a visual or audible signal to bring the vehicle to a stop, is
31 guilty of a:

- 1 a. Class A misdemeanor for a first offense and a class C felony for a subsequent
2 offense within three years;
- 3 b. Class C felony if the driver violates this section while willfully fleeing during or
4 after the commission of a felony; or
- 5 c. Class C felony if, at any time during the flight or pursuit, the driver willfully
6 operates the vehicle in a manner constituting an inherent risk of death or serious
7 bodily injury to a third person.
- 8 2. A signal complies with this section if the signal is perceptible to the driver and:
 - 9 a. If given from a vehicle, the signal is given by hand, voice, emergency light, or
10 siren, and the stopping vehicle is appropriately marked showing it to be an official
11 police vehicle; or
 - 12 b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or
13 siren, and the officer is in uniform or prominently displays the officer's badge of
14 office.
- 15 3. A conviction under this section carries a presumption of a jail sentence of at least thirty
16 days and, if there is an underlying conviction, the presumed jail sentence may not be
17 served concurrently to any jail sentence for the underlying conviction. If the sentencing
18 court does not impose at least the presumptive minimum term of imprisonment, the
19 court shall justify the reason for a departure from the presumptive jail sentence within
20 the judgment.

21 **SECTION 7. AMENDMENT.** Section 62.1-02-01 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **62.1-02-01. Persons who are not to possess firearms - Penalty.**

- 24 1. a. A person who has been convicted anywhere of a felony offense involving
25 violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an
26 equivalent felony offense of another state or the federal government is prohibited
27 from owning a firearm or having one in possession or under control from the date
28 of conviction and continuing for a period of ten years after the date of conviction
29 or the date of release from incarceration, parole, or probation, whichever is latest.
- 30 b. A person who has been convicted anywhere of a felony offense of this or another
31 state or the federal government not provided for in subdivision a or who has been

1 convicted of a class A misdemeanor offense involving violence or intimidation in
2 violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another
3 state or the federal government and the offense was committed while using or
4 possessing a firearm, a dangerous weapon, or, as defined in section 12.1-01-04,
5 a destructive device or an explosive, is prohibited from owning a firearm or
6 having one in possession or under control from the date of conviction and
7 continuing for a period of five years after the date of conviction or the date of
8 release from incarceration, parole, or probation, whichever is latest.

9 c. A person who is or has ever been diagnosed and confined or committed to a
10 hospital or other institution in this state or elsewhere by a court of competent
11 jurisdiction, other than a person who has had the petition that provided the basis
12 for the diagnosis, confinement, or commitment dismissed under section
13 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another
14 jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or
15 as a mentally deficient individual, is prohibited from purchasing a firearm or
16 having one in possession or under control. This limitation does not apply to a
17 person who has not suffered from the disability for the previous three years or
18 who has successfully petitioned for relief under section 62.1-02-01.2.

19 d. A person under the age of eighteen years may not possess a handgun except
20 that such a person, while under the direct supervision of an adult, may possess a
21 handgun for the purposes of firearm safety training, target shooting, or hunting.

22 e. A person who is a fugitive from justice is prohibited from owning a firearm or
23 having a firearm in possession or under control.

24 f. A person who, being an alien, is illegally or unlawfully in the United States is
25 prohibited from owning a firearm or having a firearm in possession or under
26 control.

27 g. A person who has been convicted in any court of a misdemeanor crime of
28 domestic violence is prohibited from owning a firearm or having a firearm in
29 possession or under control. For the purposes of this section a "misdemeanor
30 crime of domestic violence" means the willful infliction of bodily injury against an
31 individual who:

- 1 (1) Is a current or former spouse or intimate partner of the victim, or individual
2 similarly situated to a spouse of the victim;
- 3 (2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate
4 partner; or
- 5 (3) Shares a child in common with the victim.
- 6 h. A person who has been discharged from the armed forces under dishonorable
7 conditions is prohibited from owning a firearm or having a firearm in possession
8 or under control.
- 9 i. A person is prohibited from owning a firearm or having a firearm in possession or
10 under control if that person is subject to a court order that:
- 11 (1) Was issued after a hearing of which such person received actual notice, and
12 at which such person had an opportunity to participate;
- 13 (2) Restrains the person from harassing, stalking, or threatening an intimate
14 partner of the person or child of the intimate partner or person, or engaging
15 in other conduct that would place an intimate partner in reasonable fear of
16 bodily injury to the partner or child; and
- 17 (3) (a) Includes a finding the person represents a credible threat to the
18 physical safety of the intimate partner or child; or
- 19 (b) By its terms explicitly prohibits the use, attempted use, or threatened
20 use of physical force against the intimate partner or child that would
21 reasonably be expected to cause bodily injury.
- 22 2. A person who violates subdivision a or b, e, f, g, h, or i of subsection 1 is guilty of a
23 class C felony, and a person who violates subdivision c or d of subsection 1 is guilty of
24 a class A misdemeanor.
- 25 3. A person who violates subdivision a or b of subsection 1 and has three or more prior
26 felony convictions on separate occasions under any provisions in chapter 12.1-16,
27 12.1-17, 12.1-18, or 12.1-20, section 12.1-21-01, chapter 12.1-22, subsection 1 of
28 19-03.1-23, or a similar offense from another court in North Dakota or a court of record
29 in the United States, is guilty of a class B felony, and the court shall impose a
30 minimum sentence of five years' imprisonment. A conviction under this subsection
31 carries a presumptive minimum term of imprisonment of five years. If the sentencing

1 court does not impose at least the presumptive minimum term of imprisonment for an
2 offense under this section, the court shall justify the reasoning for a departure from the
3 presumptive minimum sentence within the judgment.

4 ~~2-4.~~ For the purposes of this section, "conviction" means a determination that the person
5 committed one of the above-mentioned crimes upon a verdict of guilt, a plea of guilty,
6 or a plea of nolo contendere even though:

- 7 a. The court suspended execution of sentence in accordance with subsection 3 of
8 section 12.1-32-02;
- 9 b. The court deferred imposition of sentence in accordance with subsection 4 of
10 section 12.1-32-02;
- 11 c. The court placed the person on probation;
- 12 d. The person's conviction has been reduced in accordance with subsection 9 of
13 section 12.1-32-02 or section 12.1-32-07.1;
- 14 e. Sentence dispositions, sentence reductions, or offense determinations equivalent
15 to this section were imposed or granted by a court, board, agency, or law of
16 another state or the federal government; or
- 17 f. The person committed an offense equivalent to an offense described in
18 subdivision a or b of subsection 1 when that person was subject to juvenile
19 adjudication or proceedings and a determination of a court under chapter 27-20.4
20 or of a court of another state or the federal government was made that the
21 person committed the delinquent act or offense.

22 ~~3-5.~~ For purposes of subsection 1, unless the pardon, expungement, or restoration of civil
23 rights expressly provides that a person may not ship, transport, possess, or receive
24 firearms, a person is not considered to have been convicted of a crime under
25 subdivision a, b, or g of subsection 1 if:

- 26 a. The conviction has been expunged or set aside; or
- 27 b. The conviction is for an offense for which the person has been pardoned or has
28 had civil rights restored if the law of the applicable jurisdiction provides for the
29 loss of civil rights for the offense.

- 1 6. A felon who is not sentenced under section 12.1-32-09.1 may possess a rifle that has
2 a barrel sixteen inches [40.72 centimeters] or longer or a shotgun that has a barrel
3 eighteen inches [45.72 centimeters] or longer and which is one of the following:
- 4 a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or
5 similar type of ignition system, manufactured before 1899.
 - 6 b. A replica of any firearm described in subdivision a, if the replica is not designed
7 or redesigned for using rimfire or conventional centerfire fixed ammunition or
8 uses rimfire or conventional centerfire fixed ammunition that is no longer
9 manufactured in the United States and which is not readily available in the
10 ordinary channels of commercial trade.
 - 11 c. A muzzleloading rifle or muzzleloading shotgun designed to use black powder or
12 a black powder substitute and which cannot use fixed ammunition.

13 **SECTION 8.** Section 62.1-02-15 of the North Dakota Century Code is created and enacted
14 as follows:

15 **62.1-02-15. Possession of a firearm in furtherance of a felony crime of violence or**
16 **drug trafficking crime.**

- 17 1. Any person who, during and in relation to any felony crime of violence or drug
18 trafficking crime, uses or carries a firearm, or who, in furtherance of any such crime,
19 possesses a firearm, is guilty of a class B felony. A conviction under this section
20 carries a presumptive minimum term of imprisonment which may not run concurrently
21 to the punishment provided for the felony crime of violence or drug trafficking crime.
22 The presumptive minimum term of imprisonment is:
- 23 a. Not less than three years;
 - 24 b. Not less than five years if the firearm is brandished; or
 - 25 c. Not less than seven years if the firearm is discharged.
- 26 2. If the firearm possessed by a person convicted of a violation of this section is a short-
27 barreled rifle, short-barreled shotgun, machine gun, submachine gun, or fully
28 automatic rifle, the presumptive minimum term of imprisonment is not less than seven
29 years.

- 1 3. For a violation of this section which occurs after a previous conviction under this
2 section has become final, the person is guilty of a class A felony and the presumptive
3 minimum term of imprisonment is not less than ten years.
- 4 4. Notwithstanding any other provision of law:
- 5 a. A term of imprisonment imposed on a person under this section may not run
6 concurrently with any other term of imprisonment imposed on the person,
7 including any term of imprisonment imposed for the felony crime of violence or
8 drug trafficking crime during which the firearm was used, carried, or possessed;
- 9 b. An offender who is convicted of a crime under this section is not eligible for
10 release from confinement on any basis until eighty-five percent of the sentence
11 imposed by the court has been served or the sentence is commuted. For
12 purposes of this subsection, confinement does not include placement in a
13 halfway house, treatment facility, or other community placement; and
- 14 c. If the sentencing court does not impose at least the presumptive minimum term
15 of imprisonment for an offense under this section, the court shall justify the
16 reasoning for a departure from the presumptive minimum sentence within the
17 judgment.
- 18 5. For purposes of this section:
- 19 a. "Brandish" means, with respect to a firearm, to display all or part of the firearm, or
20 otherwise make the presence of the firearm known to another individual, in order
21 to intimidate that individual, regardless of whether the firearm is directly visible to
22 that individual.
- 23 b. "Drug trafficking crime" means a violation of subsection 1 or 3 of section
24 19-03.1-23.
- 25 c. "Felony crime of violence" means a felony violation of section 12.1-16-01,
26 12.1-16-02, 12.1-16-03, 12.1-17-01.2, 12.1-17-02, 12.1-17-03, 12.1-17-04,
27 12.1-17-12, 12.1-18-01, 12.1-18-02, 12.1-20-03, 12.1-20-04, 12.1-20-07,
28 12.1-20-12.3, 12.1-21-01, 12.1-21-02, 12.1-22-01, or 12.1-22-02.

SB 2107
68th Legislative Assembly
House Judiciary Committee
March 14th, 2023
Testimony of Travis W. Finck, Executive Director, NDCLCI

Chairman Klemin, members of the House Judiciary Committee, my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota. I rise today on behalf of the Commission to provide testimony in opposition.

The Commission is concerned about the legislation as it is currently written. The Commission expressed the concern in the Senate regarding the likelihood of more trials. This position was and is based upon the bill containing mandatory sentences for preventing arrest, Simple Assault, and fleeing in a motor vehicle. The Senate amended the bill to a presumptive sentence versus a mandatory sentence. However, presumptive sentences are not found in century code outside of presumptive probation. Thus, the Commission is in a position where we don't know what would happen.

While we don't know how presumptive sentences will be handled by North Dakota State Courts, we do have reason to believe the court will treat these like minimum mandatory sentences. Thus, a defendant would be "presumptively" sentenced to 14 days in jail on a class A misdemeanor resisting arrest. This disincentivizes plea agreements and may cause more matters to go to trial. More trials take more attorney time and that does cause more expense. Proponents of the bill claim those are sunken costs. However, those costs are only sunk when handled by a public defender office or monthly contract. We have had such a level of turnover we are now having to assign a number of cases on a hourly basis. When more cases occur in an area, it will require more hourly cases, which will cost more money.

Further, the bill does not clearly define what would justify a departure from the presumptive sentence. This bill as originally written attempted to remove all discretion from the Court by imposing mandatory minimums. The latest version of presumptive

sentences appears to give the court discretion but requires them to justify the reason. This seems to be a new implementation of jurisprudence in North Dakota that could serve to severely limit judicial independence forcing trials.

Additionally, it is worth noting the academic research on minimum mandatory sentences show they do not prevent crime. Incarceration is inherently criminogenic. Individuals forced to serve county jail sentences consecutively to all other sentences often lose employment, housing, and potentially even family. This does not make them safer and more law abiding when they are returned to the community. This does not include the significant costs to county jails and state prisons.

Given the ineffectiveness of mandatory sentencing, most states, including North Dakota, have moved away from minimum mandatory or prescriptive sentencing. The national pulse has been to apply resources upstream in evidence-based and proven effective strategies to combat crime, not on back-end building of bigger prisons. North Dakota had the foresight to go through this work in 2015 in the justice reinvestment legislation and implementation of Free Through Recovery. This bill appears to significantly reduce the progress that has been made.

I have been provided a copy of some proposed amendments. The proposed amendments are a much better attempt to try and deter conduct. By restoring judicial discretion, defendants would be once again at the mercy of the court based upon individual circumstances. Further, the amendments restore the firearm to enhancements rather than create a complicated system of sentencing depending on the weapon involved.

Chairman Klemin, members of the Committee, for the reasons stated herein, the Commission on Legal Counsel urges a DO NOT PASS recommendation on SB 2107 as currently written.

Respectfully Submitted:



Travis W. Finck
Executive Director, NDCLCI

March 13, 2023

Testimony to the **House Judiciary Committee**

Submitted By: Jesse Walstad on behalf of the ND Association of Criminal Defense Lawyers

Testimony in **Opposition to S.B. 2107**

Chairmen and Members of the House Judiciary Committee:

My name is Jesse Walstad and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers throughout our state who dedicate a portion of their practice to criminal defense. The mission of the NDACDL is “to promote justice and due process” and to “promote the proper and fair administration of criminal justice within the State of North Dakota.” With that mission in mind, the NDACDL **opposes S.B. 2107** and recommends a **DO NOT PASS** from the House Judiciary Committee.

As proposed and as amended, S.B. 2107, attempts to insert a host of minimum mandatory sentences and dubiously inarticulate firearms prohibitions into our state law. During the 1980s and 1990s the Federal government and many states began adding minimum mandatory sentences into their law. By way of example, Illicit drug laws, particularly in the federal code, are riddled with minimum mandatory sentences. Yet, drug offenses continue to increase in frequency and severity. With the exception of a few particularly egregious offenses, our Legislature has historically resisted the temptation to insert a host of minimum mandatory into our law – instead relying on our exceptionally well qualified judges to fashion appropriate sentences under existing law.

The Legislature’s reluctance to follow the minimum mandatory trend of decades past was sound judgement. Data gathered over the past several decades establishes that minimum mandatory sentences have failed to prevent or deter crime while simultaneously expanding our national prison population by 500% over the past forty years. For this reason, many states and the federal government have been reforming and reducing their minimum mandatory sentence laws in recent years.¹ S.B. 2017 threatens to move North Dakota in the opposite direction of the current trend away from minimum mandatory sentencing. The Legislature should not accept this invitation to adopt a system that has demonstrably failed in other jurisdictions.

The language has been semantically softened in the amended version of S.B. 2107 before this committee, but the effect is the same. Minimum mandatory has been changed to “presumptive sentence.” The requirement that the sentence shall be served consecutively, has been changed to “may not be served concurrently.” The substantive similarity underlying the semantic changes is clear on the face of the bill. For instance, “[i]f the sentencing court does not impose at least the presumptive minimum term of imprisonment, the court shall justify the reason for a departure from the presumptive jail sentence within the judgment.” Departures from current minimum mandatory sentences must also be supported in judgment under our current law. Each year the Supreme Court issues an annual report of departures from minimum mandatory sentences, not one single departure has been reported from June 30, 2017 to the present. The suggestion that changing the diction to “presumptive sentence” would suddenly result in downward departures in deserving cases is in stark contrast with the data.

¹ The trend away from minimum mandatory sentences is exemplified by the First Step Act of 2018. There, a bipartisan Congress opened the door for the federal judiciary to depart from certain severe sentencing requirements, eliminate stacking of mandatory minimums, and reduce the three strikes law. In doing so, it transferred some measure of sentencing discretion back to the federal judges who are best situated to fashion fair and just sentences based on the unique circumstances of each case.

Testimony in favor has identified a perceived uptick in offenses including preventing arrest, fleeing, and assaults on police officers, and extolled the dangers of anecdotal worst-case scenarios. I submit that our State's Attorneys and judiciary have no difficulty distinguishing between cases meriting imprisonment and those meriting leniency. S.B. 2107 will deprive our judiciary and our State's Attorneys of the wise and seasoned discretion they use to ensure justice is done in every case.

By way of example, I have had clients charged with preventing arrest or interfering for exercising their lawful right to refuse questioning or deny entry in the absence of a warrant. I had one charged with interfering with a law enforcement function after his foot became stuck under the front seat of a police cruiser preventing his immediate exit when directed. Under S.B. 2107 those and countless other situations would serve two weeks in jail.

My colleague recently had a client who was a doctoral level professional who was moving his car out of a short-term parking zone during a snowstorm. He didn't brush the snow off his car, hoping the wind from driving would do so. An officer immediately initiated his emergency lights because the license plate and windows were snow covered. The client drove three blocks before he saw the officer's emergency lights. When he did, he stopped immediately. He was charged as fleeing. Compare that incident to one in which a suspect leads four agencies on a 3-county high speed pursuit through several cities. Does our criminal justice system benefit from a mandatory 30-day jail sentence and lasting record of conviction from an honest mistake by a person who has no criminal record?

I had another client charged with simple assault on an officer when the officer suffered what he described as an "abrasion" to his pinky finger while placing handcuffs on my client. Another man, while intoxicated to the brink of consciousness unintentionally jerked his foot hitting an EMT on the hip while lying in an ambulance gurney, the EMT was uninjured, but the client was a charged with simple assault on an emergency worker. Under S.B. 2107, each would receive a 30-day jail sentence.

A broad range of conduct, from honest mistakes to extreme public dangers, falls under each of these statutes. A credible justice system such as our contains sentencing safeguards to ensure a just and fair outcome based on the circumstances of each case. Judicial independence and discretion is central to justice. Personally, and on behalf of the NDACDL, I trust our judges to dispense justice based on the facts of each case as applied to the sentencing factors our law already provides and I strongly urge this committee to deny the flawed invitation to arbitrarily limit our judge's discretion.

Those in favor have repeatedly asserted that the normative or deterrent effect of "presumptive minimums" will disincentivize commission of these offenses. First, data shows minimum mandatories have little if any deterrent effect, even in premeditated offenses such as drug distribution, child porn, and violent crimes. Secondly, these offenses - obstruction, fleeing, simple assault on an officer - are not premeditated offenses. They are impulsive offenses with little if any corresponding forethought. If minimum mandatories don't deter premeditated offenses, it is illogical to assume they would have any deterrent effect on low level impulse crimes. As such, the deterrent effect championed by those in favor is speculative at best, and contrary to common sense and abundant data.

What we can predict with relative certainty is an immediate and dramatic increase in the number of trials, the number of inmates, and the amount of resources required to implement this ill-

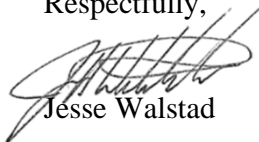
conceived plan. Those negative externalities are foreseeable and undeniable. If passed SB 2107 will place imminent and substantial resource demands on our courts, our State's Attorney's, our indigent defense commission, and our prison system. All of which are already at or over capacity.

When mandatory sentences are in play the attorneys and judges working on a case are substantially limited in their ability to resolve cases justly and amicably. When faced with minimum mandatory sentences my clients often have no incentive to enter a guilty plea, because they will receive the same sentence if convicted by a jury that they would if they plead guilty. Each jury trial is a considerable use of state and personal resources. The vast majority of criminal cases don't proceed to trial because the law provides latitude for the state, defendant, and court to agree on appropriate sentences on a case-by-case basis. Minimum mandatory sentences create an arbitrary negotiating floor often precluding agreement and unnecessarily consuming precious justice system resources.

The insinuation that North Dakota judges are soft on crime or fail to recognize and appropriately punish dangerous or repeat offenders, is categorically false. Despite the semantic gamesmanship S.B. 2107 would require severe one-size-fits all mandatory sentencing without any regard for the circumstances of the case or whether the defendant is a habitual or particularly dangerous offender. Arbitrarily limiting judicial discretion will result in unnecessarily harsh sentences in many low-level cases, while the sentencing outcomes in egregious cases will likely go unchanged.

The bottom line is the collective wisdom and experience of our judiciary enforcing our current sentencing laws ensures justice can exist in each case. S.B. 2107, in its proposed and amended form, mandates one-size fits all sentencing which will deny true tailored justice to the lowest level offenders. It means more trials, more prisoners, and unnecessary but substantial demands on our justice system. These negative consequences whether deemed "minimum mandatory" or "presumptive" need not be endured when we have an exceptional prosecutor's bar and judiciary with the discretion to fashion appropriate sentences to the facts of each case. North Dakota prosecutors and judges have broad latitude to severely punish egregious offenses while simultaneously mitigating sentencing outcomes in deserving cases. The NDACDL strongly urges this committee to trust our judges, our prosecutors, and our law by voting **DO NOT PASS** on S.B. 2107.

Respectfully,



Jesse Walstad

23.8013.04001

SECOND ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

REENGROSSED SENATE BILL NO. 2107

Introduced by

Judiciary Committee

(At the request of the Attorney General)

1 A BILL for an Act to ~~create and enact sections 12.1-17-14 and 62.1-02-15 of the North Dakota~~
 2 ~~Century Code, relating to shooting offenses and drug trafficking; to amend and reenact sections~~
 3 ~~12.1-08-02, 12.1-17-01, 12.1-17-03, 12.1-32-02.1, and 12.1-32-07.4, 39-10-71, and 62.1-02-01 of~~
 4 the North Dakota Century Code, relating to ~~sentences for crimes committed with firearms and~~
 5 ~~for fleeing law enforcement~~ reckless endangerment, mandatory prison terms for armed
 6 offenders, and presumptive probation; to provide for a legislative management study; and to
 7 provide a penalty.

8 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

9 ~~SECTION 1. AMENDMENT. Section 12.1-08-02 of the North Dakota Century Code is~~
 10 ~~amended and reenacted as follows:~~

11 ~~12.1-08-02. Preventing arrest or discharge of other duties.~~

12 ~~1. A person is guilty of a class A misdemeanor if, with intent to prevent a public servant~~
 13 ~~from effecting an arrest of himself or another for a misdemeanor or infraction, or from~~
 14 ~~discharging any other official duty, he creates a substantial risk of bodily injury to the~~
 15 ~~public servant or to anyone except himself, or employs means justifying or requiring~~
 16 ~~substantial force to overcome resistance to effecting the arrest or the discharge of the~~
 17 ~~duty. A person is guilty of a class C felony if, with intent to prevent a public servant~~
 18 ~~from effecting an arrest of himself or another for a class A, B, or C felony, he creates a~~
 19 ~~substantial risk of bodily injury to the public servant or to anyone except himself, or~~
 20 ~~employs means justifying or requiring substantial force to overcome resistance to~~
 21 ~~effecting such an arrest.~~

22 ~~2. It is a defense to a prosecution under this section that the public servant was not~~
 23 ~~acting lawfully, but it is no defense that the defendant mistakenly believed that the~~

1 public servant was not acting lawfully. A public servant executing a warrant or other
2 process in good faith and under color of law shall be deemed to be acting lawfully.
3 ~~3. A conviction under this section carries a presumption of a jail sentence of at least~~
4 ~~fourteen days and, if there is an underlying conviction, the presumed jail sentence may~~
5 ~~not be served concurrently to any jail sentence for the underlying conviction. If the~~
6 ~~sentencing court does not impose at least the presumed minimum term of~~
7 ~~imprisonment, the court shall justify the reason for a departure from the presumptive~~
8 ~~jail sentence within the judgment.~~

9 ~~SECTION 2. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is~~
10 ~~amended and reenacted as follows:~~

11 ~~12.1-17-01. Simple assault.~~

12 ~~1. A person is guilty of an offense if that person:~~

13 ~~a. Willfully causes bodily injury to another human being; or~~

14 ~~b. Negligently causes bodily injury to another human being by means of a firearm,~~
15 ~~destructive device, or other weapon, the use of which against a human being is~~
16 ~~likely to cause death or serious bodily injury.~~

17 ~~2. The offense is:~~

18 ~~a. A class C felony when the victim is a peace officer or correctional institution~~
19 ~~employee acting in an official capacity, which the actor knows to be a fact; an~~
20 ~~employee of the state hospital acting in the course and scope of employment,~~
21 ~~which the actor knows to be a fact, and the actor is an individual committed to or~~
22 ~~detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a~~
23 ~~judicial proceeding; or a member of a municipal or volunteer fire department or~~
24 ~~emergency medical services personnel unit or emergency department worker in~~
25 ~~the performance of the member's duties.~~

26 ~~b. A class B misdemeanor except as provided in subdivision a.~~

27 ~~3. A conviction under subdivision a of subsection 2 of this section carries a~~
28 ~~presumption of a jail sentence of at least thirty days and if there is an underlying~~
29 ~~conviction the presumption may not be served concurrently to any jail sentence for the~~
30 ~~underlying conviction. If the sentencing court does not impose at least the presumptive~~

1 ~~minimum term of imprisonment, the court shall justify the reasoning for a departure~~
2 ~~from the presumptive jail sentence within the judgment.~~

3 ~~SECTION 3. Section 12.1-17-14 of the North Dakota Century Code is created and enacted~~
4 ~~as follows:~~

5 ~~— 12.1-17-14. Shooting at inhabited dwelling or camper; or occupied structure, vehicle,~~
6 ~~or aircraft - Penalty.~~

7 ~~— Any person who willfully discharges a firearm at an inhabited dwelling, occupied structure,~~
8 ~~occupied motor vehicle, occupied aircraft, or inhabited camper is guilty of a class B felony. As~~
9 ~~used in this section, "inhabited" means currently used for dwelling purposes, whether occupied~~
10 ~~or not.~~

11 **SECTION 1. AMENDMENT.** Section 12.1-17-03 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **12.1-17-03. Reckless endangerment.**

14 A person is guilty of an offense if ~~he~~the person creates a substantial risk of serious bodily
15 injury or death to another. The offense is a class B felony if the offense is committed by
16 ~~discharging a firearm, and a class C felony if the circumstances manifest his~~the person's
17 extreme indifference to the value of human life. Otherwise it is a class A misdemeanor. There is
18 risk within the meaning of this section if the potential for harm exists, whether or not a particular
19 person's safety is actually jeopardized.

20 **SECTION 2. AMENDMENT.** Section 12.1-32-02.1 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **12.1-32-02.1. Mandatory prison terms for armed offenders.**

- 23 1. Notwithstanding any other provision of this title, a term of imprisonment must be
24 imposed upon an offender and served without benefit of parole when:
- 25 a. In the course of committing an offense, the offender inflicts or attempts to inflict
26 bodily injury upon another, threatens or menaces another with imminent bodily
27 injury with a dangerous weapon, explosive, ~~or~~ destructive device, ~~or~~ firearm; or
 - 28 b. The offender possesses or has within immediate reach and control a dangerous
29 weapon, explosive, ~~or~~ destructive device, ~~or~~ firearm while in the course of
30 committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.

- 1 2. This requirement applies only when possession of a dangerous weapon, explosive, ~~or~~
2 destructive device, or firearm has been charged and admitted or found to be true in
3 the manner provided by law, and must be imposed as follows:
- 4 a. If the offense for which the offender is convicted is a class AA, class A, or class B
5 felony, the court shall impose a minimum sentence of four years' imprisonment.
6 b. If the offense for which the offender is convicted is a class C felony, the court
7 shall impose a minimum sentence of two years' imprisonment.
- 8 c. If the court finds the offender is a special dangerous or habitual offender under
9 subdivision a, b, c, or d of subsection 1 of section 12.1-32-09 and the offender
10 violates subsection 1 of this section, the court shall impose a minimum sentence
11 of ten years' imprisonment, if the offense is a class AA, class A, or class B felony.
12 If the offense is a class C felony, the court shall impose a minimum sentence of
13 seven years' imprisonment. An offender sentenced under this subdivision is not
14 eligible for parole any earlier than eighteen months before the expiration of the
15 mandatory sentence.
- 16 3. This section applies even when being armed is an element of the offense for which the
17 offender is convicted.
- 18 4. ~~An~~Unless the offender is sentenced under subdivision c of subsection 2, an offender
19 serving a sentence subject to this section may be eligible to participate in a release
20 program under section 12-48.1-02 during the last six months of the offender's
21 sentence.

22 **SECTION 3. AMENDMENT.** Section 12.1-32-07.4 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **12.1-32-07.4. Presumptive probation.**

- 25 1. The sentencing court shall sentence an individual who has pled guilty to, or has been
26 found guilty of, a class C felony offense or class A misdemeanor offense to a term of
27 probation at the time of initial sentencing, except for an offense involving domestic
28 violence; an offense subject to registration under section 12.1-32-15; an offense
29 involving a firearm or dangerous weapon, explosive, or incendiary device; an offense
30 in violation of section 12.1-08-02, subdivision a of subsection 2 of section 12.1-17-01,

- 1 section 12.1-17-03, or section 39-10-71; or if a mandatory term of incarceration is
2 required by law.
- 3 2. The sentencing court may impose a sentence of imprisonment if the sentencing court
4 finds there are aggravating factors present to justify a departure from presumptive
5 probation. Aggravating factors include:
- 6 a. That the individual has plead guilty to, or has been found guilty of, a felony
7 offense or class A misdemeanor offense prior to the date of the commission of
8 the offense or offenses charged in the complaint, information, or indictment;
- 9 b. The age and vulnerability of the victim, whether the individual was in a position of
10 responsibility or trust over the victim, or whether the individual abused a public
11 position of responsibility or trust; or
- 12 c. If the individual used threats or coercion in the commission of the offense.
- 13 3. This section does not preclude the sentencing court from deferring imposition of
14 sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an
15 individual to a term of incarceration with credit for time spent in custody if execution of
16 the sentence is suspended.

17 ~~SECTION 4. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is~~
18 ~~amended and reenacted as follows:~~

19 ~~39-10-71. Fleeing or attempting to elude a peace officer - Penalty.~~

20 ~~1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or~~
21 ~~who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or~~
22 ~~peace officer, when given a visual or audible signal to bring the vehicle to a stop, is~~
23 ~~guilty of a:~~

24 ~~a. Class A misdemeanor for a first offense and a class C felony for a subsequent~~
25 ~~offense within three years;~~

26 ~~b. Class C felony if the driver violates this section while willfully fleeing during or~~
27 ~~after the commission of a felony; or~~

28 ~~c. Class C felony if, at any time during the flight or pursuit, the driver willfully~~
29 ~~operates the vehicle in a manner constituting an inherent risk of death or serious~~
30 ~~bodily injury to a third person.~~

31 ~~2. A signal complies with this section if the signal is perceptible to the driver and:~~

1 ~~a. If given from a vehicle, the signal is given by hand, voice, emergency light, or~~
2 ~~siren, and the stopping vehicle is appropriately marked showing it to be an official~~
3 ~~police vehicle; or~~

4 ~~b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or~~
5 ~~siren, and the officer is in uniform or prominently displays the officer's badge of~~
6 ~~office.~~

7 ~~3. A conviction under this section carries a presumption of a jail sentence of at least~~
8 ~~thirty days and, if there is an underlying conviction, the presumed jail sentence may~~
9 ~~not be served concurrently to any jail sentence for the underlying conviction. If the~~
10 ~~sentencing court does not impose at least the presumptive minimum term of~~
11 ~~imprisonment, the court shall justify the reason for a departure from the presumptive~~
12 ~~jail sentence within the judgment.~~

13 ~~SECTION 5. AMENDMENT. Section 62.1-02-01 of the North Dakota Century Code is~~
14 ~~amended and reenacted as follows:~~

15 ~~62.1-02-01. Persons who are not to possess firearms -- Penalty.~~

16 ~~1. a. A person who has been convicted anywhere of a felony offense involving~~
17 ~~violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an~~
18 ~~equivalent felony offense of another state or the federal government is prohibited~~
19 ~~from owning a firearm or having one in possession or under control from the date~~
20 ~~of conviction and continuing for a period of ten years after the date of conviction~~
21 ~~or the date of release from incarceration, parole, or probation, whichever is latest.~~

22 ~~b. A person who has been convicted anywhere of a felony offense of this or another~~
23 ~~state or the federal government not provided for in subdivision a or who has been~~
24 ~~convicted of a class A misdemeanor offense involving violence or intimidation in~~
25 ~~violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another~~
26 ~~state or the federal government and the offense was committed while using or~~
27 ~~possessing a firearm, a dangerous weapon, or, as defined in section 12.1-01-04,~~
28 ~~a destructive device or an explosive, is prohibited from owning a firearm or~~
29 ~~having one in possession or under control from the date of conviction and~~
30 ~~continuing for a period of five years after the date of conviction or the date of~~
31 ~~release from incarceration, parole, or probation, whichever is latest.~~

- 1 ~~c. A person who is or has ever been diagnosed and confined or committed to a~~
2 ~~hospital or other institution in this state or elsewhere by a court of competent~~
3 ~~jurisdiction, other than a person who has had the petition that provided the basis~~
4 ~~for the diagnosis, confinement, or commitment dismissed under section~~
5 ~~25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another~~
6 ~~jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or~~
7 ~~as a mentally deficient individual, is prohibited from purchasing a firearm or~~
8 ~~having one in possession or under control. This limitation does not apply to a~~
9 ~~person who has not suffered from the disability for the previous three years or~~
10 ~~who has successfully petitioned for relief under section 62.1-02-01.2.~~
- 11 ~~d. A person under the age of eighteen years may not possess a handgun except~~
12 ~~that such a person, while under the direct supervision of an adult, may possess a~~
13 ~~handgun for the purposes of firearm safety training, target shooting, or hunting.~~
- 14 ~~e. A person who is a fugitive from justice is prohibited from owning a firearm or~~
15 ~~having a firearm in possession or under control.~~
- 16 ~~f. A person who, being an alien, is illegally or unlawfully in the United States is~~
17 ~~prohibited from owning a firearm or having a firearm in possession or under~~
18 ~~control.~~
- 19 ~~g. A person who has been convicted in any court of a misdemeanor crime of~~
20 ~~domestic violence is prohibited from owning a firearm or having a firearm in~~
21 ~~possession or under control. For the purposes of this section a "misdemeanor~~
22 ~~crime of domestic violence" means the willful infliction of bodily injury against an~~
23 ~~individual who:~~
- 24 ~~(1) Is a current or former spouse or intimate partner of the victim, or individual~~
25 ~~similarly situated to a spouse of the victim;~~
- 26 ~~(2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate~~
27 ~~partner; or~~
- 28 ~~(3) Shares a child in common with the victim.~~
- 29 ~~h. A person who has been discharged from the armed forces under dishonorable~~
30 ~~conditions is prohibited from owning a firearm or having a firearm in possession~~
31 ~~or under control.~~

- 1 ~~i. A person is prohibited from owning a firearm or having a firearm in possession or~~
2 ~~under control if that person is subject to a court order that:~~
- 3 ~~(1) Was issued after a hearing of which such person received actual notice, and~~
4 ~~at which such person had an opportunity to participate;~~
- 5 ~~(2) Restrains the person from harassing, stalking, or threatening an intimate~~
6 ~~partner of the person or child of the intimate partner or person, or engaging~~
7 ~~in other conduct that would place an intimate partner in reasonable fear of~~
8 ~~bodily injury to the partner or child; and~~
- 9 ~~(3) (a) Includes a finding the person represents a credible threat to the~~
10 ~~physical safety of the intimate partner or child; or~~
- 11 ~~(b) By its terms explicitly prohibits the use, attempted use, or threatened~~
12 ~~use of physical force against the intimate partner or child that would~~
13 ~~reasonably be expected to cause bodily injury.~~
- 14 ~~2. A person who violates subdivision a or, b, e, f, g, h, or i of subsection 1 is guilty of a~~
15 ~~class C felony, and a person who violates subdivision c or d of subsection 1 is guilty of~~
16 ~~a class A misdemeanor.~~
- 17 ~~3. A person who violates subdivision a or b of subsection 1 and has three or more prior~~
18 ~~felony convictions on separate occasions under any provisions in chapter 12.1-16,~~
19 ~~12.1-17, 12.1-18, or 12.1-20, section 12.1-21-01, chapter 12.1-22, subsection 1 of~~
20 ~~19-03.1-23, or a similar offense from another court in North Dakota or a court of record~~
21 ~~in the United States, is guilty of a class B felony. A conviction under this subsection~~
22 ~~carries a presumptive minimum term of imprisonment of five years. If the sentencing~~
23 ~~court does not impose at least the presumptive minimum term of imprisonment for an~~
24 ~~offense under this section, the court shall justify the reasoning for a departure from the~~
25 ~~presumptive minimum sentence within the judgment.~~
- 26 ~~2.4. For the purposes of this section, "conviction" means a determination that the person~~
27 ~~committed one of the above mentioned crimes upon a verdict of guilt, a plea of guilty,~~
28 ~~or a plea of nolo contendere even though:~~
- 29 ~~a. The court suspended execution of sentence in accordance with subsection 3 of~~
30 ~~section 12.1-32-02;~~

- 1 ~~b. The court deferred imposition of sentence in accordance with subsection 4 of~~
2 ~~section 12.1-32-02;~~
- 3 ~~c. The court placed the person on probation;~~
- 4 ~~d. The person's conviction has been reduced in accordance with subsection 9 of~~
5 ~~section 12.1-32-02 or section 12.1-32-07.1;~~
- 6 ~~e. Sentence dispositions, sentence reductions, or offense determinations equivalent~~
7 ~~to this section were imposed or granted by a court, board, agency, or law of~~
8 ~~another state or the federal government; or~~
- 9 ~~f. The person committed an offense equivalent to an offense described in~~
10 ~~subdivision a or b of subsection 1 when that person was subject to juvenile~~
11 ~~adjudication or proceedings and a determination of a court under chapter 27-20.4~~
12 ~~or of a court of another state or the federal government was made that the~~
13 ~~person committed the delinquent act or offense.~~
- 14 ~~3.5. For purposes of subsection 1, unless the pardon, expungement, or restoration of civil~~
15 ~~rights expressly provides that a person may not ship, transport, possess, or receive~~
16 ~~firearms, a person is not considered to have been convicted of a crime under~~
17 ~~subdivision a, b, or g of subsection 1 if:~~
- 18 ~~a. The conviction has been expunged or set aside; or~~
- 19 ~~b. The conviction is for an offense for which the person has been pardoned or has~~
20 ~~had civil rights restored if the law of the applicable jurisdiction provides for the~~
21 ~~loss of civil rights for the offense.~~
- 22 ~~6. A felon who is not sentenced under section 12.1-32-09.1 may possess a rifle that has~~
23 ~~a barrel sixteen inches [40.72 centimeters] or longer or a shotgun that has a barrel~~
24 ~~eighteen inches [45.72 centimeters] or longer and which is one of the following:~~
- 25 ~~a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or~~
26 ~~similar type of ignition system, manufactured before 1899.~~
- 27 ~~b. A replica of any firearm described in subdivision a, if the replica is not designed~~
28 ~~or redesigned for using rimfire or conventional centerfire fixed ammunition or~~
29 ~~uses rimfire or conventional centerfire fixed ammunition that is no longer~~
30 ~~manufactured in the United States and which is not readily available in the~~
31 ~~ordinary channels of commercial trade.~~

1 ~~_____ e. A muzzleloading rifle or muzzleloading shotgun designed to use black powder or~~
2 ~~_____ a black powder substitute and which cannot use fixed ammunition.~~

3 ~~_____ **SECTION 6.** Section 62.1-02-15 of the North Dakota Century Code is created and enacted~~
4 ~~_____ as follows:~~

5 ~~_____ **62.1-02-15. Possession of a firearm in furtherance of a felony crime of violence or**~~
6 ~~_____ **drug trafficking crime.**~~

7 ~~_____ 1. Any person who, during and in relation to any felony crime of violence or drug~~
8 ~~_____ trafficking crime, uses or carries a firearm, or who, in furtherance of any such crime,~~
9 ~~_____ possesses a firearm, is guilty of a class B felony. A conviction under this section~~
10 ~~_____ carries a presumptive minimum term of imprisonment which may not run concurrently~~
11 ~~_____ to the punishment provided for the felony crime of violence or drug trafficking crime.~~
12 ~~_____ The presumptive minimum term of imprisonment is:~~

13 ~~_____ a. Not less than three years;~~

14 ~~_____ b. Not less than five years if the firearm is brandished; or~~

15 ~~_____ c. Not less than seven years if the firearm is discharged.~~

16 ~~_____ 2. If the firearm possessed by a person convicted of a violation of this section is a short-~~
17 ~~_____ barreled rifle, short barreled shotgun, machine gun, submachine gun, or fully~~
18 ~~_____ automatic rifle, the presumptive minimum term of imprisonment is not less than seven~~
19 ~~_____ years.~~

20 ~~_____ 3. For a violation of this section which occurs after a previous conviction under this~~
21 ~~_____ section has become final, the person is guilty of a class A felony and the presumptive~~
22 ~~_____ minimum term of imprisonment is not less than ten years.~~

23 ~~_____ 4. Notwithstanding any other provision of law:~~

24 ~~_____ a. A term of imprisonment imposed on a person under this section may not run~~
25 ~~_____ concurrently with any other term of imprisonment imposed on the person,~~
26 ~~_____ including any term of imprisonment imposed for the felony crime of violence or~~
27 ~~_____ drug trafficking crime during which the firearm was used, carried, or possessed;~~

28 ~~_____ b. An offender who is convicted of a crime under this section is not eligible for~~
29 ~~_____ release from confinement on any basis until eighty-five percent of the sentence~~
30 ~~_____ imposed by the court has been served or the sentence is commuted. For~~

1 ~~purposes of this subsection, confinement does not include placement in a~~
2 ~~halfway house, treatment facility, or other community placement; and~~
3 ~~c. If the sentencing court does not impose at least the presumptive minimum term~~
4 ~~of imprisonment for an offense under this section, the court shall justify the~~
5 ~~reasoning for a departure from the presumptive minimum sentence within the~~
6 ~~judgment.~~

7 ~~5. For purposes of this section:~~

8 ~~a. "Brandish" means, with respect to a firearm, to display all or part of the firearm, or~~
9 ~~otherwise make the presence of the firearm known to another individual, in order~~
10 ~~to intimidate that individual, regardless of whether the firearm is directly visible to~~
11 ~~that individual.~~

12 ~~b. "Drug trafficking crime" means a violation of subsection 1 or 3 of section~~
13 ~~19-03.1-23.~~

14 ~~c. "Felony crime of violence" means a felony violation of section 12.1-16-01,~~
15 ~~12.1-16-02, 12.1-16-03, 12.1-17-01.2, 12.1-17-02, 12.1-17-03, 12.1-17-04,~~
16 ~~12.1-17-12, 12.1-18-01, 12.1-18-02, 12.1-20-03, 12.1-20-04, 12.1-20-07,~~
17 ~~12.1-20-12.3, 12.1-21-01, 12.1-21-02, 12.1-22-01, or 12.1-22-02.~~

18 **SECTION 4. LEGISLATIVE MANAGEMENT STUDY - FIREARM POSSESSION.** During
19 the 2023-24 interim, the legislative management shall consider studying those provisions of the
20 North Dakota Century Code that prohibit certain individuals from possessing a firearm. The
21 study may include an examination of the state's firearm and weapon possession prohibitions as
22 compared to the federal regulations. The study must include an examination of whether the
23 category of individuals prohibited from possessing a firearm by statute should be maintained as
24 is, narrowed, or expanded. The study must include input from the attorney general, the supreme
25 court, the association of counties, the league of cities, the state's attorney association, the
26 association of criminal defense lawyers, and the peace officers association. The legislative
27 management shall report its findings and recommendations, together with any legislation
28 necessary to implement the recommendations, to the sixty-ninth legislative assembly.



POLICE

Mandan North Dakota

Jason J. Ziegler
 Chief of Police
 205 1st Ave NW
 Mandan, ND 58554
 701-667-3250

Date: March 14, 2023

To: Chair Representative L. Klemin and House Judiciary Committee Members

From: Jason J. Ziegler Chief of Police for City of Mandan

Reference: SB 2107: Relating to sentences for crimes committed with firearms and for fleeing law enforcement.

I am Chief Jason J. Ziegler, the Chief of Police for the City of Mandan and the current sitting president for the North Dakota Chiefs of Police Association. As a police officer for almost 33 years, I am here today in support of SB 2107.

I will breakdown how this bill if turned into law will not only help the citizens of Mandan but all communities across the Great State of North Dakota.

Currently law enforcement is experiencing a workforce shortage and in my professional opinion one of the major factors is that it's a dangerous job and individuals who may want to do the job think twice because of that reason. It's hard to recruit and retain officers when criminals can assault them, flee from them and shoot at them with very little consequences. I hear it from police officers all the time that the criminal gets no time or very little time for the crimes they commit. This kills morale among police officers, and in some cases as we have seen across our country cause officers to not even engage in enforcing the law. If we as a State take the stance that we will not let the criminals make victims of our citizens and let our officers know that if they track down those in our communities that want to do harm to others, we will send a clear message to all criminals, "Not in our State!"

SB 2107 would address many of the concerns of most police officers, and when a criminal knows that there are minimum mandatories if they assault a police officer, flee from a police officer and or use a firearm in the commission of a crime they will spend significant time in jail or prison, they may think twice before victimizing the innocent citizens or our brave police officers.

***Fleeing:** When a criminal flees in a vehicle from law enforcement they do it for one purpose, to avoid capture and arrest from the police. Fleeing in a vehicle from the police is one of the most dangerous things to our communities that can happen. In many cases the fleeing criminal has committed a crime and or has an active warrant for their arrest. Our police officers know how dangerous these pursuits can be and in many cases will not pursue. The fleeing criminal does not care for anyone except themselves and continue to flee after the police cancel. These fleeing criminals do sometimes crash, even after the police are no longer pursuing. This is an unnecessary endangerment to our communities and a minimum of 14 days in jail may reduce fleeing incidents, and at the minimum it would keep them off the streets for 14 days.*

In Mandan we have experienced the following increases in fleeing vehicles from the police:

2013	2014	2015	2016*	2017*	2018	2019	2020	2021	2022
3	3	19	28	12	54	42	49	53	55
0	0	+533%	+47%	-57%	+350%	-22%	+17%	+8%	+4%

*DAPL

As the above illustrates there is a consistent pattern of increasing dangerous pursuits in Mandan.

Assault: When a criminal resist arrest and or assaults an officer, they do it for one reason and that is to avoid arrest. This section of SB 2107 should speak for itself and in my professional opinion, someone who is attempting to prevent any police officer from performing their lawful duties and or assaults them should do the minimum of 30 days in jail, if not more. If we cannot protect the protectors, then how do we expect good people to want to be police officers? Again let's send the message "Not in our State!"

Firearm: When a criminal possesses, points or fires a firearm in the commission of a crime there intent is not only to avoid arrest but to terrorize victims. With crimes becoming more violent and the belief that criminals are now victims our police officers are seeing more and more firearms on the street. In the Mandan/Bismarck Metro our agencies have a Narcotics Taskforce. Over the past three years they have seen a significant increase in firearms being seized from drug dealers. Below is a breakdown on what they have experienced:

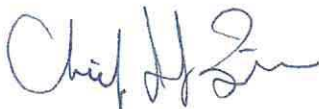
Year	2020	2021	2022
Firearms Seized	24	50	60
Percentage +/-	N/A	+108%	+20%

This section of the bill will not affect law abiding citizens. If a criminal knew that if they uses a firearm they would do minim of 3yrs to 7yrs they once again would think twice from using them.

Let's send a message to violent criminals "Not in our State!"

I want to thank Chair Klemin and the House Judiciary Committee and I am recommending a do pass on SB 2107.

Respectfully,



Jason J. Ziegler
Chief of Police
City of Mandan

HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE LAWRENCE R. KLEMIN, CHAIRMAN
MARCH 14, 2023

DAVID KRABBENHOFT, DIRECTOR, NORTH DAKOTA DEPARTMENT OF
CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: SB 2107

My name is Dave Krabbenhoft and I am the Director for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify neutral on SB 2107.

From all we see and hear in the media and in data, it is apparent that gun crimes are growing concern in this state. We all share those concerns for the health and safety of our communities. If this bill is enacted in its current state, according to section 8 an additional Class B felony crime will be in statute that requires the judges to impose upon convicted individuals minimum mandatory incarceration sentences ranging from three to seven years. Keep in mind that the court may impose any sentence up to the maximum of allowed by law. Additionally, any sentence imposed according to this new law requires the following:

1. The individual serve 85% of the sentence without the benefit of parole,
2. The sentence may not run concurrently with any other sentence, and
3. Restricts the department from placing the individual in a halfway house, treatment facility or other community confinement.

Depending on the circumstances, incarceration of perpetrators committing violent offenses may be necessary; however, protecting the health and safety of our communities and victims does not end there. Our role in the Department of Corrections and Rehabilitation requires us working with individuals to make them better citizens. This includes engaging those incarcerated in evidence-based treatment, work, education and other programs and services to reduce the likelihood that the individual will continue to engage in criminal behavior upon their release (96% of those incarcerated will be released back to the community). It also is necessary to have some parole eligibility as an option for release planning as people transition back to our communities. Authorizing parole eligibility aids the DOCR by incentivizing people to engage in rehabilitative programs and services. It also plays a significant role in promoting public and victim safety by giving the parole board the opportunity to consider release and if granted, setting the terms and conditions for the parole release. Once on parole, officers can assist the individual in overcoming the obstacles they will face to obtain employment, transportation, housing and other community services. Parole officers can also proactively prevent crime by enforcing conditions of supervision which may result in the individual being returned to prison due to technical violations rather than waiting until the individual commits another crime and there are more victims. As much as arrest, conviction and incarceration are components to public health and safety, so too are rehabilitative programming, transitional planning and post-release supervision.

We also have some concerns with sections 1, 2 and 6 relating to presumptive sentences for crimes of fleeing, assault on a peace officer and preventing arrest. As written, the corresponding presumptive minimum sentences may not be served concurrently and must be served in jail. It is very possible that these sentences may be run consecutively to a state prison

sentence. This will result in deputies spending more time transporting people from prison to the jail to serve their sentences that may range from 14 – 30 days or more. This places additional strain on already limited jail and law enforcement resources. Additionally, this results in interruptions in the transition to supervision process that can result in housing, transportation and parole/probation supervision challenges.

Closing:

We support amendments to this bill focusing on public health and safety and encouraging effective use of resources. We emphasize that incentivizing people to engage in DOCR programs and services and having opportunities for parole release and supervision benefit the individual, but even more so, it benefits the health and safety of our communities. When you set requirements for punishing and removing people from society who use a firearm to commit a violent offense, it is our belief that rehabilitation services, transitional planning and parole supervision are standards that have at least equal necessity, if not greater, especially when we are dealing with people who have engaged in violent behavior using firearms.

23.8013.04001
Title.

Prepared by the Legislative Council staff for
Representative Satrom
March 9, 2023

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2107

Page 1, line 1, remove "create and enact sections 12.1-17-14 and 62.1-02-15 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to shooting offenses and drug trafficking; to"

Page 1, line 3, replace "12.1-08-02, 12.1-17-01" with "12.1-17-03"

Page 1, line 3, after the third comma insert "and"

Page 1, line 3, remove ", 39-10-71, and 62.1-02-01"

Page 1, line 4, remove "sentences for crimes committed with firearms and for fleeing"

Page 1, line 5, replace "law enforcement" with "reckless endangerment, mandatory prison terms for armed offenders, and presumptive probation; to provide for a legislative management study"

Page 1, remove lines 7 through 23

Page 2, remove lines 1 through 30

Page 3, replace lines 1 through 8 with:

"SECTION 1. AMENDMENT. Section 12.1-17-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-03. Reckless endangerment.

A person is guilty of an offense if ~~he~~the person creates a substantial risk of serious bodily injury or death to another. The offense is a class B felony if the offense is committed by discharging a firearm, and a class C felony if the circumstances manifest ~~his~~the person's extreme indifference to the value of human life. Otherwise it is a class A misdemeanor. There is risk within the meaning of this section if the potential for harm exists, whether or not a particular person's safety is actually jeopardized."

Page 3, line 16, remove "or"

Page 3, line 16, remove the overstrike over "~~, or firearm~~"

Page 3, line 18, remove "or"

Page 3, line 18, remove the overstrike over "~~, or firearm~~"

Page 3, line 20, remove "or"

Page 3, line 21, remove the overstrike over "~~, or firearm~~"

Page 3, after line 26, insert:

"c. If the court finds the offender is a special dangerous or habitual offender under subdivision a, b, c, or d of subsection 1 of section 12.1-32-09 and the offender violates subsection 1 of this section, the court shall impose a minimum sentence of ten years' imprisonment, if

the offense is a class AA, class A, or class B felony. If the offense is a class C felony, the court shall impose a minimum sentence of seven years' imprisonment. An offender sentenced under this subdivision is not eligible for parole any earlier than eighteen months before the expiration of the mandatory sentence."

Page 3, line 29, overstrike "An" and insert immediately thereafter "Unless the offender is sentenced under subdivision c of subsection 2, an"

Page 4, line 9, after the second underscored comma insert "section 12.1-17-03."

Page 4, remove lines 25 through 31

Page 5, remove lines 1 through 31

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 30

Page 10, replace lines 1 through 24 with:

"SECTION 4. LEGISLATIVE MANAGEMENT STUDY - FIREARM

POSSESSION. During the 2023-24 interim, the legislative management shall consider studying those provisions of the North Dakota Century Code that prohibit certain individuals from possessing a firearm. The study may include an examination of the state's firearm and weapon possession prohibitions as compared to the federal regulations. The study must include an examination of whether the category of individuals prohibited from possessing a firearm by statute should be maintained as is, narrowed, or expanded. The study must include input from the attorney general, the supreme court, the association of counties, the league of cities, the state's attorney association, the association of criminal defense lawyers, and the peace officers association. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

AG 3-28-23

23.8013.04000

SECOND ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

REENGROSSED SENATE BILL NO. 2107

Introduced by

Judiciary Committee

(At the request of the Attorney General)

A BILL for an Act to create and enact sections 12.1-17-14 and 62.1-02-15 of the North Dakota Century Code, relating to shooting offenses and drug trafficking; to amend and reenact sections 12.1-08-02, 12.1-17-01, 12.1-32-02.1, 12.1-32-07.4, 12.1-32-09.1, and 39-10-71, ~~and 62.1-02-01~~ of the North Dakota Century Code, relating to sentences for crimes committed with firearms and for fleeing law enforcement; to provide for a legislative study; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-02. Preventing arrest or discharge of other duties.

1. A person is guilty of a class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another for a misdemeanor or infraction, or from discharging any other official duty, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty. A person is guilty of a class C felony if, with intent to prevent a public servant from effecting an arrest of himself or another for a class A, B, or C felony, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting such an arrest.
2. It is a defense to a prosecution under this section that the public servant was not acting lawfully, but it is no defense that the defendant mistakenly believed that the public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully.

3. A conviction under this section carries a presumption of a ~~jail~~ sentence of incarceration of at least fourteen days and, if there is an underlying conviction, the presumed ~~jail~~ sentence of incarceration may not be served concurrently to any ~~jail~~ sentence of incarceration for the underlying conviction. If the sentencing court, in the exercise of the court's discretion, does not impose at least the presumed minimum term of ~~imprisonment incarceration~~, the court shall justify the reason for a departure from the presumptive ~~jail~~ sentence within the judgment.

SECTION 2. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
 - a. Willfully causes bodily injury to another human being; or
 - b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
 - a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.
 - b. A class B misdemeanor except as provided in subdivision a.
3. A conviction under subdivision a of subsection 2 of this section carries a presumption of a ~~jail~~ sentence of incarceration of at least thirty days and if there is an underlying conviction the presumption may not be served concurrently to any ~~jail~~ sentence of incarceration for the underlying conviction. If the sentencing court, in the exercise of the court's discretion, does not impose at least the presumptive minimum term of ~~imprisonment incarceration~~, the court shall justify the reasoning for a departure from the presumptive ~~jail~~ sentence within the judgment.

SECTION 3. Section 12.1-17-14 of the North Dakota Century Code is created and enacted as follows:

12.1-17-14. Shooting at inhabited dwelling or camper; or occupied structure, vehicle, or aircraft - Penalty.

Any person who willfully discharges a firearm at an inhabited dwelling, occupied structure, occupied motor vehicle, occupied aircraft, or inhabited camper is guilty of a class B felony. As used in this section, "inhabited" means currently used for dwelling purposes, whether occupied or not.

SECTION 4. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:
 - a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, ~~or~~ destructive device, or firearm; or *62.1-02.0*
prohibited from possessing a firearm under section
 - b. ¹ The offender possesses or has within immediate reach and control a dangerous weapon, explosive, ~~or~~ destructive device, or firearm while in the course of committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.
2. This requirement applies only when possession of a dangerous weapon, explosive, ~~or~~ destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:
 - a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
 - b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.
3. This section applies even when being armed is an element of the offense for which the offender is convicted.
4. An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence.

5. This section does not apply to an offender convicted under section 62.1-02-15.

Why?

Q. Sanjay Gandhi

See new section on p. 6

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

12.1-32-07.4. Presumptive probation.

1. The sentencing court shall sentence an individual who has pled guilty to, or has been found guilty 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 subject to registration under section 12.1-32-15; an offense involving a firearm or dangerous weapon, explosive, or incendiary device; an offense in violation of section 12.1-08-02, subdivision a of subsection 2 of section 12.1-17-01, or section 39-10-71; or if a mandatory term of incarceration is required by law.
2. The sentencing court may impose a sentence of imprisonment if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. Aggravating factors include:
 - a. That the individual has pled guilty to, or has been found guilty of, a felony offense or class A misdemeanor offense prior to the date of the commission of the offense or offenses charged in the complaint, information, or indictment;
 - b. The age and vulnerability of the victim, whether the individual was in a position of responsibility or trust over the victim, or whether the individual abused a public position of responsibility or trust; or
 - c. If the individual used threats or coercion in the commission of the offense.
3. 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 if execution of the sentence is suspended.

SECTION 6. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. Sentencing of violent offenders.

1. Except as provided under section 12-48.1-02 and pursuant to rules adopted by the department of corrections and rehabilitation, and offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-17-14, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02,

or an attempt to commit the offenses, and who receives a sentence of ~~imprisonment~~ incarceration is not eligible for release from ~~confinement~~ incarceration on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted.

SECTION 67. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

39-10-71. Fleeing or attempting to elude a peace officer - Penalty.

1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a:
 - a. Class A misdemeanor for a first offense and a class C felony for a subsequent offense within three years;
 - b. Class C felony if the driver violates this section while willfully fleeing during or after the commission of a felony; or
 - c. Class C felony if, at any time during the flight or pursuit, the driver willfully operates the vehicle in a manner constituting an inherent risk of death or serious bodily injury to a third person.
2. A signal complies with this section if the signal is perceptible to the driver and:
 - a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
 - b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.
3. A conviction under this section carries a presumption of a ~~jail~~ sentence of incarceration of at least thirty days and, if there is an underlying conviction, the presumed ~~jail~~ sentence of incarceration may not be served concurrently to any ~~jail~~ sentence of incarceration for the underlying conviction. If the sentencing court, in the exercise of the court's discretion, does not impose at least the presumptive minimum term of ~~imprisonment~~ incarceration, the court shall justify the reason for a departure from the presumptive ~~jail~~ sentence within the judgment.

SECTION 8. Section 62.1-02-15 of the North Dakota Century Code is created and enacted as follows:

62.1-02-15. Possession of a firearm in furtherance of a felony crime of violence or drug trafficking crime.

1. Any person who, knowingly possesses, within the person's proximity, or uses a firearm during ~~and or~~ in relation to any felony crime of violence or drug trafficking crime, ~~uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm,~~ is guilty of a class B felony. A conviction under this section carries a presumptive minimum term of ~~imprisonment~~ incarceration which may not run concurrently to the punishment provided for the underlying felony crime of violence or drug trafficking crime. The presumptive minimum term of ~~imprisonment~~ incarceration is:
 - a. Not less than three years if the firearm is possessed within the person's proximity;
 - b. Not less than five years if the firearm is brandished; or
 - c. Not less than seven years if the firearm is discharged.
2. If the firearm possessed by a person convicted of a violation of this section is a short-barreled rifle, short-barreled shotgun, machine gun, submachine gun, or fully automatic rifle, the presumptive minimum term of ~~imprisonment~~ incarceration is not less than seven years.
3. For a violation of this section which occurs after a previous conviction under this section has become final, the person is guilty of a class A felony and the presumptive minimum term of ~~imprisonment~~ incarceration is not less than ten years.
4. Notwithstanding any other provision of law:
 - a. ~~A term of imprisonment imposed on a person under this section may not run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the felony crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed;~~
 - b. An offender who is convicted of a crime under this section is not eligible for release from ~~confinement~~ incarceration on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted. ~~For purposes of this subsection, confinement~~ incarceration does not include placement in a halfway house, treatment facility, or other community placement; and

e.b. If the sentencing court, in the exercise of the court's discretion, does not impose at least the presumptive minimum term of imprisonment incarceration for an offense under this section, the court shall justify the reasoning for a departure from the presumptive minimum sentence within the judgment.

5. For purposes of this section:

- a. "Brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another individual, in order to intimidate that individual, regardless of whether the firearm is directly visible to that individual.
- b. "Drug trafficking crime" means a violation of subsection 1 or 3 of section 19-03.1-23.
- c. "Felony crime of violence" means a felony violation of section 12.1-16-01, 12.1-16-02, 12.1-16-03, 12.1-17-01.2, 12.1-17-02, 12.1-17-03, 12.1-17-04, 12.1-17-12, 12.1-18-01, 12.1-18-02, 12.1-20-03, 12.1-20-04, 12.1-20-07, 12.1-20-12.3, 12.1-21-01, 12.1-21-02, 12.1-22-01, or 12.1-22-02.

SECTION 9. LEGISLATIVE MANAGEMENT STUDY – FIREARM POSSESSION.

During the 2023-24 interim, the legislative management shall consider studying those provisions of the North Dakota Century Code which prohibit certain individuals from possessing a firearm. The study may include an examination of the state's firearm and weapon possession prohibitions as compared to the federal regulations. The study must include an examination of whether the category of individuals prohibited from possessing a firearm by statute should be maintained as is, narrowed, or expanded. The study must include input from the attorney general, the supreme court, the association of counties, the league of cities, the state's attorney association, the association of criminal defense lawyers, and the peace officer's association. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

add NRA

Proposed Attorney General Amendments to Reengrossed SB2107

SB2107, as amended, remains a narrowly targeted solution to the statistically dramatic statewide increase in gun violence and violence toward law enforcement.

The Attorney General and Chief Deputy Attorney General have met with and/or phone conferenced with many state's attorneys and assistant state's attorneys in order to now offer these amendments. Several members of the House Judiciary Committee have also collaborated with the Attorney General in devising amendments to the reengrossed bill, as have officials from DOCR. Several Senators have also been consulted regarding proposed amendments to the version of the bill passed by the State Senate, 41-6.

The Sheriffs Association, Chiefs of Police Association, and ND Peace Officers Association remain adamant in their support of this legislation.

As a result of discussions with stakeholders, the Attorney General offers additional amendments to reengrossed SB2107:

- **Section 1, 2, and 7:** clarifies that sentences in this provision are **discretionary to the court** and replaces the word "jail" with "incarceration," to avoid any arguable confusion regarding placement during incarceration. (*Amendment at suggestion of DOCR*)
- **Section 4:** Removes amending language from the Attorney General's original proposal and will leave current law (NDCC 12.1-32-02.1) unchanged. (*Amendment at the suggestion of several state's attorneys and assistant state's attorneys.*)
- **Section 6:** Technical clarification, per collaboration with other stakeholders.
- **Section 8:** Clarifies that the statute applies only to those who "knowingly possess" (either on their person or within their proximity) or "use" a firearm "during or in relation to any felony crime of violence or drug trafficking." (*In response to suggestions from a handful of state's attorneys.*)
 - Proposed amendment also removes unnecessary language from SB2107, per collaborative discussions with stakeholders.
- **Section 9:** Scraps the original proposal that added categories of people who are not permitted to lawfully carry firearms in North Dakota, opting for a study of that topic, and calls for input from a wide array of stakeholders in the criminal justice system. (*At the suggestion of a handful of state's attorneys.*)
- **The term "presumptive mandatory minimum"** signals that the legislature leaves the sentencing discretion to the courts but directs the court to explain in writing if they elect to sentence below the legislative presumption.

- Here are the **presumptive** mandatory sentences in SB2107:
 - If someone is committing a felony crime of violence or felony drug trafficking offense **and**:
 - Has a firearm in their physical or proximate possession while doing so: the bill provides that the defendant **should** get at least an additional 3 years on their sentence;
 - Brandishes a firearm while committing the offense: the bill provides that the defendant **should** get at least an additional 5 years on their sentence; or
 - Discharges a firearm – or has an illegal firearm (such as a fully automatic machine gun) while committing the offense: the bill provides that the defendant **should** get at least an additional 7 years on their sentence.
- Under the current version of SB2107, it is presumed these sentences are served **consecutively**, not concurrently, with the sentences for the underlying offenses.
 - If a court doesn't make the sentence consecutive, then the court must put their reasons in writing.
- Under SB2107, defendants must serve at least 85% of the sentence of incarceration handed down by the court and must serve that time incarcerated, not in a halfway house or community center.

The amended bill still protects our law enforcement officers:

- Provides a presumptive 14-day sentence for defendants who resist arrest and create a substantial risk of bodily injury to the peace officer.
- Provides a presumptive 30-day sentence for defendants assaulting or fleeing from a peace officer.
 - Same sentencing presumptions as for the violent crime provisions of SB2107, regarding the presumption of the sentence being served consecutively to any other sentence, and defendants must serve at least 85% incarcerated.
 - If a judge chooses not to impose these sentences, the judge must then provide an explanation in writing. This sunshine provision is an important policy aspect of this bill. Judges should have daylight on their decisions, just as legislators and executive branch officials already do.

23.8013.04003
Title.

Prepared by the Legislative Council staff for
Representative Klemin
April 4, 2023

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2107

In lieu of the amendments adopted by the House as printed on pages 1412 and 1413 of the House Journal, Reengrossed Senate Bill No. 2107 is amended as follows:

Page 1, line 3, after "12.1-17-01" insert ", 12.1-17-03"

Page 1, line 3, after the fourth comma insert "12.1-32-09.1, and"

Page 1, line 3, remove ", and 62.1-02-01"

Page 1, line 5, after "enforcement" insert ", reckless endangerment, mandatory prison terms for armed offenders, and presumptive probation; to provide for a legislative management study"

Page 2, line 1, remove "jail"

Page 2, line 1, after "sentence" insert "of incarceration"

Page 2, line 2, remove "jail"

Page 2, line 2, after "sentence" insert "of incarceration"

Page 2, line 3, remove "jail"

Page 2, line 3, after "sentence" insert "of incarceration"

Page 2, line 4, after "court" insert ", in the exercise of the court's discretion"

Page 2, line 5, replace "imprisonment" with "incarceration"

Page 2, line 6, remove "jail"

Page 2, line 25, remove "of this section"

Page 2, line 26, remove "jail"

Page 2, line 26, after "sentence" insert "of incarceration"

Page 2, line 27, remove "jail"

Page 2, line 27, after "sentence" insert "of incarceration"

Page 2, line 28, after "court" insert ", in the exercise of the court's discretion."

Page 2, line 29, replace "imprisonment" with "incarceration"

Page 2, line 30, remove "jail"

Page 3, after line 8, insert:

"SECTION 4. AMENDMENT. Section 12.1-17-03 of the North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.
4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.
5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation."

Page 5, line 15, remove "jail"

Page 5, line 15, after "sentence" insert "of incarceration"

Page 5, line 16, remove "jail"

Page 5, line 16, after "sentence" insert "of incarceration"

Page 5, line 17, remove "jail"

Page 5, line 17, after "sentence" insert "of incarceration"

Page 5, line 18, after "court" insert ", in the exercise of the court's discretion,"

Page 5, line 18, replace "imprisonment" with "incarceration"

Page 5, line 19, remove "jail"

Page 5, remove lines 21 through 31

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 9

Page 9, line 14, after the underscored comma insert "knowingly possesses, within the person's proximity, or uses a firearm"

Page 9, line 14, replace "and" with "or"

Page 9, line 15, remove ", uses or carries a firearm, or who, in furtherance of any such crime,"

Page 9, line 16, remove "possesses a firearm"

Page 9, line 17, replace "imprisonment" with "incarceration"

Page 9, line 18, after the second "the" insert "underlying"

Page 9, line 19, replace "imprisonment" with "incarceration"

Page 9, line 20, after "years" insert "if the firearm is possessed within the person's proximity"

Page 9, line 25, replace "imprisonment" with "incarceration"

Page 9, line 29, replace "imprisonment" with "incarceration"

Sixty-eighth
Legislative Assembly
of North Dakota

REENGROSSED SENATE BILL NO. 2107

Introduced by

Judiciary Committee

(At the request of the Attorney General)

1 A BILL for an Act to create and enact sections 12.1-17-14 and 62.1-02-15 of the North Dakota
 2 Century Code, relating to shooting offenses and drug trafficking; to amend and reenact sections
 3 12.1-08-02, 12.1-17-01, 12.1-17-03, 12.1-32-02.1, 12.1-32-07.4, 12.1-32-09.1, and 39-10-71,
 4 ~~and 62.1-02-04~~ of the North Dakota Century Code, relating to sentences for crimes committed
 5 with firearms and for fleeing law enforcement, reckless endangerment, mandatory prison terms
 6 for armed offenders, and presumptive probation; to provide for a legislative management study;
 7 and to provide a penalty.

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

9 **SECTION 1. AMENDMENT.** Section 12.1-08-02 of the North Dakota Century Code is
 10 amended and reenacted as follows:

11 **12.1-08-02. Preventing arrest or discharge of other duties.**

- 12 1. A person is guilty of a class A misdemeanor if, with intent to prevent a public servant
 13 from effecting an arrest of himself or another for a misdemeanor or infraction, or from
 14 discharging any other official duty, he creates a substantial risk of bodily injury to the
 15 public servant or to anyone except himself, or employs means justifying or requiring
 16 substantial force to overcome resistance to effecting the arrest or the discharge of the
 17 duty. A person is guilty of a class C felony if, with intent to prevent a public servant
 18 from effecting an arrest of himself or another for a class A, B, or C felony, he creates a
 19 substantial risk of bodily injury to the public servant or to anyone except himself, or
 20 employs means justifying or requiring substantial force to overcome resistance to
 21 effecting such an arrest.
- 22 2. It is a defense to a prosecution under this section that the public servant was not
 23 acting lawfully, but it is no defense that the defendant mistakenly believed that the

1 public servant was not acting lawfully. A public servant executing a warrant or other
2 process in good faith and under color of law shall be deemed to be acting lawfully.
3 3. A conviction under this section carries a presumption of a jail-sentence of incarceration
4 of at least fourteen days and, if there is an underlying conviction, the presumed jail-
5 sentence of incarceration may not be served concurrently to any jail-sentence of
6 incarceration for the underlying conviction. If the sentencing court, in the exercise of
7 the court's discretion does not impose at least the presumed minimum term of
8 imprisonmentincarceration, the court shall justify the reason for a departure from the
9 presumptive jail-sentence within the judgment.

10 **SECTION 2. AMENDMENT.** Section 12.1-17-01 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **12.1-17-01. Simple assault.**

- 13 1. A person is guilty of an offense if that person:
- 14 a. Willfully causes bodily injury to another human being; or
- 15 b. Negligently causes bodily injury to another human being by means of a firearm,
- 16 destructive device, or other weapon, the use of which against a human being is
- 17 likely to cause death or serious bodily injury.
- 18 2. The offense is:
- 19 a. A class C felony when the victim is a peace officer or correctional institution
- 20 employee acting in an official capacity, which the actor knows to be a fact; an
- 21 employee of the state hospital acting in the course and scope of employment,
- 22 which the actor knows to be a fact, and the actor is an individual committed to or
- 23 detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a
- 24 judicial proceeding; or a member of a municipal or volunteer fire department or
- 25 emergency medical services personnel unit or emergency department worker in
- 26 the performance of the member's duties.
- 27 b. A class B misdemeanor except as provided in subdivision a.
- 28 3. A conviction under subdivision a of subsection 2 of this section carries a presumption
29 of a jail-sentence of incarceration of at least thirty days and if there is an underlying
30 conviction the presumption may not be served concurrently to any jail-sentence of
31 incarceration for the underlying conviction. If the sentencing court, in the exercise of

1 the court's discretion, does not impose at least the presumptive minimum term of
2 imprisonment in incarceration, the court shall justify the reasoning for a departure from
3 the presumptive jail sentence within the judgment.

4 **SECTION 3.** Section 12.1-17-14 of the North Dakota Century Code is created and enacted
5 as follows:

6 **12.1-17-14. Shooting at inhabited dwelling or camper; or occupied structure, vehicle,**
7 **or aircraft - Penalty.**

8 Any person who willfully discharges a firearm at an inhabited dwelling, occupied structure,
9 occupied motor vehicle, occupied aircraft, or inhabited camper is guilty of a class B felony. As
10 used in this section, "inhabited" means currently used for dwelling purposes, whether occupied
11 or not.

12 **SECTION 4. AMENDMENT.** Section 12.1-17-03 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **12.1-17-03. Reckless endangerment.**

15 A person is guilty of an offense if ~~he~~the person creates a substantial risk of serious bodily
16 injury or death to another. The offense is a class B felony if the offense is committed by
17 intentionally or knowingly discharging a firearm. The offense is a class C felony if the
18 circumstances manifest ~~his~~the person's extreme indifference to the value of human life.
19 Otherwise it is a class A misdemeanor. There is risk within the meaning of this section if the
20 potential for harm exists, whether or not a particular person's safety is actually jeopardized.

21 **SECTION 5. AMENDMENT.** Section 12.1-32-02.1 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **12.1-32-02.1. Mandatory prison terms for armed offenders.**

- 24 1. Notwithstanding any other provision of this title, a term of imprisonment must be
25 imposed upon an offender and served without benefit of parole when:
- 26 a. In the course of committing an offense, the offender inflicts or attempts to inflict
27 bodily injury upon another, threatens or menaces another with imminent bodily
28 injury with a dangerous weapon, explosive, ~~or~~ destructive device, or firearm; or
 - 29 b. The offender possesses or has within immediate reach and control a dangerous
30 weapon, explosive, ~~or~~ destructive device, or firearm while in the course of
31 committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.

- 1 2. This requirement applies only when possession of a dangerous weapon, explosive, ~~or~~
2 destructive device, **or firearm** has been charged and admitted or found to be true in
3 the manner provided by law, and must be imposed as follows:
 - 4 a. If the offense for which the offender is convicted is a class AA, class A, or class B
5 felony, the court shall impose a minimum sentence of four years' imprisonment.
 - 6 b. If the offense for which the offender is convicted is a class C felony, the court
7 shall impose a minimum sentence of two years' imprisonment.
- 8 3. This section applies even when being armed is an element of the offense for which the
9 offender is convicted.
- 10 4. An offender serving a sentence subject to this section may be eligible to participate in
11 a release program under section 12-48.1-02 during the last six months of the
12 offender's sentence.
- 13 5. This section does not apply to an offender convicted under section 62.1-02-15.

14 **SECTION 6. AMENDMENT.** Section 12.1-32-07.4 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **12.1-32-07.4. Presumptive probation.**

- 17 1. The sentencing court shall sentence an individual who has pled guilty to, or has been
18 found guilty of, a class C felony offense or class A misdemeanor offense to a term of
19 probation at the time of initial sentencing, except for an offense involving domestic
20 violence; an offense subject to registration under section 12.1-32-15; an offense
21 involving a firearm or dangerous weapon, explosive, or incendiary device; an offense
22 in violation of section 12.1-08-02, subdivision a of subsection 2 of section 12.1-17-01,
23 section 12.1-17-03, or section 39-10-71; or if a mandatory term of incarceration is
24 required by law.
- 25 2. The sentencing court may impose a sentence of imprisonment if the sentencing court
26 finds there are aggravating factors present to justify a departure from presumptive
27 probation. Aggravating factors include:
 - 28 a. That the individual has plead guilty to, or has been found guilty of, a felony
29 offense or class A misdemeanor offense prior to the date of the commission of
30 the offense or offenses charged in the complaint, information, or indictment;

- 1 or a sentence of imprisonment upon revocation of probation before August 1, 2015, is
2 eligible to have the offender's sentence considered by the parole board.
- 3 5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon
4 revocation of probation.

5 **SECTION 8. AMENDMENT.** Section 39-10-71 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **39-10-71. Fleeing or attempting to elude a peace officer - Penalty.**

- 8 1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or
9 who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or
10 peace officer, when given a visual or audible signal to bring the vehicle to a stop, is
11 guilty of a:
- 12 a. Class A misdemeanor for a first offense and a class C felony for a subsequent
13 offense within three years;
- 14 b. Class C felony if the driver violates this section while willfully fleeing during or
15 after the commission of a felony; or
- 16 c. Class C felony if, at any time during the flight or pursuit, the driver willfully
17 operates the vehicle in a manner constituting an inherent risk of death or serious
18 bodily injury to a third person.
- 19 2. A signal complies with this section if the signal is perceptible to the driver and:
- 20 a. If given from a vehicle, the signal is given by hand, voice, emergency light, or
21 siren, and the stopping vehicle is appropriately marked showing it to be an official
22 police vehicle; or
- 23 b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or
24 siren, and the officer is in uniform or prominently displays the officer's badge of
25 office.
- 26 3. A conviction under this section carries a presumption of a jail-sentence of incarceration
27 of at least thirty days and, if there is an underlying conviction, the presumed jail-
28 sentence of incarceration may not be served concurrently to any jail-sentence of
29 incarceration for the underlying conviction. If the sentencing court, in the exercise of
30 the court's discretion, does not impose at least the presumptive minimum term of

1 ~~imprisonment or incarceration, the court shall justify the reason for a departure from the~~
2 ~~presumptive jail sentence within the judgment.~~

3 ~~SECTION 5. AMENDMENT. Section 62.1-02-01 of the North Dakota Century Code is~~
4 ~~amended and reenacted as follows:~~

5 ~~62.1-02-01. Persons who are not to possess firearms -- Penalty.~~

6 ~~1. a. A person who has been convicted anywhere of a felony offense involving~~
7 ~~violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an~~
8 ~~equivalent felony offense of another state or the federal government is prohibited~~
9 ~~from owning a firearm or having one in possession or under control from the date~~
10 ~~of conviction and continuing for a period of ten years after the date of conviction~~
11 ~~or the date of release from incarceration, parole, or probation, whichever is latest.~~

12 ~~b. A person who has been convicted anywhere of a felony offense of this or another~~
13 ~~state or the federal government not provided for in subdivision a or who has been~~
14 ~~convicted of a class A misdemeanor offense involving violence or intimidation in~~
15 ~~violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another~~
16 ~~state or the federal government and the offense was committed while using or~~
17 ~~possessing a firearm, a dangerous weapon, or, as defined in section 12.1-01-04,~~
18 ~~a destructive device or an explosive, is prohibited from owning a firearm or~~
19 ~~having one in possession or under control from the date of conviction and~~
20 ~~continuing for a period of five years after the date of conviction or the date of~~
21 ~~release from incarceration, parole, or probation, whichever is latest.~~

22 ~~c. A person who is or has ever been diagnosed and confined or committed to a~~
23 ~~hospital or other institution in this state or elsewhere by a court of competent~~
24 ~~jurisdiction, other than a person who has had the petition that provided the basis~~
25 ~~for the diagnosis, confinement, or commitment dismissed under section~~
26 ~~25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another~~
27 ~~jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or~~
28 ~~as a mentally deficient individual, is prohibited from purchasing a firearm or~~
29 ~~having one in possession or under control. This limitation does not apply to a~~
30 ~~person who has not suffered from the disability for the previous three years or~~
31 ~~who has successfully petitioned for relief under section 62.1-02-01.2.~~

- 1 ~~d. A person under the age of eighteen years may not possess a handgun except~~
2 ~~that such a person, while under the direct supervision of an adult, may possess a~~
3 ~~handgun for the purposes of firearm safety training, target shooting, or hunting.~~
- 4 ~~e. A person who is a fugitive from justice is prohibited from owning a firearm or~~
5 ~~having a firearm in possession or under control.~~
- 6 ~~f. A person who, being an alien, is illegally or unlawfully in the United States is~~
7 ~~prohibited from owning a firearm or having a firearm in possession or under~~
8 ~~control.~~
- 9 ~~g. A person who has been convicted in any court of a misdemeanor crime of~~
10 ~~domestic violence is prohibited from owning a firearm or having a firearm in~~
11 ~~possession or under control. For the purposes of this section a "misdemeanor~~
12 ~~crime of domestic violence" means the willful infliction of bodily injury against an~~
13 ~~individual who:~~
- 14 ~~(1) Is a current or former spouse or intimate partner of the victim, or individual~~
15 ~~similarly situated to a spouse of the victim;~~
- 16 ~~(2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate~~
17 ~~partner; or~~
- 18 ~~(3) Shares a child in common with the victim.~~
- 19 ~~h. A person who has been discharged from the armed forces under dishonorable~~
20 ~~conditions is prohibited from owning a firearm or having a firearm in possession~~
21 ~~or under control.~~
- 22 ~~i. A person is prohibited from owning a firearm or having a firearm in possession or~~
23 ~~under control if that person is subject to a court order that:~~
- 24 ~~(1) Was issued after a hearing of which such person received actual notice, and~~
25 ~~at which such person had an opportunity to participate;~~
- 26 ~~(2) Restrains the person from harassing, stalking, or threatening an intimate~~
27 ~~partner of the person or child of the intimate partner or person, or engaging~~
28 ~~in other conduct that would place an intimate partner in reasonable fear of~~
29 ~~bodily injury to the partner or child; and~~
- 30 ~~(3) (a) Includes a finding the person represents a credible threat to the~~
31 ~~physical safety of the intimate partner or child; or~~

- 1 ~~(b) By its terms explicitly prohibits the use, attempted use, or threatened~~
2 ~~use of physical force against the intimate partner or child that would~~
3 ~~reasonably be expected to cause bodily injury.~~
- 4 ~~2. A person who violates subdivision a or, b, e, f, g, h, or i of subsection 1 is guilty of a~~
5 ~~class C felony, and a person who violates subdivision c or d of subsection 1 is guilty of~~
6 ~~a class A misdemeanor.~~
- 7 ~~3. A person who violates subdivision a or b of subsection 1 and has three or more prior~~
8 ~~felony convictions on separate occasions under any provisions in chapter 12.1-16,~~
9 ~~12.1-17, 12.1-18, or 12.1-20, section 12.1-21-01, chapter 12.1-22, subsection 1 of~~
10 ~~19-03.1-23, or a similar offense from another court in North Dakota or a court of record~~
11 ~~in the United States, is guilty of a class B felony. A conviction under this subsection~~
12 ~~carries a presumptive minimum term of imprisonment of five years. If the sentencing~~
13 ~~court does not impose at least the presumptive minimum term of imprisonment for an~~
14 ~~offense under this section, the court shall justify the reasoning for a departure from the~~
15 ~~presumptive minimum sentence within the judgment.~~
- 16 ~~2.4. For the purposes of this section, "conviction" means a determination that the person~~
17 ~~committed one of the above-mentioned crimes upon a verdict of guilt, a plea of guilty,~~
18 ~~or a plea of nolo contendere even though:~~
- 19 ~~a. The court suspended execution of sentence in accordance with subsection 3 of~~
20 ~~section 12.1-32-02;~~
- 21 ~~b. The court deferred imposition of sentence in accordance with subsection 4 of~~
22 ~~section 12.1-32-02;~~
- 23 ~~c. The court placed the person on probation;~~
- 24 ~~d. The person's conviction has been reduced in accordance with subsection 9 of~~
25 ~~section 12.1-32-02 or section 12.1-32-07.1;~~
- 26 ~~e. Sentence dispositions, sentence reductions, or offense determinations equivalent~~
27 ~~to this section were imposed or granted by a court, board, agency, or law of~~
28 ~~another state or the federal government; or~~
- 29 ~~f. The person committed an offense equivalent to an offense described in~~
30 ~~subdivision a or b of subsection 1 when that person was subject to juvenile~~
31 ~~adjudication or proceedings and a determination of a court under chapter 27-20.4~~

- 1 or of a court of another state or the federal government was made that the
2 person committed the delinquent act or offense.
- 3 ~~3.5. For purposes of subsection 1, unless the pardon, expungement, or restoration of civil~~
4 ~~rights expressly provides that a person may not ship, transport, possess, or receive~~
5 ~~firearms, a person is not considered to have been convicted of a crime under~~
6 ~~subdivision a, b, or g of subsection 1 if:~~
- 7 ~~a. The conviction has been expunged or set aside; or~~
8 ~~b. The conviction is for an offense for which the person has been pardoned or has~~
9 ~~had civil rights restored if the law of the applicable jurisdiction provides for the~~
10 ~~loss of civil rights for the offense.~~
- 11 ~~6. A felon who is not sentenced under section 12.1-32-09.1 may possess a rifle that has~~
12 ~~a barrel sixteen inches [40.72 centimeters] or longer or a shotgun that has a barrel~~
13 ~~eighteen inches [45.72 centimeters] or longer and which is one of the following:~~
- 14 ~~a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or~~
15 ~~similar type of ignition system, manufactured before 1899.~~
- 16 ~~b. A replica of any firearm described in subdivision a, if the replica is not designed~~
17 ~~or redesigned for using rimfire or conventional centerfire fixed ammunition or~~
18 ~~uses rimfire or conventional centerfire fixed ammunition that is no longer~~
19 ~~manufactured in the United States and which is not readily available in the~~
20 ~~ordinary channels of commercial trade.~~
- 21 ~~c. A muzzleloading rifle or muzzleloading shotgun designed to use black powder or~~
22 ~~a black powder substitute and which cannot use fixed ammunition.~~

23 **SECTION 9.** Section 62.1-02-15 of the North Dakota Century Code is created and enacted
24 as follows:

25 **62.1-02-15. Possession of a firearm in furtherance of a felony crime of violence or**
26 **drug trafficking crime.**

- 27 1. Any person who, knowingly possesses, within the person's proximity, or uses a firearm
28 during and/or in relation to any felony crime of violence or drug trafficking crime, uses
29 or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, is
30 guilty of a class B felony. A conviction under this section carries a presumptive
31 minimum term of imprisonment/incarceration which may not run concurrently to the

- 1 punishment provided for the underlying felony crime of violence or drug trafficking
2 crime. The presumptive minimum term of imprisonmentincarceration is:
- 3 a. Not less than three years if the firearm is possessed within the person's
4 proximity;
- 5 b. Not less than five years if the firearm is brandished; or
6 c. Not less than seven years if the firearm is discharged.
- 7 2. If the firearm possessed by a person convicted of a violation of this section is a short-
8 barreled rifle, short-barreled shotgun, machine gun, submachine gun, or fully
9 automatic rifle, the presumptive minimum term of imprisonmentincarceration is not
10 less than seven years.
- 11 3. For a violation of this section which occurs after a previous conviction under this
12 section has become final, the person is guilty of a class A felony and the presumptive
13 minimum term of imprisonmentincarceration is not less than ten years.
- 14 4. Notwithstanding any other provision of law:
- 15 a. ~~A term of imprisonment imposed on a person under this section may not run~~
16 ~~concurrently with any other term of imprisonment imposed on the person,~~
17 ~~including any term of imprisonment imposed for the felony crime of violence or~~
18 ~~drug trafficking crime during which the firearm was used, carried, or possessed;~~
- 19 ~~b.~~ An offender who is convicted of a crime under this section is not eligible for
20 release from confinementincarceration on any basis until eighty-five percent of
21 the sentence imposed by the court has been served or the sentence is
22 commuted. For purposes of this subsection, confinementIncarceration does not
23 include placement in a halfway house, treatment facility, or other community
24 placement; and
- 25 e.b. If the sentencing court, in the exercise of the court's discretion, does not impose
26 at least the presumptive minimum term of imprisonmentincarceration for an
27 offense under this section, the court shall justify the reasoning for a departure
28 from the presumptive minimum sentence within the judgment.
- 29 5. For purposes of this section:
- 30 a. "Brandish" means, with respect to a firearm, to display all or part of the firearm, or
31 otherwise make the presence of the firearm known to another individual, in order

1 to intimidate that individual, regardless of whether the firearm is directly visible to
2 that individual.

3 b. "Drug trafficking crime" means a violation of subsection 1 or 3 of section
4 19-03.1-23.

5 c. "Felony crime of violence" means a felony violation of section 12.1-16-01,
6 12.1-16-02, 12.1-16-03, 12.1-17-01.2, 12.1-17-02, 12.1-17-03, 12.1-17-04,
7 12.1-17-12, 12.1-18-01, 12.1-18-02, 12.1-20-03, 12.1-20-04, 12.1-20-07,
8 12.1-20-12.3, 12.1-21-01, 12.1-21-02, 12.1-22-01, or 12.1-22-02.

9 **SECTION 10. LEGISLATIVE MANAGEMENT STUDY - FIREARM POSSESSION.** During
10 the 2023-24 interim, the legislative management shall consider studying those provisions of the
11 North Dakota Century Code which prohibit certain individuals from possessing a firearm. The
12 study may include an examination of the state's firearm and weapon possession prohibitions as
13 compared to the federal regulations. The study must include an examination of whether the
14 category of individuals prohibited from possessing a firearm by statute should be maintained in
15 its current form, narrowed, or expanded. The study must include input from the attorney
16 general, the supreme court, the North Dakota association of counties, the North Dakota league
17 of cities, the North Dakota state's attorneys' association, the North Dakota association of
18 criminal defense lawyers, the North Dakota peace officers association, and the national rifle
19 association. The legislative management shall report its findings and recommendations,
20 together with any legislation necessary to implement the recommendations, to the sixty-ninth
21 legislative assembly.

SB 2107 NDCC Citations

CHAPTER 12.1-08 Obstruction of Law Enforcement — Escape

12.1-08-02. Preventing arrest or discharge of other duties.

12.1-16-01. Murder.

12.1-16-02. Manslaughter.

12.1-16-03. Negligent homicide.

12.1-17-01. Simple assault.

12.1-17-01.1. Assault.

12.1-17-01.2. Domestic violence.

12.1-17-02. Aggravated assault.

12.1-17-03. Reckless endangerment.

12.1-17-04. Terrorizing.

12.1-17-12. Assault or homicide while fleeing peace officer.

12.1-17-14 **NEW** Shooting at inhabited dwelling or camper; or occupied structure, vehicle, or aircraft -- penalty

12.1-18-01. Kidnapping.

12.1-18-02. Felonious restraint.

12.1-20-03. Gross sexual imposition — Penalty.

12.1-20-04. Sexual imposition.

12.1-20-07. Sexual assault.

12.1-20-12.3. Sexual extortion.

12.1-21-01. Arson.

12.1-21-02. Endangering by fire or explosion.

12.1-22-01. Robbery.

12.1-22-02. Burglary.

CHAPTER 12.1-32 Penalties and Sentencing

12.1-32-02.1. Mandatory prison terms for armed offenders.

12.1-32-07.4. Presumptive probation. **SEE HB 1490 “force” as aggravating factor**

12.1-32-09. Dangerous special offenders — Habitual offenders — Extended sentences — Procedure.

12.1-32-09.1. Sentencing of violent offenders.

CHAPTER 19-03.1 Uniform Controlled Substances Act

19-03.1-23. Prohibited acts — Penalties.

CHAPTER 39-10 General Rules of the Road

39-10-71. Fleeing or attempting to elude a peace officer — Penalty.

CHAPTER 62.1-02 Possession of Weapons 62.1-02-15 **NEW** Possession of a firearm in furthrance of a felony crime of violence or drug trfficking crime

23.8013.04005

SECOND ENGROSSMENT

v. 4000 Senate
v. 5000 House
AG amendments
in House JU

Sixty-eighth
Legislative Assembly
of North Dakota

REENGROSSED SENATE BILL NO. 2107

Introduced by

Judiciary Committee

(At the request of the Attorney General)

reckless endangerment
sentencing of violent offenders

1 A BILL for an Act to create and enact sections 12.1-17-14 and 62.1-02-15 of the North Dakota
2 Century Code, relating to shooting offenses and drug trafficking; to amend and reenact sections
3 12.1-08-02, 12.1-17-01, 12.1-17-03, 12.1-32-02.1, 12.1-32-07.4, 12.1-32-09.1, and 39-10-71,
4 and ~~62.1-02-04~~ of the North Dakota Century Code, relating to sentences for crimes committed
5 with firearms and for fleeing law enforcement, reckless endangerment, simple assault, and
6 presumptive probation; to provide for a legislative management study; and to provide a penalty.

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

8 **SECTION 1. AMENDMENT.** Section 12.1-08-02 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **12.1-08-02. Preventing arrest or discharge of other duties.**

*v. 4000 Sec. 1
and AG*

- 11 1. A person is guilty of a class A misdemeanor if, with intent to prevent a public servant
12 from effecting an arrest of himself or another for a misdemeanor or infraction, or from
13 discharging any other official duty, he creates a substantial risk of bodily injury to the
14 public servant or to anyone except himself, or employs means justifying or requiring
15 substantial force to overcome resistance to effecting the arrest or the discharge of the
16 duty. A person is guilty of a class C felony if, with intent to prevent a public servant
17 from effecting an arrest of himself or another for a class A, B, or C felony, he creates a
18 substantial risk of bodily injury to the public servant or to anyone except himself, or
19 employs means justifying or requiring substantial force to overcome resistance to
20 effecting such an arrest.
- 21 2. It is a defense to a prosecution under this section that the public servant was not
22 acting lawfully, but it is no defense that the defendant mistakenly believed that the
23 public servant was not acting lawfully. A public servant executing a warrant or other
24 process in good faith and under color of law shall be deemed to be acting lawfully.

1 3. A conviction under this section carries a presumption of a ~~jail-sentence~~ of incarceration
2 of at least fourteen days and, if there is an underlying conviction, the presumed ~~jail-~~
3 sentence of incarceration may not be served concurrently to any ~~jail-sentence~~ of
4 incarceration for the underlying conviction. If the sentencing court ^{AG} ~~in the exercise of~~
5 the court's discretion] does not impose at least the presumed minimum term of
6 imprisonment~~incarceration~~, the court shall justify the reason for a departure from the
7 presumptive ~~jail-sentence~~ within the judgment.

8 **SECTION 2. AMENDMENT.** Section 12.1-17-01 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **12.1-17-01. Simple assault.**

v. 4000 Sec. 2

- 11 1. A person is guilty of an offense if that person:
- 12 a. Willfully causes bodily injury to another human being; or
- 13 b. Negligently causes bodily injury to another human being by means of a firearm,
- 14 destructive device, or other weapon, the use of which against a human being is
- 15 likely to cause death or serious bodily injury.
- 16 2. The offense is:
- 17 a. A class C felony when the victim is a peace officer or correctional institution
- 18 employee acting in an official capacity, which the actor knows to be a fact; an
- 19 employee of the state hospital acting in the course and scope of employment,
- 20 which the actor knows to be a fact, and the actor is an individual committed to or
- 21 detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a
- 22 judicial proceeding; or a member of a municipal or volunteer fire department or
- 23 emergency medical services personnel unit or emergency department worker in
- 24 the performance of the member's duties.
- 25 b. A class B misdemeanor except as provided in subdivision a.
- 26 3. A conviction under subdivision a of subsection 2 ~~of this section~~ carries a presumption
27 of a ~~jail-sentence~~ of incarceration of at least thirty days and if there is an underlying
28 conviction the presumption may not be served concurrently to any ~~jail-sentence~~ of
29 incarceration for the underlying conviction. If the sentencing court ^{AG} ~~in the exercise of~~
30 the court's discretion] does not impose at least the presumptive minimum term of

1 imprisonmentincarceration, the court shall justify the reasoning for a departure from
2 the presumptive ~~jail~~ sentence within the judgment.

3 **SECTION 3.** Section 12.1-17-14 of the North Dakota Century Code is created and enacted
4 as follows: *v. 4000 Sec. 3*

5 **12.1-17-14. Shooting at inhabited dwelling or camper; or occupied structure, vehicle,**
6 **or aircraft - Penalty.**

7 Any person who willfully discharges a firearm at an inhabited dwelling, occupied structure,
8 occupied motor vehicle, occupied aircraft, or inhabited camper is guilty of a class B felony. As
9 used in this section, "inhabited" means currently used for dwelling purposes, whether occupied
10 or not.

11 **SECTION 4. AMENDMENT.** Section 12.1-17-03 of the North Dakota Century Code is
12 amended and reenacted as follows: *v. 5000 as passed by House*
Sec. 1

13 **12.1-17-03. Reckless endangerment.**

14 A person is guilty of an offense if ~~he~~the person creates a substantial risk of serious bodily
15 injury or death to another. The offense is a class B felony if the offense is committed by
16 intentionally or knowingly discharging a firearm. The offense is a class C felony if the
17 circumstances manifest ~~his~~the person's extreme indifference to the value of human life.
18 Otherwise it is a class A misdemeanor. There is risk within the meaning of this section if the
19 potential for harm exists, whether or not a particular person's safety is actually jeopardized.

20 **SECTION 5. AMENDMENT.** Section 12.1-32-02.1 of the North Dakota Century Code is
21 amended and reenacted as follows: *v. 4000 Sec. 4*

22 **12.1-32-02.1. Mandatory prison terms for armed offenders.**

- 23 1. Notwithstanding any other provision of this title, a term of imprisonment must be
24 imposed upon an offender and served without benefit of parole when:
- 25 a. In the course of committing an offense, the offender inflicts or attempts to inflict
26 bodily injury upon another, threatens or menaces another with imminent bodily
27 injury with a dangerous weapon, explosive, ~~or~~ destructive device, or firearm; or
28 b. The offender possesses or has within immediate reach and control a dangerous
29 weapon, explosive, ~~or~~ destructive device, or firearm while in the course of
30 committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.

- 1 b. The age and vulnerability of the victim, whether the individual was in a position of
2 responsibility or trust over the victim, or whether the individual abused a public
3 position of responsibility or trust; or
4 c. If the individual used threats or coercion in the commission of the offense.
- 5 3. This section does not preclude the sentencing court from deferring imposition of
6 sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an
7 individual to a term of incarceration with credit for time spent in custody if execution of
8 the sentence is suspended.

9 **SECTION 7. AMENDMENT.** Section 12.1-32-09.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **12.1-32-09.1. Sentencing of violent offenders.**

- 12 1. Except as provided under section 12-48.1-02 and pursuant to rules adopted by the
13 department of corrections and rehabilitation, an offender who is convicted of a crime in
14 violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section
15 12.1-17-14, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of
16 subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2
17 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a
18 sentence of ~~imprisonment~~incarceration is not eligible for release from
19 ~~confinement~~incarceration on any basis until eighty-five percent of the sentence
20 imposed by the court has been served or the sentence is commuted.
- 21 2. In the case of an offender who is sentenced to a term of life imprisonment with
22 opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence
23 imposed" means the remaining life expectancy of the offender on the date of
24 sentencing. The remaining life expectancy of the offender must be calculated on the
25 date of sentencing, computed by reference to a recognized mortality table as
26 established by rule by the supreme court.
- 27 3. Notwithstanding this section, an offender sentenced under subsection 1 of section
28 12.1-32-01 may not be eligible for parole until the requirements of that subsection
29 have been met.
- 30 4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or
31 an attempt to commit the offense, and who has received a sentence of imprisonment

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1 or a sentence of imprisonment upon revocation of probation before August 1, 2015, is
2 eligible to have the offender's sentence considered by the parole board.

3 5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon
4 revocation of probation.

5 **SECTION 8. AMENDMENT.** Section 39-10-71 of the North Dakota Century Code is
6 amended and reenacted as follows: *v. 4000 Sec. 6 and AG*

7 **39-10-71. Fleeing or attempting to elude a peace officer - Penalty.**

8 1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or
9 who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or
10 peace officer, when given a visual or audible signal to bring the vehicle to a stop, is
11 guilty of a:

12 a. Class A misdemeanor for a first offense and a class C felony for a subsequent
13 offense within three years;

14 b. Class C felony if the driver violates this section while willfully fleeing during or
15 after the commission of a felony; or

16 c. Class C felony if, at any time during the flight or pursuit, the driver willfully
17 operates the vehicle in a manner constituting an inherent risk of death or serious
18 bodily injury to a third person.

19 2. A signal complies with this section if the signal is perceptible to the driver and:

20 a. If given from a vehicle, the signal is given by hand, voice, emergency light, or
21 siren, and the stopping vehicle is appropriately marked showing it to be an official
22 police vehicle; or

23 b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or
24 siren, and the officer is in uniform or prominently displays the officer's badge of
25 office.

26 3. A conviction under this section carries a presumption of a jail-sentence of incarceration
27 of at least thirty days and, if there is an underlying conviction, the presumed jail-
28 sentence of incarceration may not be served concurrently to any jail-sentence of
29 incarceration for the underlying conviction. If the sentencing court, [in the exercise of
30 the court's discretion] does not impose at least the presumptive minimum term of

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1 imprisonmentincarceration, the court shall justify the reason for a departure from the
2 presumptive jail sentence within the judgment.

3 ~~SECTION 5. AMENDMENT. Section 62.1-02-01 of the North Dakota Century Code is~~
4 ~~amended and reenacted as follows:~~ *Removed by AG in favor of Study in Sec. 10*

5 ~~62.1-02-01. Persons who are not to possess firearms—Penalty.~~

6 ~~1. a. A person who has been convicted anywhere of a felony offense involving~~
7 ~~violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an~~
8 ~~equivalent felony offense of another state or the federal government is prohibited~~
9 ~~from owning a firearm or having one in possession or under control from the date~~
10 ~~of conviction and continuing for a period of ten years after the date of conviction~~
11 ~~or the date of release from incarceration, parole, or probation, whichever is latest.~~

12 ~~b. A person who has been convicted anywhere of a felony offense of this or another~~
13 ~~state or the federal government not provided for in subdivision a or who has been~~
14 ~~convicted of a class A misdemeanor offense involving violence or intimidation in~~
15 ~~violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another~~
16 ~~state or the federal government and the offense was committed while using or~~
17 ~~possessing a firearm, a dangerous weapon, or, as defined in section 12.1-01-04,~~
18 ~~a destructive device or an explosive, is prohibited from owning a firearm or~~
19 ~~having one in possession or under control from the date of conviction and~~
20 ~~continuing for a period of five years after the date of conviction or the date of~~
21 ~~release from incarceration, parole, or probation, whichever is latest.~~

22 ~~c. A person who is or has ever been diagnosed and confined or committed to a~~
23 ~~hospital or other institution in this state or elsewhere by a court of competent~~
24 ~~jurisdiction, other than a person who has had the petition that provided the basis~~
25 ~~for the diagnosis, confinement, or commitment dismissed under section~~
26 ~~25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another~~
27 ~~jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or~~
28 ~~as a mentally deficient individual, is prohibited from purchasing a firearm or~~
29 ~~having one in possession or under control. This limitation does not apply to a~~
30 ~~person who has not suffered from the disability for the previous three years or~~
31 ~~who has successfully petitioned for relief under section 62.1-02-01.2.~~

- 1 ~~_____ d. A person under the age of eighteen years may not possess a handgun except~~
2 ~~that such a person, while under the direct supervision of an adult, may possess a~~
3 ~~handgun for the purposes of firearm safety training, target shooting, or hunting.~~
- 4 ~~_____ e. A person who is a fugitive from justice is prohibited from owning a firearm or~~
5 ~~having a firearm in possession or under control.~~
- 6 ~~_____ f. A person who, being an alien, is illegally or unlawfully in the United States is~~
7 ~~prohibited from owning a firearm or having a firearm in possession or under~~
8 ~~control.~~
- 9 ~~_____ g. A person who has been convicted in any court of a misdemeanor crime of~~
10 ~~domestic violence is prohibited from owning a firearm or having a firearm in~~
11 ~~possession or under control. For the purposes of this section a "misdemeanor~~
12 ~~crime of domestic violence" means the willful infliction of bodily injury against an~~
13 ~~individual who:~~
- 14 ~~_____ (1) Is a current or former spouse or intimate partner of the victim, or individual~~
15 ~~similarly situated to a spouse of the victim;~~
- 16 ~~_____ (2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate~~
17 ~~partner; or~~
- 18 ~~_____ (3) Shares a child in common with the victim.~~
- 19 ~~_____ h. A person who has been discharged from the armed forces under dishonorable~~
20 ~~conditions is prohibited from owning a firearm or having a firearm in possession~~
21 ~~or under control.~~
- 22 ~~_____ i. A person is prohibited from owning a firearm or having a firearm in possession or~~
23 ~~under control if that person is subject to a court order that:~~
- 24 ~~_____ (1) Was issued after a hearing of which such person received actual notice, and~~
25 ~~at which such person had an opportunity to participate;~~
- 26 ~~_____ (2) Restrains the person from harassing, stalking, or threatening an intimate~~
27 ~~partner of the person or child of the intimate partner or person, or engaging~~
28 ~~in other conduct that would place an intimate partner in reasonable fear of~~
29 ~~bodily injury to the partner or child; and~~
- 30 ~~_____ (3) (a) Includes a finding the person represents a credible threat to the~~
31 ~~physical safety of the intimate partner or child; or~~

1 ~~(b) By its terms explicitly prohibits the use, attempted use, or threatened~~
2 ~~use of physical force against the intimate partner or child that would~~
3 ~~reasonably be expected to cause bodily injury.~~

4 ~~2. A person who violates subdivision a or b, c, f, g, h, or i of subsection 1 is guilty of a~~
5 ~~class C felony, and a person who violates subdivision c or d of subsection 1 is guilty of~~
6 ~~a class A misdemeanor.~~

7 ~~3. A person who violates subdivision a or b of subsection 1 and has three or more prior~~
8 ~~felony convictions on separate occasions under any provisions in chapter 12.1-16,~~
9 ~~12.1-17, 12.1-18, or 12.1-20, section 12.1-21-01, chapter 12.1-22, subsection 1 of~~
10 ~~19-03.1-23, or a similar offense from another court in North Dakota or a court of record~~
11 ~~in the United States, is guilty of a class B felony. A conviction under this subsection~~
12 ~~carries a presumptive minimum term of imprisonment of five years. If the sentencing~~
13 ~~court does not impose at least the presumptive minimum term of imprisonment for an~~
14 ~~offense under this section, the court shall justify the reasoning for a departure from the~~
15 ~~presumptive minimum sentence within the judgment.~~

16 ~~2.4. For the purposes of this section, "conviction" means a determination that the person~~
17 ~~committed one of the above mentioned crimes upon a verdict of guilt, a plea of guilty,~~
18 ~~or a plea of nolo contendere even though:~~

19 ~~a. The court suspended execution of sentence in accordance with subsection 3 of~~
20 ~~section 12.1-32-02;~~

21 ~~b. The court deferred imposition of sentence in accordance with subsection 4 of~~
22 ~~section 12.1-32-02;~~

23 ~~c. The court placed the person on probation;~~

24 ~~d. The person's conviction has been reduced in accordance with subsection 9 of~~
25 ~~section 12.1-32-02 or section 12.1-32-07.1;~~

26 ~~e. Sentence dispositions, sentence reductions, or offense determinations equivalent~~
27 ~~to this section were imposed or granted by a court, board, agency, or law of~~
28 ~~another state or the federal government; or~~

29 ~~f. The person committed an offense equivalent to an offense described in~~
30 ~~subdivision a or b of subsection 1 when that person was subject to juvenile~~
31 ~~adjudication or proceedings and a determination of a court under chapter 27-20.4-~~

1 or of a court of another state or the federal government was made that the
2 person committed the delinquent act or offense.

3 ~~3.5. For purposes of subsection 1, unless the pardon, expungement, or restoration of civil~~
4 ~~rights expressly provides that a person may not ship, transport, possess, or receive~~
5 ~~firearms, a person is not considered to have been convicted of a crime under~~
6 ~~subdivision a, b, or g of subsection 1 if:~~

7 ~~a. The conviction has been expunged or set aside; or~~

8 ~~b. The conviction is for an offense for which the person has been pardoned or has~~
9 ~~had civil rights restored if the law of the applicable jurisdiction provides for the~~
10 ~~loss of civil rights for the offense.~~

11 ~~6. A felon who is not sentenced under section 12.1-32-09.1 may possess a rifle that has~~
12 ~~a barrel sixteen inches [40.72 centimeters] or longer or a shotgun that has a barrel~~
13 ~~eighteen inches [45.72 centimeters] or longer and which is one of the following:~~

14 ~~a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or~~
15 ~~similar type of ignition system, manufactured before 1899.~~

16 ~~b. A replica of any firearm described in subdivision a, if the replica is not designed~~
17 ~~or redesigned for using rimfire or conventional centerfire fixed ammunition or~~
18 ~~uses rimfire or conventional centerfire fixed ammunition that is no longer~~
19 ~~manufactured in the United States and which is not readily available in the~~
20 ~~ordinary channels of commercial trade.~~

21 ~~c. A muzzleloading rifle or muzzleloading shotgun designed to use black powder or~~
22 ~~a black powder substitute and which cannot use fixed ammunition.~~

23 **SECTION 9.** Section 62.1-02-15 of the North Dakota Century Code is created and enacted
24 as follows: *v. 4000 and AG*

25 **62.1-02-15. Possession of a firearm in furtherance of a felony crime of violence or**
26 **drug trafficking crime.**

27 1. Any person who ^{AG} knowingly possesses, within the person's proximity, or uses a firearm
28 during and/or in relation to any felony crime of violence or drug trafficking crime, uses
29 or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, is
30 guilty of a class B felony. A conviction under this section carries a presumptive
31 minimum term of imprisonment in incarceration which may not run concurrently to the

- 1 punishment provided for the underlying felony crime of violence or drug trafficking
2 crime. The presumptive minimum term of imprisonmentincarceration is:
- 3 a. Not less than three years if the firearm is possessed within the person's
4 proximity;] AG
- 5 b. Not less than five years if the firearm is brandished; or
6 c. Not less than seven years if the firearm is discharged.
- 7 2. If the firearm possessed by a person convicted of a violation of this section is a short-
8 barreled rifle, short-barreled shotgun, machine gun, submachine gun, or fully
9 automatic rifle, the presumptive minimum term of imprisonmentincarceration is not
10 less than seven years.
- 11 3. For a violation of this section which occurs after a previous conviction under this
12 section has become final, the person is guilty of a class A felony and the presumptive
13 minimum term of imprisonmentincarceration is not less than ten years.
- 14 4. Notwithstanding any other provision of law:
- 15 a. ~~A term of imprisonment imposed on a person under this section may not run~~
16 ~~concurrently with any other term of imprisonment imposed on the person,~~
17 ~~including any term of imprisonment imposed for the felony crime of violence or~~
18 ~~drug trafficking crime during which the firearm was used, carried, or possessed;~~
- 19 ~~b. An offender who is convicted of a crime under this section is not eligible for~~
20 ~~release from confinementincarceration on any basis until eighty-five percent of~~
21 ~~the sentence imposed by the court has been served or the sentence is~~
22 ~~commuted. For purposes of this subsection, confinementincarceration does not~~
23 ~~include placement in a halfway house, treatment facility, or other community~~
24 ~~placement; and~~
- 25 e.b. If the sentencing court [in the exercise of the court's discretion] does not impose AG
26 at least the presumptive minimum term of imprisonmentincarceration for an
27 offense under this section, the court shall justify the reasoning for a departure
28 from the presumptive minimum sentence within the judgment.
- 29 5. For purposes of this section:
- 30 a. "Brandish" means, with respect to a firearm, to display all or part of the firearm, or
31 otherwise make the presence of the firearm known to another individual, in order

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removed

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1 to intimidate that individual, regardless of whether the firearm is directly visible to
2 that individual.

3 b. "Drug trafficking crime" means a violation of subsection 1 or 3 of section
4 19-03.1-23.

5 c. "Felony crime of violence" means a felony violation of section 12.1-16-01,
6 12.1-16-02, 12.1-16-03, 12.1-17-01.2, 12.1-17-02, 12.1-17-03, 12.1-17-04,
7 12.1-17-12, 12.1-18-01, 12.1-18-02, 12.1-20-03, 12.1-20-04, 12.1-20-07,
8 12.1-20-12.3, 12.1-21-01, 12.1-21-02, 12.1-22-01, or 12.1-22-02.

9 **SECTION 10. LEGISLATIVE MANAGEMENT STUDY - FIREARM POSSESSION.** During
10 the 2023-24 interim, the legislative management shall consider studying those provisions of the
11 North Dakota Century Code which prohibit certain individuals from possessing a firearm. The
12 study may include an examination of the state's firearm and weapon possession prohibitions as
13 compared to the federal regulations. The study must include an examination of whether the
14 category of individuals prohibited from possessing a firearm by statute should be maintained in
15 its current form, narrowed, or expanded. The study must include input from the attorney
16 general, the supreme court, the North Dakota association of counties, the North Dakota league
17 of cities, the North Dakota state's attorneys' association, the North Dakota association of
18 criminal defense lawyers, the North Dakota peace officers association, and the national rifle
19 association. The legislative management shall report its findings and recommendations,
20 together with any legislation necessary to implement the recommendations, to the sixty-ninth
21 legislative assembly.

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Title.

Prepared by the Legislative Council staff for
Representative Klemin
April 14, 2023

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2107

In lieu of the amendments adopted by the House as printed on pages 1412 and 1413 of the House Journal, Reengrossed Senate Bill No. 2107 is amended as follows:

Page 1, line 3, after "12.1-17-01" insert ", 12.1-17-03"

Page 1, line 3, after the fourth comma insert "12.1-32-09.1, and"

Page 1, line 3, remove ", and 62.1-02-01"

Page 1, line 5, after "enforcement" insert ", reckless endangerment, simple assault, and presumptive probation; to provide for a legislative management study"

Page 2, line 1, remove "jail"

Page 2, line 1, after "sentence" insert "of incarceration"

Page 2, line 2, remove "jail"

Page 2, line 2, after "sentence" insert "of incarceration"

Page 2, line 3, remove "jail"

Page 2, line 3, after "sentence" insert "of incarceration"

Page 2, line 4, after "court" insert ", in the exercise of the court's discretion"

Page 2, line 5, replace "imprisonment" with "incarceration"

Page 2, line 6, remove "jail"

Page 2, line 25, remove "of this section"

Page 2, line 26, remove "jail"

Page 2, line 26, after "sentence" insert "of incarceration"

Page 2, line 27, remove "jail"

Page 2, line 27, after "sentence" insert "of incarceration"

Page 2, line 28, after "court" insert ", in the exercise of the court's discretion."

Page 2, line 29, replace "imprisonment" with "incarceration"

Page 2, line 30, remove "jail"

Page 3, after line 8, insert:

"SECTION 4. AMENDMENT. Section 12.1-17-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-03. Reckless endangerment.

A person is guilty of an offense if ~~he~~the person creates a substantial risk of serious bodily injury or death to another. The offense is a class B felony if the offense is

committed by intentionally or knowingly discharging a firearm. The offense is a class C felony if the circumstances manifest his~~the~~ person's extreme indifference to the value of human life. Otherwise it is a class A misdemeanor. There is risk within the meaning of this section if the potential for harm exists, whether or not a particular person's safety is actually jeopardized."

Page 3, line 16, remove "or"

Page 3, line 16, remove the overstrike over "~~,-or firearm~~"

Page 3, line 18, remove "or"

Page 3, line 18, remove the overstrike over "~~,-or firearm~~"

Page 3, line 20, remove "or"

Page 3, line 21, remove the overstrike over "~~,-or firearm~~"

Page 3, after line 31, insert:

"5. This section does not apply to an offender convicted under section 62.1-02-15."

Page 4, line 9, after the second underscored comma insert "section 12.1-17-03."

Page 4, after line 24, insert:

"SECTION 7. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. Sentencing of violent offenders.

1. Except as provided under section 12-48.1-02 and pursuant to rules adopted by the department of corrections and rehabilitation, an offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-17-14, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of ~~imprisonment~~incarceration is not eligible for release from ~~confinement~~incarceration on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted.
2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.
3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.

4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.
5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation."

Page 5, line 15, remove "jail"

Page 5, line 15, after "sentence" insert "of incarceration"

Page 5, line 16, remove "jail"

Page 5, line 16, after "sentence" insert "of incarceration"

Page 5, line 17, remove "jail"

Page 5, line 17, after "sentence" insert "of incarceration"

Page 5, line 18, after "court" insert ", in the exercise of the court's discretion."

Page 5, line 18, replace "imprisonment" with "incarceration"

Page 5, line 19, remove "jail"

Page 5, remove lines 21 through 31

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 9

Page 9, line 14, after the underscored comma insert "knowingly possesses, within the person's proximity, or uses a firearm"

Page 9, line 14, replace "and" with "or"

Page 9, line 15, remove ", uses or carries a firearm, or who, in furtherance of any such crime."

Page 9, line 16, remove "possesses a firearm"

Page 9, line 17, replace "imprisonment" with "incarceration"

Page 9, line 18, after the second "the" insert "underlying"

Page 9, line 19, replace "imprisonment" with "incarceration"

Page 9, line 20, after "years" insert "if the firearm is possessed within the person's proximity"

Page 9, line 25, replace "imprisonment" with "incarceration"

Page 9, line 29, replace "imprisonment" with "incarceration"

Page 10, line 1, remove "A term of imprisonment imposed on a person under this section may not run"

Page 10, remove lines 2 through 4

Page 10, line 5, remove "b."

Page 10, line 6, replace "confinement" with "incarceration"

Page 10, line 7, remove "For"

Page 10, line 8, replace "purposes of this subsection, confinement" with "Incarceration"

Page 10, line 10, replace "c." with "b."

Page 10, line 10, after "court" insert ". in the exercise of the court's discretion."

Page 10, line 11, replace "imprisonment" with "incarceration"

Page 10, after line 24, insert:

"SECTION 10. LEGISLATIVE MANAGEMENT STUDY - FIREARM POSSESSION. During the 2023-24 interim, the legislative management shall consider studying those provisions of the North Dakota Century Code which prohibit certain individuals from possessing a firearm. The study may include an examination of the state's firearm and weapon possession prohibitions as compared to the federal regulations. The study must include an examination of whether the category of individuals prohibited from possessing a firearm by statute should be maintained in its current form, narrowed, or expanded. The study must include input from the attorney general, the supreme court, the North Dakota association of counties, the North Dakota league of cities, the North Dakota state's attorneys' association, the North Dakota association of criminal defense lawyers, the North Dakota peace officers association, and the national rifle association. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

SB 2107 NDCC Citations

CHAPTER 12.1-08 Obstruction of Law Enforcement — Escape

12.1-08-02. Preventing arrest or discharge of other duties.

12.1-16-01. Murder.

12.1-16-02. Manslaughter.

12.1-16-03. Negligent homicide.

12.1-17-01. Simple assault.

12.1-17-01.1. Assault.

12.1-17-01.2. Domestic violence.

12.1-17-02. Aggravated assault.

12.1-17-03. Reckless endangerment.

12.1-17-04. Terrorizing.

12.1-17-12. Assault or homicide while fleeing peace officer.

12.1-17-14 **NEW** Shooting at inhabited dwelling or camper; or occupied structure, vehicle, or aircraft -- penalty

12.1-18-01. Kidnapping.

12.1-18-02. Felonious restraint.

12.1-20-03. Gross sexual imposition — Penalty.

12.1-20-04. Sexual imposition.

12.1-20-07. Sexual assault.

12.1-20-12.3. Sexual extortion.

12.1-21-01. Arson.

12.1-21-02. Endangering by fire or explosion.

12.1-22-01. Robbery.

12.1-22-02. Burglary.

CHAPTER 12.1-32 Penalties and Sentencing

12.1-32-02.1. Mandatory prison terms for armed offenders.

12.1-32-07.4. Presumptive probation. **SEE HB 1490 “force” as aggravating factor**

12.1-32-09. Dangerous special offenders — Habitual offenders — Extended sentences — Procedure.

12.1-32-09.1. Sentencing of violent offenders.

CHAPTER 19-03.1 Uniform Controlled Substances Act

19-03.1-23. Prohibited acts — Penalties.

CHAPTER 39-10 General Rules of the Road

39-10-71. Fleeing or attempting to elude a peace officer — Penalty.

CHAPTER 62.1-02 Possession of Weapons 62.1-02-15 **NEW** Possession of a firearm in furtherance of a felony crime of violence or drug trafficking crime



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April 19, 2023

PROPOSED AMENDMENT TO SECTION 3 OF SB 2107 VERSION 23.8013.04005:

Amend Section 3 as follows:

SECTION 3. Section 12.1-17-14 of the North Dakota Century Code is created and enacted as follows:

12.1-17-14. Shooting at inhabited dwelling or camper; or occupied structure, vehicle, or aircraft – Penalty.

Any person who willfully discharges a firearm at an inhabited dwelling, occupied structure, occupied motor vehicle, occupied aircraft, or inhabited camper is guilty of a class B felony reckless endangerment as provided in section 12.1-17-03. As used in this section, "inhabited" means currently used for dwelling purposes, whether occupied or not.

1 imprisonment ~~incarceration~~, the court shall justify the reasoning for a departure from
2 the presumptive ~~jail~~ sentence within the judgment.

3 **SECTION 3.** Section 12.1-17-14 of the North Dakota Century Code is created and enacted
4 as follows: *v. 4000 Sec. 3*

5 **12.1-17-14. Shooting at inhabited dwelling or camper; or occupied structure, vehicle,**
6 **or aircraft - Penalty.**

7 Any person who willfully discharges a firearm at an inhabited dwelling, occupied structure,
8 occupied motor vehicle, occupied aircraft, or inhabited camper is guilty of a class B felony. As
9 used in this section, "inhabited" means currently used for dwelling purposes, whether occupied
10 or not.

11 **SECTION 4. AMENDMENT.** Section 12.1-17-03 of the North Dakota Century Code is
12 amended and reenacted as follows: *v. 5000 as passed by House*
Sec. 1

13 **12.1-17-03. Reckless endangerment.**

14 A person is guilty of an offense if ~~he~~ the person creates a substantial risk of serious bodily
15 injury or death to another. The offense is a class B felony if the offense is committed by
16 intentionally or knowingly discharging a firearm. The offense is a class C felony if the
17 circumstances manifest ~~his~~ the person's extreme indifference to the value of human life.
18 Otherwise it is a class A misdemeanor. There is risk within the meaning of this section if the
19 potential for harm exists, whether or not a particular person's safety is actually jeopardized.

20 **SECTION 5. AMENDMENT.** Section 12.1-32-02.1 of the North Dakota Century Code is
21 amended and reenacted as follows: *v. 4000 Sec. 4*

22 **12.1-32-02.1. Mandatory prison terms for armed offenders.**

- 23 1. Notwithstanding any other provision of this title, a term of imprisonment must be
24 imposed upon an offender and served without benefit of parole when:
- 25 a. In the course of committing an offense, the offender inflicts or attempts to inflict
26 bodily injury upon another, threatens or menaces another with imminent bodily
27 injury with a dangerous weapon, explosive, or destructive device, or firearm; or
 - 28 b. The offender possesses or has within immediate reach and control a dangerous
29 weapon, explosive, or destructive device, or firearm while in the course of
30 committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.

reckless endangerment
as provided in Section 12.1-17-03
←