

Sixty-eighth  
Legislative Assembly  
of North Dakota

**ENGROSSED HOUSE BILL NO. 1138**

Introduced by

Representatives Satrom, Karls, Klemin, Schauer, Vigesaa

Senator Conley

1 A BILL for an Act to amend and reenact subsection 1 of section 12.1-32-02 and sections  
2 19-03.1-23 and 39-08-01.5 of the North Dakota Century Code, relating to a mental health court  
3 program.

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

5 **SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-32-02 of the North Dakota  
6 Century Code is amended and reenacted as follows:

7 1. Every person convicted of an offense who is sentenced by the court must be  
8 sentenced to one or a combination of the following alternatives, unless the sentencing  
9 alternatives are otherwise specifically provided in the statute defining the offense or  
10 sentencing is deferred under subsection 4:

11 a. Payment of the reasonable costs of the person's prosecution.

12 b. Probation.

13 c. A term of imprisonment, including intermittent imprisonment:

14 (1) In a state correctional facility in accordance with section 29-27-07, in a  
15 regional corrections center, or in a county jail, if convicted of a felony or a  
16 class A misdemeanor.

17 (2) In a county jail or in a regional corrections center, if convicted of a class B  
18 misdemeanor.

19 (3) In a facility or program deemed appropriate for the treatment of the  
20 individual offender, including available community-based or faith-based  
21 programs.

22 (4) In the case of persons convicted of an offense who are under eighteen  
23 years of age at the time of sentencing, the court is limited to sentencing the

1                    minor defendant to a term of imprisonment in the custody of the department  
2                    of corrections and rehabilitation.

3                    d. A fine.

4                    e. Restitution for damages resulting from the commission of the offense.

5                    f. Restoration of damaged property or other appropriate work detail.

6                    g. Commitment to an appropriate licensed public or private institution for treatment  
7                    of alcoholism, drug addiction, or mental disease or defect.

8                    h. Commitment to a sexual offender treatment program.

9                    i. Drug court program. A drug court is a district court supervised treatment program  
10                    approved by the supreme court which combines judicial supervision with alcohol  
11                    and drug testing and substance use disorder treatment in a licensed treatment  
12                    program. The supreme court may adopt rules, including rules of procedure, for  
13                    drug court programs.

14                    j. Veterans treatment docket. A veterans treatment docket is a district court  
15                    supervised docket approved by the supreme court which combines judicial  
16                    supervision with licensed treatment programs to treat substance use disorders,  
17                    mental health conditions, behavioral health conditions, traumatic brain injuries,  
18                    military sexual trauma, and co-occurring disorders. The supreme court may adopt  
19                    rules, including rules of procedure, for veterans treatment dockets.

20                    k. Completion of a restorative justice program. For purposes of this section,  
21                    "restorative justice program" means a system of justice which focuses on the  
22                    rehabilitation of offenders through reconciliation with victims and the community  
23                    at large.

24                    l. Mental health court program. A mental health court is a district court supervised  
25                    treatment program approved by the supreme court which combines judicial  
26                    supervision with mental health services and treatment in a licensed treatment  
27                    program. The supreme court may adopt rules, including rules of procedure, for  
28                    mental health court programs.

29                    Except as provided by section 12.1-32-06.1, sentences imposed under this subsection  
30                    may not exceed in duration the maximum sentences of imprisonment provided by  
31                    section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining

1 an offense. This subsection does not permit the unconditional discharge of an offender  
2 following conviction. A sentence under subdivision e or f must be imposed in the  
3 manner provided in section 12.1-32-08. If the person is sentenced to a term of  
4 imprisonment, the court may prohibit the person from contacting the victim during the  
5 term of imprisonment. For purposes of this subsection, "victim" means victim as  
6 defined in section 12.1-34-01.

7 **SECTION 2. AMENDMENT.** Section 19-03.1-23 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **19-03.1-23. Prohibited acts - Penalties.**

- 10 1. Except as authorized by this chapter, it is unlawful for a person to willfully, as defined  
11 in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or  
12 deliver, a controlled substance, or to deliver, distribute, or dispense a controlled  
13 substance by means of the internet, but a person who violates section 12-46-24 or  
14 12-47-21 may not be prosecuted under this subsection. A person who violates this  
15 subsection with respect to:
- 16 a. A controlled substance classified in schedule I or II which is a narcotic drug, or  
17 methamphetamine, is guilty of a class B felony.
  - 18 b. Any other controlled substance classified in schedule I, II, or III, or a controlled  
19 substance analog, except marijuana or tetrahydrocannabinol is guilty of a class B  
20 felony.
  - 21 c. Marijuana, tetrahydrocannabinol, or a substance classified in schedule IV, is  
22 guilty of a class C felony.
  - 23 d. A substance classified in schedule V, is guilty of a class A misdemeanor.
- 24 2. A prior misdemeanor conviction under subsection 7 or a prior conviction under  
25 subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under  
26 subsection 1.
- 27 3. Except as authorized by this chapter, it is unlawful for any person to willfully, as  
28 defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit  
29 substance by means of the internet or any other means, or possess with intent to  
30 deliver, a counterfeit substance by means of the internet or any other means, but any

- 1 person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this  
2 subsection. Any person who violates this subsection with respect to:
- 3 a. A counterfeit substance classified in schedule I, II, or III, is guilty of a class B  
4 felony.
- 5 b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
- 6 c. A counterfeit substance classified in schedule V, is guilty of a class A  
7 misdemeanor.
- 8 4. A person at least eighteen years of age who solicits, induces, intimidates, employs,  
9 hires, or uses a person under eighteen years of age to aid or assist in the  
10 manufacture, delivery, or possession with intent to manufacture or deliver a controlled  
11 substance for the purpose of receiving consideration or payment for the manufacture  
12 or delivery of any controlled substance is guilty of a class B felony. It is not a defense  
13 to a violation of this subsection that the defendant did not know the age of a person  
14 protected under this subsection.
- 15 5. Except for a prior conviction equivalent to a misdemeanor violation of subsection 7 or  
16 a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this title  
17 or a law of another state or the federal government which is equivalent to an offense  
18 with respect to the manufacture, delivery, or intent to deliver a controlled substance  
19 under this title committed while the offender was an adult and which resulted in a plea  
20 or finding of guilt must be considered a prior offense under subsection 1. The prior  
21 offense must be alleged in the complaint, information, or indictment. The plea or  
22 finding of guilt for the prior offense must have occurred before the date of the  
23 commission of the offense or offenses charged in the complaint, information, or  
24 indictment.
- 25 6. It is unlawful for a person to willfully, as defined in section 12.1-02-02:
- 26 a. Serve as an agent, intermediary, or other entity that causes the internet to be  
27 used to bring together a buyer and seller to engage in the delivery, distribution, or  
28 dispensing of a controlled substance in a manner not authorized by this chapter;  
29 or
- 30 b. Offer to fill or refill a prescription for a controlled substance based solely on a  
31 consumer's completion of an online medical questionnaire.

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

2 7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess  
3 a controlled substance or a controlled substance analog unless the substance  
4 was obtained directly from, or pursuant to, a valid prescription or order of a  
5 practitioner while acting in the course of the practitioner's professional practice, or  
6 except as otherwise authorized by this chapter, but any person who violates  
7 section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.

8 b. Except as otherwise provided in this subsection, any person who violates this  
9 subsection is guilty of a class A misdemeanor for the first offense under this  
10 subsection and a class C felony for a second or subsequent offense under this  
11 subsection.

12 c. If, at the time of the offense the person is in or on the real property comprising a  
13 public or private elementary or secondary school or a public career and technical  
14 education school, the person is guilty of a class B felony, unless the offense  
15 involves marijuana or tetrahydrocannabinol.

16 d. A person who violates this subsection by possessing:

17 (1) Marijuana:

18 (a) In an amount of less than one-half ounce [14.175 grams] is guilty of  
19 an infraction.

20 (b) At least one-half ounce [14.175 grams] but not more than 500 grams  
21 of marijuana is guilty of a class B misdemeanor.

22 (c) More than 500 grams of marijuana is guilty of a class A misdemeanor.

23 (2) Tetrahydrocannabinol:

24 (a) In an amount less than two grams is guilty of an infraction.

25 (b) At least two grams but not more than six grams of  
26 tetrahydrocannabinol is guilty of a class B misdemeanor.

27 (c) More than six grams of tetrahydrocannabinol is guilty of a class A  
28 misdemeanor.

29 e. If an individual is sentenced to the legal and physical custody of the department  
30 of corrections and rehabilitation under this subsection, the department may place  
31 the individual in a drug and alcohol treatment program designated by the

- 1 department. Upon the successful completion of the drug and alcohol treatment  
2 program, the department shall release the individual from imprisonment to begin  
3 any court-ordered period of probation.
- 4 f. If the individual is not subject to any court-ordered probation, the court shall order  
5 the individual to serve the remainder of the sentence of imprisonment on  
6 supervised probation subject to the terms and conditions imposed by the court.
- 7 g. Probation under this subsection may include placement in another facility,  
8 treatment program, drug court, mental health court, or veterans treatment docket.  
9 If an individual is placed in another facility or treatment program upon release  
10 from imprisonment, the remainder of the sentence must be considered as time  
11 spent in custody.
- 12 h. An individual incarcerated under this subsection as a result of a second probation  
13 revocation is not eligible for release from imprisonment upon the successful  
14 completion of treatment.
- 15 i. A person who violates this subsection regarding possession of five or fewer  
16 capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or  
17 controlled substance analog is guilty of a class A misdemeanor.
- 18 8. Except as provided by section 19-03.1-45, a court may order a person who violates  
19 this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed  
20 addiction counselor. The evaluation must indicate the prospects for rehabilitation and  
21 whether addiction treatment is required. If ordered, the evaluation must be submitted  
22 to the court before imposing punishment for a felony violation or a misdemeanor  
23 violation.
- 24 9. If a person pleads guilty or is found guilty of a first offense regarding possession of  
25 one ounce [28.35 grams] or less of marijuana or two grams or less of  
26 tetrahydrocannabinol and a judgment of guilt is entered, a court, upon motion, shall  
27 seal the court record of that conviction if the person is not subsequently convicted  
28 within two years of a further violation of this chapter. Once sealed, the court record  
29 may not be opened even by order of the court.
- 30 10. Upon successful completion of a drug court program, mental health court program, or  
31 veterans treatment docket, a person who has been convicted of a felony under this

1 section and sentenced to drug court, mental health court, or veterans treatment docket  
2 is deemed to have been convicted of a misdemeanor.

3 11. If a person convicted of a misdemeanor under this section is sentenced to drug court,  
4 mental health court, or veterans treatment docket and successfully completes a drug  
5 court program, mental health court, or veterans treatment docket, the court shall  
6 dismiss the case and seal the file in accordance with section 12.1-32-07.2.

7 12. If an individual under the age of twenty-one pleads guilty or is found guilty of a first  
8 offense regarding possession of one-half ounce [14.175 grams] or less of marijuana,  
9 the court also may sentence the individual to an evidence-based alcohol and drug  
10 education program operated under rules adopted by the department of human  
11 services under section 50-06-44. For a second or subsequent offense regarding  
12 possession of one-half ounce [14.175 grams] or less of marijuana, the court also shall  
13 sentence the individual to an evidence-based alcohol and drug education program  
14 operated under rules adopted by the department of health and human services under  
15 section 50-06-44.

16 **SECTION 3. AMENDMENT.** Section 39-08-01.5 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18 **39-08-01.5. Partial suspension of sentence for drug court program, mental health**  
19 **court program, or veterans treatment docket completion.**

20 1. Notwithstanding section 39-08-01, all but ten days of the minimum mandatory  
21 sentence required for a defendant charged with a third or subsequent violation of  
22 section 39-08-01 may be suspended on the condition the defendant successfully  
23 completes a drug court program, mental health court program, or veterans treatment  
24 docket approved by the supreme court.

25 2. Upon successful completion of a drug court program, mental health court program, or  
26 veterans treatment docket, a defendant convicted of a felony under section 39-08-01  
27 and sentenced to drug court, mental health court, or veterans treatment docket is  
28 deemed to have been convicted of a misdemeanor.

29 3. If a defendant convicted of a misdemeanor under section 39-08-01 is sentenced to  
30 drug court, mental health court, or veterans treatment docket and successfully  
31 completes a drug court program, mental health court, or veterans treatment docket,

- 1 the court shall dismiss the case and seal the file in accordance with section
- 2 12.1-32-07.2.