

Introduced by

Senators Meyer, D. Larsen, Larson

Representatives Ista, Roers Jones, Schneider

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 drug court and the
3 creation of a veterans treatment docket.

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 Except as provided by section 12.1-32-06.1, sentences imposed under this subsection
21 may not exceed in duration the maximum sentences of imprisonment provided by
22 section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining
23 an offense. This subsection does not permit the unconditional discharge of an offender
24 following conviction. A sentence under subdivision e or f must be imposed in the
25 manner provided in section 12.1-32-08. If the person is sentenced to a term of
26 imprisonment, the court may prohibit the person from contacting the victim during the
27 term of imprisonment. For purposes of this subsection, "victim" means victim as
28 defined in section 12.1-34-01.

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

1 **19-03.1-23. Prohibited acts - Penalties.**

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

8 a. A controlled substance classified in schedule I or II which is a narcotic drug, or
9 methamphetamine, is guilty of a class B felony.

10 b. Any other controlled substance classified in schedule I, II, or III, or a controlled
11 substance analog is guilty of a class B felony.

12 c. A substance classified in schedule IV, is guilty of a class C felony.

13 d. A substance classified in schedule V, is guilty of a class A misdemeanor.

14 2. A prior misdemeanor conviction under subsection 7 or a prior conviction under
15 subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under
16 subsection 1.

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

23 a. A counterfeit substance classified in schedule I, II, or III, is guilty of a class B
24 felony.

25 b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.

26 c. A counterfeit substance classified in schedule V, is guilty of a class A
27 misdemeanor.

28 4. A person at least eighteen years of age who solicits, induces, intimidates, employs,
29 hires, or uses a person under eighteen years of age to aid or assist in the
30 manufacture, delivery, or possession with intent to manufacture or deliver a controlled
31 substance for the purpose of receiving consideration or payment for the manufacture

1 or delivery of any controlled substance is guilty of a class B felony. It is not a defense
2 to a violation of this subsection that the defendant did not know the age of a person
3 protected under this subsection.

- 4 5. Except for a prior conviction equivalent to a misdemeanor violation of subsection 7 or
5 a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this title
6 or a law of another state or the federal government which is equivalent to an offense
7 with respect to the manufacture, delivery, or intent to deliver a controlled substance
8 under this title committed while the offender was an adult and which resulted in a plea
9 or finding of guilt must be considered a prior offense under subsection 1. The prior
10 offense must be alleged in the complaint, information, or indictment. The plea or
11 finding of guilt for the prior offense must have occurred before the date of the
12 commission of the offense or offenses charged in the complaint, information, or
13 indictment.

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

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

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

- 22 7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess
23 a controlled substance or a controlled substance analog unless the substance
24 was obtained directly from, or pursuant to, a valid prescription or order of a
25 practitioner while acting in the course of the practitioner's professional practice, or
26 except as otherwise authorized by this chapter, but any person who violates
27 section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.
28 b. Except as otherwise provided in this subsection, any person who violates this
29 subsection is guilty of a class A misdemeanor for the first offense under this
30 subsection and a class C felony for a second or subsequent offense under this
31 subsection.

- 1 c. If, at the time of the offense the person is in or on the real property comprising a
2 public or private elementary or secondary school or a public career and technical
3 education school, the person is guilty of a class B felony, unless the offense
4 involves marijuana.
- 5 d. A person who violates this subsection by possessing:
- 6 (1) Marijuana in an amount of less than one-half ounce [14.175 grams] is guilty
7 of an infraction.
- 8 (2) At least one-half ounce [14.175 grams] but not more than 500 grams of
9 marijuana is guilty of a class B misdemeanor.
- 10 (3) More than 500 grams of marijuana is guilty of a class A misdemeanor.
- 11 e. If an individual is sentenced to the legal and physical custody of the department
12 of corrections and rehabilitation under this subsection, the department may place
13 the individual in a drug and alcohol treatment program designated by the
14 department. Upon the successful completion of the drug and alcohol treatment
15 program, the department shall release the individual from imprisonment to begin
16 any court-ordered period of probation.
- 17 f. If the individual is not subject to any court-ordered probation, the court shall order
18 the individual to serve the remainder of the sentence of imprisonment on
19 supervised probation subject to the terms and conditions imposed by the court.
- 20 g. Probation under this subsection may include placement in another facility,
21 treatment program, ~~or drug court,~~ or veterans treatment docket. If an individual is
22 placed in another facility or treatment program upon release from imprisonment,
23 the remainder of the sentence must be considered as time spent in custody.
- 24 h. An individual incarcerated under this subsection as a result of a second probation
25 revocation is not eligible for release from imprisonment upon the successful
26 completion of treatment.
- 27 i. A person who violates this subsection regarding possession of five or fewer
28 capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or
29 controlled substance analog is guilty of a class A misdemeanor.
- 30 8. Except as provided by section 19-03.1-45, a court may order a person who violates
31 this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed

1 addiction counselor. The evaluation must indicate the prospects for rehabilitation and
2 whether addiction treatment is required. If ordered, the evaluation must be submitted
3 to the court before imposing punishment for a felony violation or a misdemeanor
4 violation.

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

10 10. Upon successful completion of a drug court program or veterans treatment docket, a
11 person who has been convicted of a felony under this section and sentenced to drug
12 court or veterans treatment docket is deemed to have been convicted of a
13 misdemeanor.

14 11. If a person convicted of a misdemeanor under this section is sentenced to drug court
15 or veterans treatment docket and successfully completes a drug court program or
16 veterans treatment docket, the court shall dismiss the case and seal the file in
17 accordance with section 12.1-32-07.2.

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

20 **39-08-01.5. Partial suspension of sentence for drug court program or veterans**
21 **treatment docket completion.**

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

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

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

1 program or veterans treatment docket, the court shall dismiss the case and seal the
2 file in accordance with section 12.1-32-07.2.

3 4. ~~For purposes of this section, unless the context otherwise requires, "drug court-~~
4 ~~program" means a district court supervised treatment program approved by the~~
5 ~~supreme court which combines judicial supervision with alcohol and drug testing and~~
6 ~~chemical addiction treatment in a licensed treatment program. The supreme court may~~
7 ~~adopt rules, including rules of procedure, for drug courts and the drug court program.~~