

HOUSE BILL NO. 1216  
with Senate AmendmentsSixtieth  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1216

Introduced by

Representatives DeKrey, Delmore, Koppelman

Senators Hacker, Lyson, Nelson

1 A BILL for an Act to amend and reenact subsection 3 of section 12.1-20-01, section 12.1-20-03,  
2 subsection 1 of section 12.1-20-03.1, and sections 12.1-32-06.1 and 12.1-32-07.1 of the North  
3 Dakota Century Code, relating to sentencing and probation supervision of sexual offenders;  
4 and to provide a penalty.

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

6 **SECTION 1. AMENDMENT.** Subsection 3 of section 12.1-20-01 of the North Dakota  
7 Century Code is amended and reenacted as follows:

8 3. When criminality depends on the victim being a minor fifteen years of age or older,  
9 the actor is guilty of an offense only if the actor is at least ~~four~~ three years older  
10 than the minor.

11 **SECTION 2. AMENDMENT.** Section 12.1-20-03 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **12.1-20-03. Gross sexual imposition - Penalty.**

14 1. A person who engages in a sexual act with another, or who causes another to  
15 engage in a sexual act, is guilty of an offense if:  
16 a. That person compels the victim to submit by force or by threat of imminent  
17 death, serious bodily injury, or kidnapping, to be inflicted on any human being;  
18 b. That person or someone with that person's knowledge has substantially  
19 impaired the victim's power to appraise or control the victim's conduct by  
20 administering or employing without the victim's knowledge intoxicants, a  
21 controlled substance as defined in chapter 19-03.1, or other means with intent  
22 to prevent resistance;  
23 c. That person knows that the victim is unaware that a sexual act is being  
24 committed upon him or her;

- d. The victim is less than fifteen years old; or
- e. 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 incapable of understanding the nature of his or her conduct.

2. A person who engages in sexual contact with another, or who causes another to engage in sexual contact, is guilty of an offense if:

- a. The victim is less than fifteen years old; ~~or~~
- b. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being; or
- c. That person knows that the victim is unaware that sexual contact is being committed on the victim.

3. a. An offense under this section is a class AA felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, if the actor's conduct violates subdivision a of subsection 1, or if the actor's conduct violates subdivision d of subsection 1 and the actor was ~~more than five years older than the victim~~ at least twenty-two years of age at the time of the offense. For any conviction of a class AA felony under subdivision a of subsection 1, the court shall impose a minimum sentence of twenty years' imprisonment, with probation supervision to follow the incarceration. The court may deviate from the mandatory sentence if the court finds that the sentence would impose a manifest injustice as defined in section 39-01-01 and the defendant has accepted responsibility for the crime or cooperated with law enforcement. However, a defendant convicted of a AA felony under this section may not be sentenced to serve less than five years of incarceration.
- b. ~~An offense under this section is a class C felony if the actor's conduct violates subdivision d of subsection 1 or subdivision a of subsection 2, and the actor was at least four but not more than five years older than the victim at the time of the offense.~~
- e. Otherwise the offense is a class A felony.

- 1           4. If, as a result of injuries sustained during the course of an offense under this  
2           section, the victim dies, the offense is a class AA felony, for which the maximum  
3           penalty of life imprisonment without parole must be imposed.

4           **SECTION 3. AMENDMENT.** Subsection 1 of section 12.1-20-03.1 of the North Dakota  
5 Century Code is amended and reenacted as follows:

- 6           1. An individual in adult court is guilty of an offense if the individual engages in any  
7           combination of three or more sexual acts or sexual contacts with a minor under the  
8           age of fifteen years during a period of three or more months. The offense is a  
9           class AA felony if the actor was ~~more than five years older than the victim at the~~  
10          ~~time of the offense. The offense is a class C felony if the actor was at least four~~  
11          ~~but not more than five years older than the victim~~ at least twenty-two years of age  
12          at the time of the offense. Otherwise, the offense is a class A felony. The court  
13          may not defer imposition of sentence.

14          **SECTION 4. AMENDMENT.** Section 12.1-32-06.1 of the North Dakota Century Code  
15 is amended and reenacted as follows:

16          **12.1-32-06.1. Length and termination of probation - Additional probation for**  
17 **violation of conditions - Penalty.**

- 18          1. Except as provided in this section, the length of the period of probation imposed in  
19          conjunction with a sentence to probation or a suspended execution or deferred  
20          imposition of sentence may not extend for more than five years for a felony and  
21          two years for a misdemeanor or infraction from the later of the date of:  
22          a. The order imposing probation;  
23          b. The defendant's release from incarceration; or  
24          c. Termination of the defendant's parole.  
25          2. If the defendant has pled or been found guilty of an offense for which the court  
26          imposes a sentence of restitution or reparation for damages resulting from the  
27          commission of the offense, the court may, following a restitution hearing pursuant  
28          to section 12.1-32-08, impose an additional period of probation not to exceed five  
29          years.  
30          3. If the defendant has pled or been found guilty of a felony sexual offense in violation  
31          of chapter 12.1-20, the court shall impose ~~a period~~ at least five years but not more

1           ~~than ten years~~ of supervised probation ~~of five years~~ to be served after sentencing  
2           or incarceration. ~~The court may impose an additional period of supervised~~  
3           ~~probation not to exceed five years.~~ If the defendant has pled or been found guilty  
4           of a class AA felony sexual offense in violation of chapter 12.1-20-03 or  
5           12.1-20-03.1, the court may impose lifetime supervised probation on the  
6           defendant. If the defendant has pled or been found guilty of a misdemeanor  
7           sexual offense in violation of chapter 12.1-20, the court may impose an additional  
8           period of probation not to exceed two years. If the unserved portion of the  
9           defendant's maximum period of incarceration is less than one year, a violation of  
10          the probation imposed under this subsection is a class A misdemeanor.

11          4. If the defendant has pled or been found guilty of abandonment or nonsupport of  
12          spouse or children, the period of probation may be continued for as long as  
13          responsibility for support continues.

14          5. In felony cases, in consequence of violation of probation conditions, the court may  
15          impose an additional period of probation not to exceed five years. The additional  
16          period of probation may follow a period of incarceration if the defendant has not  
17          served the maximum period of incarceration available at the time of initial  
18          sentencing or deferment.

19          6. The court may terminate a period of probation and discharge the defendant at any  
20          time earlier than that provided in subsection 1 if warranted by the conduct of the  
21          defendant and the ends of justice.

22          7. Notwithstanding the fact that a sentence to probation subsequently can be  
23          modified or revoked, a judgment that includes such a sentence constitutes a final  
24          judgment for all other purposes.

25          **SECTION 5. AMENDMENT.** Section 12.1-32-07.1 of the North Dakota Century Code  
26          is amended and reenacted as follows:

27          **12.1-32-07.1. Release, discharge, or termination of probation.**

28          1. Whenever a person has been placed on probation and in the judgment of the court  
29          that person has satisfactorily met the conditions of probation, the court shall cause  
30          to be issued to the person a final discharge from further supervision.

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