

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1336

Introduced by

Representatives Satrom, Grueneich, Ostlie

Senators Conley, Dwyer

1 A BILL for an Act to amend and reenact section 12.1-31.2-02, subsection 1 of section
2 12.1-32-02, and subdivision h of subsection 5 of section 39-08-01 of the North Dakota Century
3 Code, relating to orders prohibiting contact and use of orders prohibiting contact as an
4 alternative to sentencing.

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

6 **SECTION 1. AMENDMENT.** Section 12.1-31.2-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **12.1-31.2-02. Order prohibiting contact.**

9 1. a. If an individual ~~who~~ is charged with ~~or~~, arrested for, or subject to a sentence or
10 order deferring imposition of sentence for a crime of violence or threat of
11 violence, stalking, harassment, or a sex offense ~~is released from custody before~~
12 ~~arraignment or trial~~, the court authorizing the release of the individual, imposing a
13 sentence, or issuing an order deferring imposition of sentence, shall consider and
14 may issue an order prohibiting the individual from having contact with the victim.
15 The order must contain the court's directives and must inform the individual that
16 any violation of the order constitutes a criminal offense. The state's attorney shall
17 provide a copy of the order to the victim. The court shall determine at the time of
18 the individual's arraignment whether an order issued pursuant to this section will
19 be extended. If the court issues an order pursuant to this section before the time
20 the individual is charged, the order expires at the individual's arraignment or
21 within seventy-two hours of issuance if charges against the individual are not
22 filed.

- 1 **b.** A party or victim may file a written request with the court to modify or terminate
2 an order issued under this section. If requested, the court may hold a hearing to
3 determine whether to grant or deny the request to modify or terminate an order.
- 4 **c.** If an order prohibiting contact is issued upon a charge or arrest, the order
5 terminates upon dismissal, acquittal, sentence, or order deferring imposition of
6 sentence. Upon sentence or order deferring imposition of sentence, the court
7 may issue a new order under this subsection.
- 8 2. If the court has probable cause to believe that the individual charged or
9 ~~arrested~~ subject to an order under subsection 1 is likely to use, display, or threaten to
10 use a firearm or dangerous weapon as defined in section 12.1-01-04 in any further act
11 of violence, the court shall require that the individual surrender for safekeeping any
12 firearm or specified dangerous weapon in or subject to the individual's immediate
13 possession or control, to the sheriff of the county or chief of police of the city in which
14 the individual resides.
- 15 3. ~~Whenever~~ If an order prohibiting contact is issued, modified, ~~extended~~, or terminated
16 under this section, the clerk of court shall forward a copy of the order within one
17 business day to the appropriate law enforcement agency specified in the order. Upon
18 receipt of the copy of the order, the law enforcement agency shall enter the order in
19 the central warrant information system and the national crime information center
20 database provided by the federal bureau of investigation, or its successor agency.
- 21 a. Once the bureau, after consultation with the state court administrator, determines
22 and implements a method to transmit electronically to the bureau an order
23 prohibiting contact, the court electronically shall send the full text of the order as
24 issued, modified, ~~extended~~, or terminated in accordance with this section and any
25 data fields identified by the bureau. This electronic submission will fulfill the law
26 enforcement agency's requirement to enter the order in the central warrant
27 information system, but will not fulfill its requirement to enter, maintain, and
28 respond to inquiries regarding the order in the national crime information center
29 database provided by the federal bureau of investigation, or its successor
30 agency.

- 1 b. Once the bureau, after consultation with the state court administrator, determines
2 and implements an electronic method to notify law enforcement about the order,
3 the clerk of court's requirement to forward the order to the law enforcement
4 agency will be satisfied.
- 5 c. Once the bureau, after consultation with the director of state radio, determines
6 and implements a method to enter the order into the national crime information
7 center database provided by the federal bureau of investigation, or its successor
8 agency, the bureau shall enter the order electronically in the national crime
9 information center database provided by the federal bureau of investigation, or its
10 successor agency. This electronic entry will fulfill the law enforcement agency's
11 requirement to enter the order in the national crime information center database
12 provided by the federal bureau of investigation, or its successor agency, but will
13 not fulfill its requirement to maintain and respond to inquiries regarding the order
14 in the national crime information center database provided by the federal bureau
15 of investigation, or its successor agency.
- 16 4. An individual who violates a court order issued under this section is guilty of a class A
17 misdemeanor.
- 18 5. A law enforcement officer shall arrest an individual without a warrant if the officer
19 determines there is probable cause that the individual has committed the offense of
20 violating an order prohibiting contact under this section, whether or not the violation
21 was committed in the presence of the officer. A law enforcement officer who acts in
22 good faith on probable cause and without malice is immune from any civil or criminal
23 liability for making an arrest under this subsection.

24 **SECTION 2. AMENDMENT.** Subsection 1 of section 12.1-32-02 of the North Dakota
25 Century Code is amended and reenacted as follows:

- 26 1. a. Every person convicted of an offense who is sentenced by the court must be
27 sentenced to one or a combination of the following alternatives, unless the
28 sentencing alternatives are otherwise specifically provided in the statute defining
29 the offense or sentencing is deferred under subsection 4:
- 30 a. (1) Payment of the reasonable costs of the person's prosecution.
- 31 ~~b.~~ (2) Probation.

- 1 e. ~~(3)~~ A term of imprisonment, including intermittent imprisonment:
- 2 ~~(1)~~ (a) In a state correctional facility in accordance with section 29-27-07, in a
- 3 regional corrections center, or in a county jail, if convicted of a felony
- 4 or a class A misdemeanor.
- 5 ~~(2)~~ (b) In a county jail or in a regional corrections center, if convicted of a
- 6 class B misdemeanor.
- 7 ~~(3)~~ (c) In a facility or program deemed appropriate for the treatment of the
- 8 individual offender, including available community-based or
- 9 faith-based programs.
- 10 ~~(4)~~ (d) In the case of persons convicted of an offense who are under
- 11 eighteen years of age at the time of sentencing, the court is limited to
- 12 sentencing the minor defendant to a term of imprisonment in the
- 13 custody of the department of corrections and rehabilitation.
- 14 ~~d.~~ (4) A fine.
- 15 e. (5) Restitution for damages resulting from the commission of the offense.
- 16 f. (6) Restoration of damaged property or other appropriate work detail.
- 17 ~~g.~~ (7) Commitment to an appropriate licensed public or private institution for
- 18 treatment of alcoholism, drug addiction, or mental disease or defect.
- 19 ~~h.~~ (8) Commitment to a sexual offender treatment program.
- 20 i. (9) Drug court program. A drug court is a district court supervised treatment
- 21 program approved by the supreme court which combines judicial
- 22 supervision with alcohol and drug testing and substance use disorder
- 23 treatment in a licensed treatment program. The supreme court may adopt
- 24 rules, including rules of procedure, for drug court programs.
- 25 j. (10) Veterans treatment docket. A veterans treatment docket is a district court
- 26 supervised docket approved by the supreme court which combines judicial
- 27 supervision with licensed treatment programs to treat substance use
- 28 disorders, mental health conditions, behavioral health conditions, traumatic
- 29 brain injuries, military sexual trauma, and co-occurring disorders. The
- 30 supreme court may adopt rules, including rules of procedure, for veterans
- 31 treatment dockets.

- 1 k. (11) Completion of a restorative justice program. For purposes of this section,
2 "restorative justice program" means a system of justice which focuses on
3 the rehabilitation of offenders through reconciliation with victims and the
4 community at large.
- 5 f. (12) Mental health court program. A mental health court is a district court
6 supervised treatment program approved by the supreme court which
7 combines judicial supervision with mental health services and treatment in a
8 licensed treatment program. The supreme court may adopt rules, including
9 rules of procedure, for mental health court programs.

10 (13) An order prohibiting contact.

- 11 b. Except as provided ~~by~~in section 12.1-32-06.1, sentences imposed under this
12 subsection may not exceed in duration the maximum sentences of imprisonment
13 provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in
14 a statute defining an offense. This subsection does not permit the unconditional
15 discharge of an offender following conviction. A sentence under ~~subdivision~~
16 ~~paragraph 5~~ or ~~6~~ of subdivision a must be imposed in the manner provided in
17 section 12.1-32-08. If the person is sentenced to a term of imprisonment, the
18 court may prohibit the person from contacting the victim during the term of
19 imprisonment. For purposes of this subsection, "victim" means victim as defined
20 in section 12.1-34-01.

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

- 23 h. If the penalty mandated by this section includes imprisonment or placement upon
24 conviction of a violation of this section or equivalent ordinance, and if an
25 addiction evaluation has indicated that the defendant needs treatment, the court
26 may order the defendant to undergo treatment at an appropriate licensed
27 addiction treatment program under ~~subdivision g~~ of subsection 1 of section
28 12.1-32-02 and the time spent by the defendant in the treatment must be credited
29 as a portion of a sentence of imprisonment or placement under this section. A
30 court may not order the department of corrections and rehabilitation to be
31 responsible for the costs of treatment in a private treatment facility.