

**FIRST ENGROSSMENT  
with House Amendments  
ENGROSSED SENATE BILL NO. 2027**

Introduced by

Legislative Management

(Commission on Alternatives to Incarceration)

1 A BILL for an Act to amend and reenact section 12.1-32-06.1, subsections 1 and 3 of section  
2 12.1-32-07, and subdivision c of subsection 5 of section 39-08-01 of the North Dakota Century  
3 Code, relating to length and termination of probation, supervision of probation, and conditions of  
4 probation; and to provide a penalty.

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

6 **SECTION 1. AMENDMENT.** Section 12.1-32-06.1 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **12.1-32-06.1. Length and termination of probation - Additional probation for violation**  
9 **of conditions - Penalty.**

- 10 1. Except as provided in this section, the total length of the ~~period of~~ unsupervised  
11 probation imposed in conjunction with a sentence to probation or a suspended  
12 execution or deferred imposition of sentence may not extend for more than five years  
13 for a felony and two years for a misdemeanor or infraction from the later of the date of:  
14 a. The order imposing probation;  
15 b. The defendant's release from incarceration; or  
16 c. Termination of the defendant's parole.
- 17 2. Except as provided in this section, the total length of supervised probation imposed in  
18 conjunction with a sentence of probation or a suspended execution or deferred  
19 imposition of sentence may not extend for more than five years for a class C felony,  
20 ten years for all other felony offenses, and two years for a class A misdemeanor from  
21 the later of the date of:  
22 a. The order imposing probation;  
23 b. The defendant's release from incarceration; or  
24 c. Termination of the defendant's parole.

1        3. If the defendant has pled or been found guilty of an offense for which the court  
2        imposes a sentence of restitution or reparation for damages resulting from the  
3        commission of the offense, the court may, following a restitution hearing pursuant to  
4        section 12.1-32-08, impose an additional ~~period~~periods of unsupervised probation not  
5        to exceed five years for each additional period imposed.

6        ~~3.4.~~ If the defendant has pled or been found guilty of a felony sexual offense in violation of  
7        chapter 12.1-20, the court shall impose at least five years but not more than ten years  
8        of supervised probation to be served after sentencing or incarceration. If the defendant  
9        has pled or been found guilty of a class AA felony sexual offense in violation of section  
10       12.1-20-03 or 12.1-20-03.1, the court may impose lifetime supervised probation on the  
11       defendant. If the defendant has pled or been found guilty of a misdemeanor sexual  
12       offense in violation of chapter 12.1-20, the court may impose an additional  
13       ~~period~~periods of probation not to exceed two years for each additional period  
14       imposed. If the unserved portion of the defendant's maximum period of incarceration is  
15       less than one year, a violation of the probation imposed under this subsection is a  
16       class A misdemeanor.

17       ~~4.5.~~ If the defendant has pled or been found guilty of abandonment or nonsupport of  
18       spouse or children, the period of probation may be continued for as long as  
19       responsibility for support continues.

20       ~~5.6.~~ In felony and misdemeanor cases, in consequence of violation of probation conditions,  
21       the court may impose an additional ~~period~~periods of probation ~~not to exceed five-~~  
22       ~~years. The additional period of probation may follow a period of incarceration if the~~  
23       ~~defendant has not served the maximum period of incarceration available at the time of~~  
24       ~~initial sentencing or deferment~~ if the defendant has not served the maximum sentence  
25       of imprisonment or probation available to the court at the time of initial sentencing or  
26       deferment. The court shall allow the defendant credit for a sentence of probation from  
27       the date the defendant began probation until the date a petition to revoke probation  
28       was filed with the court. If the defendant is on supervised probation, the defendant is  
29       not entitled to credit for a sentence of probation for any period the defendant has  
30       absconded from supervision. The total amount of credit a defendant is entitled to for

1            time spent on probation must be stated in the criminal judgment or order of revocation  
2            of probation.

3        ~~6-7.~~ The court may terminate a period of probation and discharge the defendant at any  
4            time earlier than that provided in subsection 1 if warranted by the conduct of the  
5            defendant and the ends of justice.

6        ~~7-8.~~ Notwithstanding the fact that a sentence to probation subsequently can be modified or  
7            revoked, a judgment that includes such a sentence constitutes a final judgment for all  
8            other purposes.

9            **SECTION 2. AMENDMENT.** Subsections 1 and 3 of section 12.1-32-07 of the North Dakota  
10 Century Code are amended and reenacted as follows:

- 11            1. When the court imposes probation upon conviction for a felony offense subject to  
12            section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section  
13            12.1-17-07.1, a second or subsequent violation of any domestic violence protection  
14            order, a violation of chapter 12.1-40, a violation of section 14-09-22, or a felony  
15            offense under chapter 39-08, the court shall place the defendant under the supervision  
16            and management of the department of corrections and rehabilitation. ~~When the court~~  
17            imposes probation upon conviction or order of disposition in all other felony cases, the  
18            court may place the defendant under the supervision and management of the  
19            department of corrections and rehabilitation. In class A misdemeanor cases, the court  
20            may place the defendant under the supervision and management of the department of  
21            corrections and rehabilitation or other responsible party. In all other cases, the court  
22            may place the defendant under the supervision and management of a community  
23            corrections program other than the department of corrections and rehabilitation. ~~If an~~  
24            ~~appropriate community corrections program is not reasonably available, the court may~~  
25            ~~place the defendant under the supervision and management of the department of~~  
26            ~~corrections and rehabilitation. The department of corrections and rehabilitation may~~  
27            ~~arrange for the supervision and management of the defendant by a community~~  
28            ~~corrections program selected by the department of corrections and rehabilitation. A~~  
29            community corrections program means a program for the supervision of a defendant,  
30            including monitoring and enforcement of terms and conditions of probation set by the

1           ~~court or pursuant to a conditional release from the physical custody of a correctional-~~  
2           ~~facility or the department of corrections and rehabilitation.~~

3           3. The court shall provide as an explicit condition of every probation that the defendant  
4           may not possess a firearm, destructive device, or other dangerous weapon while the  
5           defendant is on probation. Except when the offense is a misdemeanor offense under  
6           section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the  
7           court may waive this condition of probation if the defendant has pled guilty to, or has  
8           been found guilty of, a misdemeanor or infraction offense, the misdemeanor or  
9           infraction is the defendant's first offense, and the court has made a specific finding on  
10          the record before imposition of a sentence or a probation that there is good cause to  
11          waive the condition. The court may not waive this condition of probation if the court  
12          places the defendant under the supervision and management of the department of  
13          corrections and rehabilitation. The court shall provide as an explicit condition of  
14          probation that the defendant may not willfully defraud a urine test administered as a  
15          condition of probation. Unless waived on the record by the court, the court shall also  
16          provide as a condition of probation that the defendant undergo various agreed-to  
17          community constraints and conditions as intermediate measures of the department of  
18          corrections and rehabilitation to avoid revocation, which may include:

- 19          a. Community service;
- 20          b. Day reporting;
- 21          c. Curfew;
- 22          d. Home confinement;
- 23          e. House arrest;
- 24          f. Electronic monitoring;
- 25          g. Residential halfway house;
- 26          h. Intensive supervision program; or
- 27          i. Up to five non-successive periods of incarceration during any twelve-month  
28          period, each of which may not exceed forty-eight consecutive hours; or
- 29          j. Participation in the twenty-four seven sobriety program.

30           **SECTION 3. AMENDMENT.** Subdivision c of subsection 5 of section 39-08-01 of the North  
31          Dakota Century Code is amended and reenacted as follows:

- 1           c. For a third offense within seven years, the sentence must include at least one  
2           hundred twenty days' imprisonment; a fine of at least two thousand dollars; an  
3           order for addiction evaluation by an appropriate licensed addiction treatment  
4           program; at least ~~one year's~~three hundred sixty days' supervised probation; and  
5           participation in the twenty-four seven sobriety program under chapter 54-12 as a  
6           mandatory condition of probation.