

**FIRST ENGROSSMENT
with Conference Committee Amendments
ENGROSSED HOUSE BILL NO. 1393**

Introduced by

Representatives Heinert, Hanson, K. Koppelman

Senators Bakke, D. Larson, Myrdal

1 A BILL for an Act to create and enact section 12.1-17-01.2 of the North Dakota Century Code,
2 relating to domestic violence; to amend and reenact subsection 4 of section 12-60-16.4, section
3 12.1-17-01, subsection 6 of section 12.1-17-07.1, sections 12.1-17-13 and 12.1-32-07, and
4 subsection 3 of section 12.1-38-01 of the North Dakota Century Code, relating to simple
5 assault; and to provide a penalty.

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

7 **SECTION 1. AMENDMENT.** Subsection 4 of section 12-60-16.4 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 4. Class B misdemeanor offenses in sections 12.1-17-01, 12.1-17-01.2, 12.1-20-12.1,
10 12.1-21-05, 12.1-21-06, 12.1-22-03, 12.1-23-05, and 12.1-29-03.

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

13 **12.1-17-01. Simple assault.**

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

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

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

19 2. The offense is:

20 a. A class C felony when the victim is a peace officer or correctional institution

21 employee acting in an official capacity, which the actor knows to be a fact; an

22 employee of the state hospital acting in the course and scope of employment,

23 which the actor knows to be a fact, and the actor is an individual committed to or

24 detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a

1 judicial proceeding; or a member of a municipal or volunteer fire department or
2 emergency medical services personnel unit or emergency department worker in
3 the performance of the member's duties.

4 b. ~~A class B misdemeanor for the first offense when the victim is an actor's family or~~
5 ~~household member as defined in subsection 4 of section 14-07.1-01 and a~~
6 ~~class A misdemeanor for a second or subsequent offense when the victim is an~~
7 ~~actor's family or household member as defined in subsection 4 of section~~
8 ~~14-07.1-01 and the actor has a prior conviction for simple assault under this~~
9 ~~section or an assault offense under section 12.1-17-01.1 or 12.1-17-02 involving~~
10 ~~the commission of domestic violence as defined in subsection 2 of section~~
11 ~~14-07.1-01. For purposes of this subdivision, a prior conviction includes a~~
12 ~~conviction of any assault offense in which a finding of domestic violence was~~
13 ~~made under a law or ordinance of another state which is equivalent to this~~
14 ~~subdivision.~~

15 e. A class B misdemeanor except as provided in subdivision a or b.

16 **SECTION 3.** Section 12.1-17-01.2 of the North Dakota Century Code is created and
17 enacted as follows:

18 **12.1-17-01.2. Domestic violence.**

19 1. For purposes of this section "family or household member" means family or household
20 member as defined in section 14-07.1-01.

21 2. A person is guilty of an offense if that person willfully causes:

22 a. Bodily injury to the actor's family or household member;

23 b. Substantial bodily injury to the actor's family or household member; or

24 c. Serious bodily injury to the actor's family or household member.

25 3. The offense is:

26 a. A class B misdemeanor for the first offense under subdivision a of subsection 2
27 and a class A misdemeanor for a second or subsequent offense under this
28 section or sections 12.1-17-01, 12.1-17-01.1, or 12.1-17-02 involving the
29 commission of domestic violence, as defined in section 14-07.1-01. For purposes
30 of this subdivision, a prior conviction includes a conviction of any assault offense

1 in which a finding of domestic violence was made under a law or ordinance of
2 another state which is equivalent to this section.

3 b. A class A misdemeanor for an offense under subdivision b of subsection 2 and a
4 class C felony for an offense under subdivision c of subsection 2.

5 c. A class B felony for an offense under subdivision b or c of subsection 2 if the
6 victim is under twelve years of age.

7 4. A person charged with an offense under this section must be prosecuted in district
8 court.

9 **SECTION 4. AMENDMENT.** Subsection 6 of section 12.1-17-07.1 of the North Dakota
10 Century Code is amended and reenacted as follows:

11 6. a. A person who violates this section is guilty of a class C felony if:

12 (1) The person previously has been convicted of violating section 12.1-17-01,
13 12.1-17-01.1, 12.1-17-01.2, 12.1-17-02, 12.1-17-04, 12.1-17-05, or
14 12.1-17-07, or a similar offense from another court in North Dakota, a court
15 of record in the United States, or a tribal court, involving the victim of the
16 stalking;

17 (2) The stalking violates a court order issued under chapter 14-07.1 protecting
18 the victim of the stalking, if the person had notice of the court order; or

19 (3) The person previously has been convicted of violating this section.

20 b. If subdivision a does not apply, a person who violates this section is guilty of a
21 class A misdemeanor.

22 **SECTION 5. AMENDMENT.** Section 12.1-17-13 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **12.1-17-13. Mandated treatment of domestic violence offenders.**

25 The sentence for an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2,
26 12.1-17-02, 12.1-17-03, 12.1-17-04, or 12.1-17-05 against an actor's family or household
27 member, as defined in subsection 4 of section 14-07.1-01, must include an order to complete a
28 domestic violence offender evaluation and treatment program as determined by the court. A
29 court may not order the offender to attend anger management classes or individual counseling
30 unless a domestic violence offender treatment program is not reasonably available to the

1 defendant and the court makes findings for the record explaining why an order to complete a
2 domestic violence offender treatment program would be inappropriate.

3 **SECTION 6. AMENDMENT.** Section 12.1-32-07 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

- 6 1. When the court imposes probation upon conviction for a felony offense subject to
7 section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section
8 12.1-17-07.1, a second or subsequent violation of any domestic violence protection
9 order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony
10 offense under chapter 39-08, the court shall place the defendant under the supervision
11 and management of the department of corrections and rehabilitation. When the court
12 imposes probation upon conviction or order of disposition in all other felony cases, the
13 court may place the defendant under the supervision and management of the
14 department of corrections and rehabilitation. In class A misdemeanor cases, the court
15 may place the defendant under the supervision and management of the department of
16 corrections and rehabilitation or other responsible party. In all other cases, the court
17 may place the defendant under the supervision and management of a community
18 corrections program other than the department of corrections and rehabilitation. A
19 community corrections program means a program for the supervision of a defendant,
20 including monitoring and enforcement of terms and conditions of probation set by the
21 court.
- 22 2. The conditions of probation must be such as the court in its discretion deems
23 reasonably necessary to ensure that the defendant will lead a law-abiding life or to
24 assist the defendant to do so. The court shall provide as an explicit condition of every
25 probation that the defendant not commit another offense during the period for which
26 the probation remains subject to revocation. The court shall order supervision costs
27 and fees of not less than fifty-five dollars per month unless the court makes a specific
28 finding on record that the imposition of fees will result in an undue hardship. If the
29 offender has not paid the full amount of supervision fees and costs before completion
30 or termination of probation, the court may issue an order, after opportunity for hearing,
31 to determine the amount of supervision fees and costs that are unpaid. The order may

1 be filed, transcribed, and enforced by the department of corrections and rehabilitation
2 in the same manner as civil judgments rendered by a district court of this state.

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, 12.1-17-01.2, 12.1-17-05, or 12.1-17-07.1, or
7 chapter 14-07.1, the court may waive this condition of probation if the defendant has
8 pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the
9 misdemeanor or infraction is the defendant's first offense, and the court has made a
10 specific finding on the record before imposition of a sentence or a probation that there
11 is good cause to waive the condition. The court may not waive this condition of
12 probation if the court places the defendant under the supervision and management of
13 the department of corrections and rehabilitation. The court shall provide as an explicit
14 condition of probation that the defendant may not willfully defraud a urine test
15 administered as a condition of probation. Unless waived on the record by the court,
16 the court shall also provide as a condition of probation that the defendant undergo
17 various agreed-to community constraints and conditions as intermediate measures of
18 the department of corrections and rehabilitation to avoid revocation, which may
19 include:

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

- 1 k. One period of incarceration during a period of probation not to exceed thirty
2 consecutive days in lieu of a petition for revocation of probation.
- 3 4. When imposing a sentence to probation, probation in conjunction with imprisonment,
4 or probation in conjunction with suspended execution or deferred imposition of
5 sentence, the court may impose such conditions as it deems appropriate and may
6 include any one or more of the following:
- 7 a. Work faithfully at a suitable employment or faithfully pursue a course of study or
8 of career and technical education training that will equip the defendant for
9 suitable employment.
- 10 b. Undergo available medical or psychiatric treatment and remain in a specified
11 institution if required for that purpose.
- 12 c. Attend or reside in a facility established for the instruction, recreation, or
13 residence of persons on probation.
- 14 d. Support the defendant's dependents and meet other family responsibilities.
- 15 e. Make restitution or reparation to the victim of the defendant's conduct for the
16 damage or injury which was sustained or perform other reasonable assigned
17 work. When restitution, reparation, or assigned work is a condition of probation,
18 the court shall proceed as provided in subsection 1 or 2, as applicable, of section
19 12.1-32-08.
- 20 f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05.
- 21 g. Refrain from excessive use of alcohol or any use of narcotics or of another
22 dangerous or abusable drug without a prescription.
- 23 h. Permit the probation officer to visit the defendant at reasonable times at the
24 defendant's home or elsewhere.
- 25 i. Remain within the jurisdiction of the court, unless granted permission to leave by
26 the court or the probation officer.
- 27 j. Answer all reasonable inquiries by the probation officer and promptly notify the
28 probation officer of any change in address or employment.
- 29 k. Report to a probation officer at reasonable times as directed by the court or the
30 probation officer.

- 1 l. Submit to a medical examination or other reasonable testing for the purpose of
2 determining the defendant's use of narcotics, marijuana, or other controlled
3 substance whenever required by a probation officer.
- 4 m. Refrain from associating with known users or traffickers in narcotics, marijuana,
5 or other controlled substances.
- 6 n. Submit the defendant's person, place of residence, or vehicle to search and
7 seizure by a probation officer at any time of the day or night, with or without a
8 search warrant.
- 9 o. Serve a term of imprisonment of up to one-half of the maximum term authorized
10 for the offense of which the defendant was convicted.
- 11 p. Reimburse the costs and expenses determined necessary for the defendant's
12 adequate defense when counsel is appointed or provided at public expense for
13 the defendant. When reimbursement of indigent defense costs and expenses is
14 imposed as a condition of probation, the court shall proceed as provided in
15 subsection 4 of section 12.1-32-08.
- 16 q. Provide community service for the number of hours designated by the court.
- 17 r. Refrain from any subscription to, access to, or use of the internet.
- 18 5. When the court imposes a sentence to probation, probation in conjunction with
19 imprisonment, or probation in conjunction with suspended execution or deferred
20 imposition of sentence, the defendant must be given a certificate explicitly setting forth
21 the conditions on which the defendant is being released.
- 22 6. The court, upon notice to the probationer and with good cause, may modify or enlarge
23 the conditions of probation at any time prior to the expiration or termination of the
24 period for which the probation remains conditional. If the defendant violates a
25 condition of probation at any time before the expiration or termination of the period, the
26 court may continue the defendant on the existing probation, with or without modifying
27 or enlarging the conditions, or may revoke the probation and impose any other
28 sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of
29 initial sentencing or deferment. In the case of suspended execution of sentence, the
30 court may revoke the probation and cause the defendant to suffer the penalty of the
31 sentence previously imposed upon the defendant.

- 1 7. The court may continue or modify probation conditions or revoke probation for a
2 violation of probation conditions occurring before the expiration or termination of the
3 period of probation notwithstanding that the order of the court is imposed after the
4 expiration or termination has occurred. The petition for revocation must be issued
5 within sixty days of the expiration or termination of probation.
- 6 8. Jurisdiction over a probationer may be transferred from the court that imposed the
7 sentence to another court of this state with the concurrence of both courts. Retransfers
8 of jurisdiction may also occur in the same manner. The court to which jurisdiction has
9 been transferred under this subsection may exercise all powers permissible under this
10 chapter over the defendant.
- 11 9. Notwithstanding any other provision of law, the court may authorize the defendant to
12 assist law enforcement officers in an investigation of a criminal offense upon the terms
13 and conditions as the court may require by written order. The court shall hold a
14 hearing in camera before issuing an order under this subsection. The order must be
15 sealed and is subject to inspection only upon order of the court.

16 **SECTION 7. AMENDMENT.** Subsection 3 of section 12.1-38-01 of the North Dakota
17 Century Code is amended and reenacted as follows:

- 18 3. "Crime" includes an offense named in section 12.1-16-01, 12.1-16-02, 12.1-16-03,
19 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-02, 12.1-17-03, 12.1-17-04,
20 chapter 12.1-18, section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-07,
21 chapter 12.1-21, section 12.1-22-01, 12.1-22-02, or 12.1-22-03, or an attempt to
22 commit any of these offenses. The term includes a crime in other states which would
23 have been within this definition if the crime had been committed in this state.