

**HOUSE BILL NO. 1030**

Introduced by

Legislative Management

(Commission on Alternatives to Incarceration)

1 A BILL for an Act to create and enact a new section to chapter 12.1-32 of the North Dakota  
2 Century Code, relating to exceptions from mandatory minimum sentences; to amend and  
3 reenact subsection 19 of section 12.1-01-04, subdivision a of subsection 3 of section  
4 12.1-20-03, and subsection 2 of section 12.1-32-07.1 of the North Dakota Century Code,  
5 relating to the definition of manifest injustice.

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

7 **SECTION 1. AMENDMENT.** Subsection 19 of section 12.1-01-04 of the North Dakota  
8 Century Code is amended and reenacted as follows:

9 19. ~~Repealed by S.L. 1975, ch. 116, § 33~~ "Manifest injustice" means a specific finding by  
10 the court that the imposition of sentence is unreasonably harsh or shocking to the  
11 conscience of a reasonable individual, with due consideration of the totality of  
12 circumstances.

13 **SECTION 2. AMENDMENT.** Subdivision a of subsection 3 of section 12.1-20-03 of the  
14 North Dakota Century Code is amended and reenacted as follows:

15 a. An offense under this section is a class AA felony if in the course of the offense  
16 the actor inflicts serious bodily injury upon the victim, if the actor's conduct  
17 violates subdivision a of subsection 1, or if the actor's conduct violates  
18 subdivision d of subsection 1 and the actor was at least twenty-two years of age  
19 at the time of the offense. For any conviction of a class AA felony under  
20 subdivision a of subsection 1, the court shall impose a minimum sentence of  
21 twenty years' imprisonment, with probation supervision to follow the  
22 incarceration. The court may deviate from the mandatory sentence if the court  
23 finds that the sentence would impose a manifest injustice ~~as defined in section~~  
24 ~~39-01-04~~ and the defendant has accepted responsibility for the crime or

1                   cooperated with law enforcement. However, a defendant convicted of a class AA  
2                   felony under this section may not be sentenced to serve less than five years of  
3                   incarceration.

4                   **SECTION 3. AMENDMENT.** Subsection 2 of section 12.1-32-07.1 of the North Dakota  
5 Century Code is amended and reenacted as follows:

6                   2. Whenever a person has been placed on probation pursuant to subsection 4 of section  
7                   12.1-32-02, the court at any time, when the ends of justice will be served, and when  
8                   reformation of the probationer warrants, may terminate the period of probation and  
9                   discharge the person so held. A person convicted of gross sexual imposition under  
10                  subdivision a of subsection 1 of section 12.1-20-03 is not entitled to early termination  
11                  of probation pursuant to this section, unless the court finds after at least eight years of  
12                  supervised probation that further supervision would impose a manifest injustice as-  
13                  defined in section ~~39-01-04~~. Every defendant who has fulfilled the conditions of  
14                  probation for the entire period, or who has been discharged from probation prior to  
15                  termination of the probation period, may at any time be permitted in the discretion of  
16                  the court to withdraw the defendant's plea of guilty. The court may in its discretion set  
17                  aside the verdict of guilty. In either case, the court may dismiss the information or  
18                  indictment against the defendant. The court may, upon its own motion or upon  
19                  application by the defendant and before dismissing the information or indictment,  
20                  reduce to a misdemeanor a felony conviction for which the plea of guilty has been  
21                  withdrawn or set aside. The defendant must then be released from all penalties and  
22                  disabilities resulting from the offense or crime of which the defendant has been  
23                  convicted except as provided by sections 12.1-32-15 and 62.1-02-01.

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

26                  **Mandatory sentences - Exceptions.**

27                  1. In addition to any other provision of law, when sentencing an individual convicted of a  
28                  violation for which there is a mandatory minimum sentence, the court may depart from  
29                  the applicable mandatory minimum sentence if the court, in giving due regard to the  
30                  nature of the crime, history and character of the defendant, and the defendant's  
31                  chances of successful rehabilitation, finds a compelling reason on the record that

- 1           imposition of the mandatory minimum sentence would result in manifest injustice to  
2           the defendant and that the mandatory minimum sentence is not necessary for the  
3           protection of the public.
- 4        2. Subsection 1 does not apply if:
- 5           a. The defendant willfully used, attempted to use, or threatened to use serious  
6           physical force against another individual or caused serious bodily injury of  
7           another individual;
- 8           b. The defendant intentionally used a firearm or other dangerous weapon in a  
9           manner that caused bodily injury during the commission of the offense;
- 10          c. The defendant committed an offense that involved any sexual contact against a  
11          minor; or
- 12          d. The defendant has been convicted of a substantially similar offense during the  
13          five-year period before the commission of the offense.
- 14        3. Upon departing from a mandatory minimum sentence, a judge shall report to the state  
15        court administrator who shall make available in electronic form and on the world wide  
16        web an annual report by July 1 of each year on the total number of departures from  
17        mandatory minimum sentences.