

**SECOND ENGROSSMENT
with House Amendments
REENGROSSED SENATE BILL NO. 2149**

Introduced by

Senators Armstrong, D. Larson

Representatives Klemin, P. Anderson

1 A BILL for an Act to create and enact a new subsection to section 12.1-32-09.1 of the North
2 Dakota Century Code, relating to the penalty for a class A misdemeanor; to amend and reenact
3 subdivision k of subsection 3 of section 12.1-23-05, subsection 5 of section 12.1-32-01,
4 subdivision b of subsection 1 of section 12.1-32-02.1, subsection 3 of section 19-03.1-22.2,
5 section 19-03.1-23, subsection 2 of section 19-03.1-23.1, section 19-03.1-23.4, paragraph 3 of
6 subdivision e of subsection 1 of section 19-03.1-36, subdivision e of subsection 5 of section
7 19-03.1-36, subsection 1 of section 19-03.1-45, and subsection 29 of section 40-05-02 of the
8 North Dakota Century Code, relating to grading of theft offenses, illegal possession of
9 prescription capsules, pills, or tablets, possession of marijuana, and misdemeanor marijuana
10 convictions being excluded as prior offenses for purposes of determining mandatory terms of
11 imprisonment; and to provide a penalty.

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

13 **SECTION 1. AMENDMENT.** Subdivision k of subsection 3 of section 12.1-23-05 of the
14 North Dakota Century Code is amended and reenacted as follows:

15 k. The property stolen is a prescription drug as defined in section 43-15.3-01,
16 except when the quantity stolen is five or fewer capsules, pills, or tablets.

17 **SECTION 2. AMENDMENT.** Subsection 5 of section 12.1-32-01 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 5. Class A misdemeanor, for which a maximum penalty of ~~one year's~~ imprisonment for
20 three hundred sixty days, a fine of three thousand dollars, or both, may be imposed.

21 **SECTION 3. AMENDMENT.** Subdivision b of subsection 1 of section 12.1-32-02.1 of the
22 North Dakota Century Code is amended and reenacted as follows:

23 b. The offender possesses or has within immediate reach and control a dangerous
24 weapon, explosive, destructive device, or firearm while in the course of

1 committing any felony offense under subsection 1, ~~23~~, or ~~78~~ of section
2 19-03.1-23.

3 **SECTION 4.** A new subsection to section 12.1-32-09.1 of the North Dakota Century Code is
4 created and enacted as follows:

5 An offender who is convicted of a class C felony in violation of section 12.1-17-02, or
6 an attempt to commit the offense, and who has received a sentence of imprisonment
7 or a sentence of imprisonment upon revocation of probation before August 1, 2015, is
8 eligible to have the offender's sentence considered by the parole board.

9 **SECTION 5. AMENDMENT.** Subsection 3 of section 19-03.1-22.2 of the North Dakota
10 Century Code is amended and reenacted as follows:

11 3. Unless a greater penalty is otherwise provided by law, a person who violates
12 subsection 2, and a child or vulnerable adult actually suffers bodily injury or death by
13 exposure to, ingestion of, inhalation of, or contact with a controlled substance,
14 chemical substance, or drug paraphernalia, is guilty of a class B felony ~~unless the~~
15 ~~exposure, ingestion, inhalation, or contact results in the death of the child or~~
16 ~~vulnerable adult, in which case the person is guilty of a class A felony.~~

17 **SECTION 6. AMENDMENT.** Section 19-03.1-23 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines -**
20 **Unclassified offenses - Penalties.**

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

27 a. A controlled substance classified in schedule I or II which is a narcotic drug, or
28 methamphetamine, is guilty of a class ~~AB~~ felony and must be sentenced:
29 (1) For a second offense, to imprisonment for at least ~~five~~three years.
30 (2) For a third or subsequent offense, to imprisonment for ~~twenty~~ten years.

- 1 b. Any other controlled substance classified in schedule I, II, or III, or a controlled
2 substance analog is guilty of a class B felony. Except for a person who
3 manufactures, delivers, or possesses with the intent to manufacture or deliver
4 marijuana, any person found guilty under this subdivision must be sentenced:
5 (1) For a second offense, to imprisonment for at least ~~three~~two years.
6 (2) For a third or subsequent offense, to imprisonment for ~~ten~~five years.
- 7 c. A substance classified in schedule IV, is guilty of a class C felony and must be
8 sentenced:
9 (1) For a second offense, to imprisonment for at least ~~six~~three months.
10 (2) For a third offense, to imprisonment for at least ~~one year~~six months.
11 (3) For a fourth or subsequent offense, to imprisonment for ~~five~~three years.
- 12 d. A substance classified in schedule V, is guilty of a class A misdemeanor.
- 13 2. A prior misdemeanor conviction under subsection 8 or a prior conviction under
14 subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under
15 subsections 1 and 4.
- 16 ~~2.3.~~ Except as authorized by this chapter, it is unlawful for any person to willfully, as
17 defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit
18 substance by means of the internet or any other means, or possess with intent to
19 deliver, a counterfeit substance by means of the internet or any other means, but any
20 person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this
21 subsection. Any person who violates this subsection with respect to:
22 a. ~~A counterfeit substance classified in schedule I or II which is a narcotic drug, is~~
23 ~~guilty of a class A felony.~~
24 b. ~~Any other~~A counterfeit substance classified in schedule I, II, or III, is guilty of a
25 class B felony.
- 26 ~~e.b.~~ A counterfeit substance classified in schedule IV, is guilty of a class C felony.
27 ~~d.c.~~ A counterfeit substance classified in schedule V, is guilty of a class A
28 misdemeanor.
- 29 ~~3.4.~~ For second or subsequent offenders, in addition to any other penalty imposed under
30 this section, a person who violates this chapter, except a person who manufactures,
31 delivers, or possesses with the intent to manufacture or deliver marijuana, is subject

1 to, and the court shall impose, the following penalties to run consecutively to any other
2 sentence imposed:

3 a. Any person, eighteen years of age or older, who violates this section by willfully
4 manufacturing, delivering, or possessing with intent to manufacture or deliver a
5 controlled substance in or on, or within one thousand feet [300.48 meters] of the
6 real property comprising a public or private elementary or secondary school or a
7 public career and technical education school is subject to an ~~eight-year~~four-year
8 term of imprisonment.

9 b. If the defendant was at least twenty-one years of age at the time of the offense,
10 and delivered a controlled substance to a person under the age of eighteen, the
11 defendant must be sentenced to imprisonment for at least ~~eight~~four years. It is
12 not a defense that the defendant did not know the age of a person protected
13 under this subdivision.

14 ~~4.5.~~ A person at least eighteen years of age who solicits, induces, intimidates, employs,
15 hires, or uses a person under eighteen years of age to aid or assist in the
16 manufacture, delivery, or possession with intent to manufacture or deliver a controlled
17 substance for the purpose of receiving consideration or payment for the manufacture
18 or delivery of any controlled substance is guilty of a class B felony and must be
19 sentenced:

20 a. For a second or subsequent offense, to imprisonment for at least ~~five~~three years.
21 b. It is not a defense to a violation of this subsection that the defendant did not know
22 the age of a person protected under this subsection.

23 ~~5.~~ A

24 ~~6.~~ Except for a prior conviction equivalent to a misdemeanor violation of subsection 8 or
25 a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this
26 chapter or a law of another state or the federal government which is equivalent to an
27 offense under this chapter committed while the offender was an adult and which
28 resulted in a plea or finding of guilt must be considered a prior offense under
29 subsections 1, ~~34~~, and ~~45~~. The prior offense must be alleged in the complaint,
30 information, or indictment. The plea or finding of guilt for the prior offense must have

1 occurred before the date of the commission of the offense or offenses charged in the
2 complaint, information, or indictment.

3 ~~6-7.~~ It is unlawful for a person to willfully, as defined in section 12.1-02-02:

4 a. Serve as an agent, intermediary, or other entity that causes the internet to be
5 used to bring together a buyer and seller to engage in the delivery, distribution, or
6 dispensing of a controlled substance in a manner not authorized by this chapter;
7 or

8 b. Offer to fill or refill a prescription for a controlled substance based solely on a
9 consumer's completion of an online medical questionnaire.

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

11 ~~7-8.~~ a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess
12 a controlled substance or a controlled substance analog unless the substance
13 was obtained directly from, or pursuant to, a valid prescription or order of a
14 practitioner while acting in the course of the practitioner's professional practice, or
15 except as otherwise authorized by this chapter, but any person who violates
16 section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.

17 b. Except as otherwise provided in this subsection, any person who violates this
18 subsection is guilty of a class C felony.

19 c. If, at the time of the offense the person is in or on, or within one thousand feet
20 [300.48 meters] of the real property comprising a public or private elementary or
21 secondary school or a public career and technical education school, the person is
22 guilty of a class B felony, unless the offense involves one ounce [28.35 grams] or
23 less of marijuana.

24 d. Any person who violates this subsection regarding possession of one ounce
25 [28.35 grams] or less of marijuana is guilty of a class B misdemeanor.

26 e. Any person who violates this subsection regarding possession of five or fewer
27 capsules, pills, or tablets of a schedule II, III, or IV controlled substance or
28 controlled substance analog is guilty of a class A misdemeanor.

29 ~~8-9.~~ Except as provided by section 19-03.1-45, a court may order a person who violates
30 this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed
31 addiction counselor. The evaluation must indicate the prospects for rehabilitation and

1 whether addiction treatment is required. If ordered, the evaluation must be submitted
2 to the court before imposing punishment for a felony violation or a misdemeanor
3 violation. A court shall order a person who violates subdivision e of subsection 8 to
4 undergo the drug addiction evaluation.

5 9-10. 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 **SECTION 7. AMENDMENT.** Subsection 2 of section 19-03.1-23.1 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 2. The offense is:

13 a. ~~A class AA felony if the violation of section 19-03.1-23 is designated as a class A~~
14 ~~felony.~~

15 ~~b.~~ A class A felony if the violation of section 19-03.1-23 is designated as a class B
16 felony.

17 ~~e.b.~~ A class B felony if the violation of section 19-03.1-23 is designated as a class C
18 felony.

19 ~~d.c.~~ A class C felony if the violation of section 19-03.1-23 is designated as a class A
20 misdemeanor.

21 **SECTION 8. AMENDMENT.** Section 19-03.1-23.4 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **19-03.1-23.4. Overdose prevention and immunity.**

24 An individual is immune from criminal prosecution under sections 19-03.1-22.1,
25 19-03.1-22.3, 19-03.1-22.5, subsection ~~7~~8 of section 19-03.1-23, subsection 3 of section
26 19-03.2-03, and section 19-03.4-03 if in good faith that individual ~~contacted law enforcement or~~
27 ~~emergency medical services and reported that the individual was or that seeks medical~~
28 assistance for another individual ~~was~~ in need of emergency medical assistance due to a drug
29 overdose. To receive immunity under this section, the individual receiving immunity must have
30 remained on the scene until assistance arrived, cooperated with ~~emergency medical services~~
31 ~~and law enforcement personnel~~ in the medical treatment of the reported drug overdosed

1 individual, and the overdosed individual must have been in need of emergency medical-
2 services. The maximum number of individuals that may be immune for any one occurrence is
3 three individuals a condition a layperson would reasonably believe to be a drug overdose
4 requiring immediate medical assistance. Neither the individual who experiences a drug-related
5 overdose and is in need of emergency medical assistance nor the cooperating individual
6 seeking medical assistance may be charged or prosecuted for the criminal offenses listed in this
7 section or for the sharing of controlled substances among those present. Immunity from
8 prosecution under this section is ~~not applicable for a violation under section 19-03.1-23.1~~does
9 not apply unless the evidence for the charge or prosecution was obtained as a result of the
10 drug-related overdose and the need for emergency medical assistance. Good faith does not
11 include seeking medical assistance during the course of the execution of an arrest warrant or
12 search warrant or during a lawful search.

13 **SECTION 9. AMENDMENT.** Paragraph 3 of subdivision e of subsection 1 of
14 section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

15 (3) A conveyance is not subject to forfeiture for a violation of subsection ~~7~~8 of
16 section 19-03.1-23 or subsection 3 of section 19-03.2-03.

17 **SECTION 10. AMENDMENT.** Subdivision e of subsection 5 of section 19-03.1-36 of the
18 North Dakota Century Code is amended and reenacted as follows:

19 e. Use the property, including controlled substances, imitation controlled
20 substances, and plants forfeited under subsections 6 and 7, in enforcement of
21 this chapter. However, in a case involving the delivery of a forfeited controlled
22 substance by a law enforcement officer or a person acting as an agent of a law
23 enforcement officer, no prosecution or conviction for simple possession of a
24 controlled substance under subsection ~~6~~7 of section 19-03.1-23 may be based
25 upon the forfeited controlled substances supplied by the law enforcement officer
26 or the officer's agent.

27 **SECTION 11. AMENDMENT.** Subsection 1 of section 19-03.1-45 of the North Dakota
28 Century Code is amended and reenacted as follows:

29 1. If a person has pled guilty or has been found guilty of a felony violation of subsection
30 ~~7~~8 of section 19-03.1-23, if that person has not previously pled guilty or been found
31 guilty of any offense involving the use, possession, manufacture, or delivery of a

1 controlled substance or of any other felony offense of this or another state or the
2 federal government, the court shall impose a period of probation up to the length
3 authorized under section 12.1-32-06.1 with a suspended execution of a sentence of
4 imprisonment, a sentence to probation, or an order deferring imposition of sentence.

5 **SECTION 12. AMENDMENT.** Subsection 29 of section 40-05-02 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 29. Marijuana possession. To prohibit by ordinance any person, except a person operating
8 a motor vehicle, from possessing not more than one-half ounce [14.175 grams] of
9 marijuana, as defined by section 19-03.1-01, within the jurisdiction of a city, and to
10 prescribe the punishment, provided the penalty assessed is subject to subsection 910
11 of section 19-03.1-23.