

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2364

Introduced by

Senators Nalewaja, Mathern, Watne

Representatives Carlisle, R. Kelsch, Mahoney

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 the deferred imposition of sentence for gross sexual imposition; to
3 amend and reenact subsection 3 of section 12.1-20-02, subsection 1 of section 12.1-20-05, and
4 section 12.1-20-07 of the North Dakota Century Code, relating to the definition of a sexual act,
5 corruption of a minor, and sexual assault; and to provide a penalty.

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

7 **SECTION 1. AMENDMENT.** Subsection 3 of section 12.1-20-02 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 3. "Sexual act" means sexual contact between human beings consisting of contact
10 between the penis and the vulva, the penis and the anus, the mouth and the penis,
11 ~~or the mouth and the vulva, or any other portion of the human body and the penis,~~
12 anus, or vulva; or the use of an object which comes in contact with the victim's
13 anus, vulva, or penis. For the purposes of this subsection, sexual contact between
14 the penis and the vulva, ~~or between the penis and the anus,~~ any other portion of
15 the human body and the anus or vulva, or an object and the anus, vulva, or penis
16 of the victim, occurs upon penetration, however slight. Emission is not required.

17 **SECTION 2. AMENDMENT.** Subsection 1 of section 12.1-20-05 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 1. An adult who engages in a sexual act with another person or who causes another
20 person to engage in a sexual act, is guilty of a class A misdemeanor if the other
21 person is a minor; fifteen years of age or older, or is guilty of a class C felony if the
22 adult is at least twenty-two years of age and the other person is a minor fifteen
23 years of age or older.

1 **SECTION 3. AMENDMENT.** Section 12.1-20-07 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **12.1-20-07. Sexual assault.**

- 4 1. A person who knowingly has sexual contact with another person, or who causes
5 ~~such other~~ another person to have sexual contact with ~~him~~ that person, is guilty of
6 an offense if:
- 7 a. ~~He~~ That person knows or has reasonable cause to believe that the contact is
8 offensive to the other person;
 - 9 b. ~~He~~ That person knows or has reasonable cause to believe that the other
10 person suffers from a mental disease or defect which renders ~~him or her~~ that
11 other person incapable of understanding the nature of ~~his or her~~ that other
12 person's conduct;
 - 13 c. ~~He~~ That person or someone with ~~his~~ that person's knowledge has
14 substantially impaired the other person's power to appraise or control ~~his or~~
15 ~~her~~ that other person's conduct, by administering or employing without ~~the~~
16 ~~other's~~ that other person's knowledge intoxicants or other means for the
17 purpose of preventing resistance;
 - 18 d. The other person is in official custody or detained in a hospital, prison, or
19 other institution and the actor has supervisory or disciplinary authority over
20 ~~him or her~~ that other person;
 - 21 e. The other person is a minor, fifteen years of age or older, and the actor is ~~his~~
22 ~~or her~~ the other person's parent, guardian, or is otherwise responsible for
23 general supervision of the other person's welfare; or
 - 24 f. The other person is a minor, fifteen years of age or older, and the actor is an
25 adult.
- 26 2. The offense is a class ~~A misdemeanor~~ C felony if the actor's conduct violates
27 subdivision b, c, or e of subsection 1, or subdivision f of subsection 1 if the adult is
28 at least twenty-two years of age, otherwise the offense is a class A misdemeanor if
29 the actor's conduct violates subdivision d of subsection 1 or subdivision f of
30 subsection 1 if the adult is at least eighteen years of age and not twenty-two years

1 of age or older, or a class B misdemeanor if the actor's conduct violates
2 subdivision a of subsection 1.

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

5 **Gross sexual imposition - Deferred imposition of sentence.** A person who violates
6 subdivision d of subsection 1 or subdivision a of subsection 2 of section 12.1-20-03 may not
7 receive a deferred imposition of sentence unless that person proves at sentencing by clear and
8 convincing evidence that that person reasonably believed the victim to be fifteen years of age
9 or older.