

June 2007

## **TITLE 12.1**

### **Criminal Code**

### **Summary of Bills Enacted by 2007 Legislative Assembly**

This memorandum summarizes 2007 legislation primarily affecting North Dakota Century Code (NDCC) Title 12.1. Bills primarily affecting other titles also affect this title, and relevant provisions of those bills are summarized in this memorandum.

The legislation relating to the criminal code may be classified in these areas: new offenses or changes in penalties; sex offenses and offenders; sentencing; and miscellaneous.

#### **NEW OFFENSES OR CHANGES IN PENALTIES**

**House Bill No. 1040** provides that disorderly conduct at a funeral is a Class B misdemeanor. The bill provides that a second or subsequent violation is a Class A misdemeanor. The bill became effective on January 25, 2007.

**House Bill No. 1357** changes the penalty for the possession of any motion picture, photograph, or other visual representation that includes sexual conduct by a minor from a Class A misdemeanor to a Class C felony.

**House Bill No. 1472** provides that except for purposes of voting in a school building used as a public polling place or for attending an open meeting in a school building, it is a Class A misdemeanor for certain sexual offenders to enter upon public or nonpublic elementary, middle, or high school property. The bill also provides that an individual who commits the crime of indecent exposure or an adult who commits the crime of corruption or solicitation of a minor or indecent exposure within 50 feet of school property is guilty of a Class B felony.

**House Bill No. 1500** provides that criminal trespass includes the unauthorized presence on any building, occupied structure, or storage structure.

**Senate Bill No. 2138** provides that an individual is guilty of a Class B misdemeanor if the individual lives openly and notoriously with an individual of the opposite sex as a married couple without being married to the other individual and falsely represents the couple's status as being married to each other. The bill also repeals NDCC Section 12.1-20-10 which relates to unlawful cohabitation.

**Senate Bill No. 2185** expands the definition of "serious bodily injury" to include bodily injury that impedes air flow or blood flow to the brain or lungs.

**Senate Bill No. 2248** expands the crime of luring minors by computer to include luring by other electronic means. The bill also provides that an adult convicted of a Class B or Class C felony under this section must serve a term of imprisonment of at least one year unless the individual did not take a substantial step toward meeting with the minor. The bill authorizes the Attorney General to issue an administrative subpoena compelling an Internet service provider or cellular phone company to provide subscriber information to a law enforcement agency investigating a possible violation of NDCC Section 12.1-20-05.1.

**Senate Bill No. 2352** makes it a Class B misdemeanor for a person to tattoo, brand, subdermal implant, scarify, or pierce an individual under 18 years of age unless the act takes place in the presence of and with the written consent of the individual's parent or legal guardian. The bill also provides that it is a Class B misdemeanor for a person to sell, trade, or otherwise provide materials or kits for tattooing, self-tattooing, branding, self-branding, scarifying, self-scarifying, subdermal implantation, self-subdermal implantation, body piercing, or self-body piercing to an individual who is under 18 years of age.

**Senate Bill No. 2415** makes it a Class A misdemeanor for a person to require that an individual have inserted into that individual's body a microchip containing a radio frequency identification device.

## **SEX OFFENSES AND OFFENDERS**

**House Bill No. 1216** relates to penalties for various sexual offenses. The bill provides that a person who engages in sexual contact with another is guilty of an offense if that person knows that the victim is unaware that sexual contact is being committed on the victim. The bill also provides that for any conviction of a Class AA felony under the offense of gross sexual imposition, the court must impose a minimum sentence of 20 years' imprisonment with probation supervision to follow incarceration. The bill also provides that the crime of continuous sexual abuse of a child is a Class AA felony if the actor was at least 22 years of age at the time of the offense. Otherwise the offense is a Class A felony. The bill also sets forth the conditions of probation for defendants who have been convicted of sexual offenses.

**Senate Bill No. 2103** provides that when an acute forensic medical examination is performed on an alleged victim of criminal sexual conduct, the costs incurred by the health care facility or health care professional for performing the examination may not be charged to the alleged victim. The bill directs the Attorney General to reimburse the health care facility or health care professional for the reasonable costs incurred in performing an acute forensic medical examination.

**Senate Bill No. 2256** amends Section 1 of House Bill No. 1472 which relates to sex offenders on school property. The bill provides that the prohibitions on sex offenders on school property do not apply if the offender is a parent or guardian of a student attending the school and the offender, with the written permission of the school board, is attending a conference at the school; the offender is a parent, guardian, or relative of a student attending or participating in a function at the school and the offender has requested advance permission from the school board allowing the offender's presence at the school function; the offender is a student at the school with the written permission of the school board; or the school board allows the offender on school property under other circumstances on a case-by-case basis.

**Senate Bill No. 2259** relates to the registration requirements for sex offenders. The bill expands the definition of "sexual offender" to include juvenile delinquent adjudications of certain sexual offenses under state law as well as offenses from another court in the United States, a tribal court, or the court of another country. The bill changes from 10 to 3 the number of days within which an offender must register upon entry into a county in which the offender plans to reside or is temporarily domiciled. The bill also increases from 10 to 15 the number of years after sentencing which an individual is required to comply with registration requirements. The bill imposes a 25-year registration requirement upon an offender who is assigned a moderate risk by the Attorney General.

## **SENTENCING**

**House Bill No. 1015** increases from \$40 to \$45 the minimum monthly probation supervision fee that the court may impose.

**House Bill No. 1075** provides that the total amount of credit a defendant is entitled to for time spent in custody must be stated in the criminal judgment.

**Senate Bill No. 2029** provides that "official detention" of an offender may include home detention, which is defined as the confinement of an individual adjudicated, convicted, or charged with an offense to the individual's place of residence under the terms and conditions established by the court or the Department of Corrections and Rehabilitation.

**Senate Bill No. 2241** provides that except for offenders who commit certain misdemeanor sexual offenses, the court may waive for offenders who commit misdemeanor or infraction offenses the condition of probation that the offender may not possess a firearm, destructive device, or other dangerous weapon. The bill requires the court to make a specific finding on the record before imposition of a sentence or probation that there is good cause to waive the condition.

## MISCELLANEOUS

**House Bill No. 1122** clarifies that legal counsel for indigent individuals is to be provided at public expense. The bill also provides that the Commission on Legal Counsel for Indigents is to determine the amount of costs and expenses that an indigent individual may be required to reimburse as a condition of probation.

**House Bill No. 1219** authorizes the Information Technology Department to establish a statewide automated victim information and notification system, which, if established, would be administered by the Department of Corrections and Rehabilitation. The system would permit a victim to be notified by telephone, mail, or e-mail of the status of an offender.

**House Bill No. 1319** provides that, as it relates to the use of deadly force, the duty to retreat or avoid force does not apply to an individual within or from that individual's dwelling, place of work, or from an occupied motor home or travel trailer. The bill also provides that an individual is presumed to have held a reasonable fear of imminent peril of death or serious bodily injury if the individual against whom the deadly force was used was in the process of unlawfully and forcibly entering a dwelling, place of work, or occupied motor home or travel trailer and the individual who uses deadly force knew or had reason to believe that the unlawful and forcible entry or act was occurring or had occurred. The bill provides that the presumption may be rebutted by proof beyond a reasonable doubt that the individual who used the deadly force did not have a reasonable fear of imminent peril of death or serious bodily injury to that individual or another. The bill also provides for immunity from civil liability and the awarding of reasonable attorney's fees and court costs for justifiable use of force.

**House Bill No. 1358** provides that it is a noncriminal offense for a minor to present a purported proof of age which is false or fraudulent for the purpose of attempting to purchase or possess tobacco products. The bill also prohibits the sale of tobacco products through a vending machine unless the vending machine is located in an area in which minors are not permitted access or the vending machine requires a salesperson to control the dispensation of the products contained in the machine.

**House Bill No. 1466** makes it a Class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion. The bill provides that it is an affirmative defense that the abortion was necessary in professional judgment and was intended to prevent the death of the pregnant female; that the abortion was to terminate a pregnancy that resulted from a sexual offense; and that the individual was acting within the scope of that individual's regulated profession and under the direction of or at the direction of a physician. The bill contains an effective date that provides that the Act becomes effective on the date the Legislative Council approves by motion the recommendation of the Attorney General to the Legislative Council that it is reasonably probable that the Act would be upheld as constitutional.

**Senate Bill No. 2030** amends Section 1 of Senate Bill No. 2262. As amended, the bill provides that an individual who is enrolled in an elementary, middle, or high school in the state or who is enrolled in an institution of higher education in the state is immune from prosecution for the crime of attempt or conspiracy if the individual voluntarily renounces the individual's criminal intent; the offense would have resulted in harm to an employee of a school or a student enrolled in an elementary, middle, or high school or institution of higher education or damage to the school building or school property; and the renunciation is made to a law enforcement officer or to a school administrator before any harm or damage occurs.

**Senate Bill No. 2129** provides that in a prosecution for the willful failure to pay child support, a copy of a record certified under NDCC Section 14-08.1-08 is admissible as prima facie evidence of the contents of the record.

**Senate Bill No. 2262** provides that an individual under the age of 21 is immune from prosecution for the crime of attempt or conspiracy if the individual voluntarily renounces the individual's criminal intent; the individual is a student enrolled in an elementary, middle, or high school in the state; the offense would have resulted in harm to an employee of a school or a student enrolled in an elementary, middle, or

high school or damage to the school building or school property; and the renunciation is made to a law enforcement officer or to a school administrator before any harm or damage occurs.