

June 2009

## **TITLE 12.1**

### **Criminal Code**

### **Summary of Bills Enacted by 2009 Legislative Assembly**

This memorandum summarizes 2009 legislation primarily affecting North Dakota Century Code 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. 1186** makes it a Class A misdemeanor to surreptitiously create or willfully possess a sexually expressive image that was surreptitiously created or to distribute or publish a sexually expressive image with the intent to cause emotional harm or humiliation to an individual depicted in the sexually expressive image. The bill makes it a Class B misdemeanor to acquire and knowingly distribute a sexually expressive image that was created without the consent of the subject of the image.

**House Bill No. 1244** makes it a Class A misdemeanor if a person knowingly possesses, distributes, or assists in the use of a device, chemical, or real or artificial urine advertised or intended to be used to alter the outcome of a urine test.

**House Bill No. 1365** makes it a Class B misdemeanor for a recycler, scrap metal dealer, or scrapyard operator to purchase a metal beer keg from anyone other than a brewer if the keg is clearly marked as the property of a brewery manufacturer or the keg's identification markings have been made illegible.

**Senate Bill No. 2209** provides that a person is guilty of human trafficking if the person benefits financially or receives anything of value from knowing participation in human trafficking or the person promotes, recruits, entices, harbors, transports, provides, or obtains another person knowing that the person is subject to human trafficking. The bill provides that the crime of human trafficking is a Class A felony unless the person subject to human trafficking is under age 18 in which case the offense is a Class AA felony.

**Senate Bill No. 2210** increases the penalty for willfully and unjustifiably killing or injuring a law enforcement support animal from a Class A misdemeanor to a Class C felony. The bill also provides that a person is guilty of a Class A misdemeanor and is subject to a civil penalty of up to \$5,000 if that person willfully harasses, taunts, or provokes a law enforcement support animal or otherwise interferes with the law enforcement support animal while the animal is working or while the animal is working with its handler. The bill changes the term "certified law enforcement support dog" to "law enforcement support animal."

**Senate Bill No. 2293** provides that it is a Class C felony for an individual to assault an employee of the State Hospital who is acting in the course and scope of employment and the actor is committed to or detained at the State Hospital under Chapter 25-03.3.

**Senate Bill No. 2344** provides that the crime of indecent exposure does not include the act of a woman discreetly breastfeeding her child.

#### **SEX OFFENSES AND OFFENDERS**

**House Bill No. 1272** provides that a person who engages in sexual contact with another is guilty of an offense if that person knows or has reasonable cause to believe the victim is unaware that sexual contact is being committed on the victim. The bill also provides that a person is guilty of a Class B misdemeanor if the person compels another person to submit to any threat or coercion that would render the victim reasonably incapable of resisting. The bill provides that coercion means to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance.

**House Bill No. 1334** provides that, for the purpose of sexual offender registration, a change in school or employment address includes the termination of school or employment. This section provides that the registrant

is required to inform the law enforcement agency with whom the registrant last registered in writing within five days of the termination.

**House Bill No. 1416** includes the conspiracy to commit an offense in the definition of sexual offender. The bill also requires the clerk of district court to forward all warrants issued for a violation of Section 12.1-32-15 to the county sheriff who is required to enter the warrants in the National Crime Information Center wanted person file.

**Senate Bill No. 2216** provides that when a child forensic medical examination is performed on an alleged child victim of criminal sexual conduct, the costs incurred by a health care facility or health care professional for performing the examination may not be charged, either directly or through a third-party payer, to the alleged child victim or the child's parent, guardian, or custodian. The bill appropriates \$410,000 to the Attorney General for the purpose of reimbursing health care facilities and health care professionals for the cost of the examinations. The bill became effective on April 23, 2009.

## **SENTENCING**

**House Bill No. 1306** authorizes a court to order, as a condition of probation, the participation of the defendant in the 24/7 sobriety program.

**Senate Bill No. 2115** provides that a person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment and a term of probation imposed as part of the sentence.

## **MISCELLANEOUS**

**House Bill No. 1041** makes the statutory changes necessary for the implementation of a statewide automated victim information and notification (SAVIN) system. The bill allows the victim and other concerned citizens to register with the SAVIN system to receive various notifications. The bill also provides that some of the notification duties that are currently the responsibility of certain entities, including prosecuting attorneys, courts, or custodial authorities, are automated under the SAVIN system.

**House Bill No. 1042**, which relates to technical corrections to the Century Code, corrects an inaccurate cross-reference to a section of the Constitution of North Dakota.

**House Bill No. 1107** relates to the reimbursement of indigent defense costs by the defendant. The bill provides that unless the court finds that there is no likelihood that the defendant is or will be able to pay attorney's fees and expenses, the court is required to notify the defendant, the defendant's probation office, and the prosecuting attorney of the presumed amount of costs and expenses to be reimbursed. The bill also provides that if the defendant or prosecutor requests a hearing regarding the reimbursement, the court is required to schedule a hearing at which the actual amount of attorney's fees and expenses must be shown.

**House Bill No. 1288** changes the caption of Section 12.1-08-11 from "Fleeing a peace officer" to "Refusing to halt."

**House Bill No. 1336** relocates the language relating to a court order prohibiting contact from Section 14-07.1-13, which relates to domestic violence and which is repealed in this bill, to Chapter 12.1-31.2, which relates to disorderly conduct restraining orders.