

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

SENATE BILL NO. 2364
(Senators Nalewaja, Mathern, Watne)
(Representatives Carlisle, R. Kelsch, Mahoney)

AN ACT to create and enact a new section to chapter 12.1-32 of the North Dakota Century Code, relating to the deferred imposition of sentence for gross sexual imposition; to amend and reenact subsection 3 of section 12.1-20-02, subsection 1 of section 12.1-20-05, and section 12.1-20-07 of the North Dakota Century Code, relating to the definition of a sexual act, corruption of a minor, and sexual assault; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

12.1-20-07. Sexual assault.

1. A person who knowingly has sexual contact with another person, or who causes ~~such other~~ another person to have sexual contact with ~~him~~ that person, is guilty of an offense if:
 - a. ~~He~~ That person knows or has reasonable cause to believe that the contact is offensive to the other person;
 - b. ~~He~~ That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders ~~him or her~~ that other person incapable of understanding the nature of ~~his or her~~ that other person's conduct;
 - c. ~~He~~ That person or someone with ~~his~~ that person's knowledge has substantially impaired the other person's power to appraise or control ~~his or her~~ that other person's conduct, by administering or employing without ~~the other's~~ that other person's knowledge intoxicants or other means for the purpose of preventing resistance;

- d. The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over ~~him or her~~ that other person;
 - e. The other person is a minor, fifteen years of age or older, and the actor is ~~his or her~~ the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or
 - f. The other person is a minor, fifteen years of age or older, and the actor is an adult.
2. The offense is a class A ~~misdemeanor~~ C felony if the actor's conduct violates subdivision b, c, or e of subsection 1, or subdivision f of subsection 1 if the adult is at least twenty-two years of age, ~~otherwise the offense is a class A misdemeanor if the actor's conduct violates subdivision d of subsection 1 or subdivision f of subsection 1 if the adult is at least eighteen years of age and not twenty-two years of age or older, or a class B misdemeanor if the actor's conduct violates subdivision a of subsection 1.~~

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

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2364.

Senate Vote: Yeas 49 Nays 0 Absent 0

House Vote: Yeas 96 Nays 0 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State