

# CRIMES AND PUNISHMENTS

## CHAPTER 104

SENATE BILL NO. 2046  
(Freed, Page)  
(From Legislative Council Study)

### CRIMINAL STATUTES IN HOME RULE CITIES

AN ACT to create and enact sections 12-01-02.1 and 12.1-01-05 of the North Dakota Century Code, providing that the state's criminal statutes shall have full force and effect within the territorial jurisdiction of cities and home rule cities; and providing an effective date for section 12.1-01-05 of the North Dakota Century Code.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1.) Section 12.1-01-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-01-05. CRIMES DEFINED BY STATE LAW SHALL NOT BE SUPERSEDED BY CITY ORDINANCE OR BY HOME RULE CITY'S CHARTER OR ORDINANCE.) No offense defined in this title or elsewhere by law shall be superseded by any city ordinance, or city home rule charter, or by an ordinance adopted pursuant to such a charter, and all such offenses shall have full force and effect within the territorial limits and other jurisdiction of home rule cities.

SECTION 2. EFFECTIVE DATE.) Section 12.1-01-05 shall take effect on July 1, 1975.

SECTION 3.) Section 12-01-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

\*12-01-02.1. CRIMES DEFINED BY STATE LAW SHALL NOT BE SUPERSEDED BY CITY ORDINANCE OR BY HOME RULE CITY'S CHARTER OR ORDINANCE.) No offense defined in this title or elsewhere by law shall be superseded by any city ordinance, or city home rule charter or by any ordinance adopted pursuant to such charter, and all such offenses shall have full force and effect within the territorial limits and other jurisdictions of cities, and home rule cities.

Approved March 19, 1973

\*NOTE: Section 12-01-02.1 was repealed effective July 1, 1975, by section 41 of Senate Bill No. 2045, chapter 116.

## CHAPTER 105

HOUSE BILL NO. 1516  
(Atkinson)

## ESCAPE FROM PRISON

AN ACT to amend and reenact section 12-16-05 of the North Dakota Century Code, relating to escape or attempted escape from prison, and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 12-16-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

\* 12-16-05. ESCAPE OR ATTEMPTED ESCAPE FROM PRISON - PUNISHMENT.) Any person confined in any prison upon a charge, arrest, commitment, or conviction for a felony who shall escape from or break said prison with intent to escape therefrom, or who shall attempt by force or fraud or in any other manner to escape from said prison, whether such escape is effected or not, shall be guilty of a felony, and if such escape or attempted escape shall be made from a penitentiary, he shall be subject to imprisonment therein for a term not more than double the term of the longest sentence he was serving at the time of the escape, to commence upon the expiration of his former sentences. Any person confined in any prison upon a charge, arrest, commitment, or conviction for a misdemeanor who shall escape from or break said prison with intent to escape therefrom, or who shall attempt by force or violence, or in any other manner, to escape from said prison, whether such escape is effected or not, shall be guilty of a misdemeanor.

SECTION 2. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 12, 1973

\*NOTE: Section 12-16-05 was repealed effective July 1, 1975, by section 41 of Senate Bill No. 2045, chapter 116.

## CHAPTER 106

SENATE BILL NO. 2164  
(Committee on Political Subdivisions)  
(At the request of the Law Enforcement Council)

## SHERIFFS' ANNUAL JAIL REPORT

AN ACT to amend and reenact section 12-44-15 of the North Dakota Century Code, relating to sheriffs' annual jail report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 12-44-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44-15. SHERIFF SHALL MAKE JAIL REPORT.) The sheriff, on or before the first Monday of August in each year, shall make out in writing from the jail register, a jail report in triplicate covering the previous fiscal year, one copy of which he shall file in the office of the clerk of the district court of his county, one copy with the county auditor of his county for the use of the board of county commissioners, and he shall transmit one copy of such report to the director of the North Dakota combined law enforcement council. The director shall consolidate the reports of the several sheriffs and shall communicate such consolidated report to the governor and legislative assembly as requested.

Approved March 8, 1973

## CHAPTER 107

HOUSE BILL NO. 1328  
(Committee on State and Federal Government)

## OFFICERS OF STATE TRAINING SCHOOL

AN ACT to amend and reenact section 12-46-04 of the North Dakota Century Code, relating to appointment and removal of officers at the state training school.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 12-46-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-04. APPOINTMENT AND REMOVAL OF OFFICERS - TERM OF OFFICE.) The director of institutions shall appoint the superintendent, and he shall hold his office for a term of four years and until his successor is appointed and qualified, unless he is sooner removed by the director of institutions. He may be removed by the director of institutions for misconduct, neglect of duty, incompetency, or other proper cause showing his inability or refusal properly to perform the duties of his office, but such removal shall be had only after an opportunity is given to him to be heard before a board consisting of the governor, attorney general, and director of institutions upon preferred written charges. Such removal when made, however, shall be final. All other officers and employees shall be appointed by the superintendent, subject to the approval of the director of institutions, and shall hold office at the pleasure of the superintendent. The superintendent shall show in the record of any officer or employee who is discharged by him the reason therefor.

Approved March 19, 1973

## CHAPTER 108

HOUSE BILL NO. 1193

(Committee on State and Federal Government)  
(At the request of the Director of Institutions)

APPOINTMENT AND REMOVAL OF  
PENITENTIARY OFFICERS

AN ACT to amend and reenact section 12-47-06 of the North Dakota Century Code, relating to appointment of officers at the penitentiary.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 12-47-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-06. APPOINTMENT OF OFFICERS - TERM OF OFFICE.) The director of institutions shall appoint the warden, and he shall hold his office for a term of two years and until his successor is appointed and qualified, unless he is sooner removed by the director of institutions. He may be removed by the director of institutions for misconduct, neglect of duty, incompetency, or other proper cause showing his inability or refusal properly to perform the duties of his office, but such removal shall be had only after an opportunity is given to him to be heard before a board consisting of the governor, attorney general, and director of institutions upon preferred written charges. Such removal when made, however, shall be final. All other officers and employees shall be appointed by the warden, subject to the approval of the director of institutions, and shall hold office at the pleasure of the warden. The warden shall show in the record of any officer or employee who is discharged by him the reason therefor.

Approved March 21, 1973

## CHAPTER 109

HOUSE BILL NO. 1199  
(Committee on State and Federal Government)  
(At the request of the Director of Institutions)

## CRIME BUILDING

AN ACT to amend and reenact section 12-47-11 of the North Dakota Century Code, relating to the powers and duties of the warden of the state penitentiary, custody and control of the penitentiary and the crime building, and providing an appropriation of state and federal funds for the remodeling and renovation of the crime building.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 12-47-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-11. POWERS AND DUTIES OF WARDEN.) The warden, under the direction of the director of institutions, shall have the charge, custody, and control of the penitentiary and the persons committed thereto, together with all lands, buildings, furniture, tools, implements, stock, provisions, and every other species of property pertaining thereto or within the premises thereof, excluding the crime building-officer's quarters, and control, maintenance and management of said crime building which shall solely be under the direction of the director of institutions. He shall superintend and be responsible for the policing of the penitentiary and the discipline of the inmates.

SECTION 2. APPROPRIATION.) There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$75,000.00, or so much thereof as may be necessary; and the sum of \$75,000.00 in federal funds, or so much thereof as may be necessary, which sums are appropriated to the director of institutions for the purpose of renovation and remodeling of the crime building under the control of the director of institutions. The director of institutions is hereby authorized to accept additional federal funds which may become available for this project, and such funds are hereby appropriated to the director of institutions. It is the intent of the legislative assembly that expenditures from the general fund appropriation contained in this section shall be reduced by the amount of any additional federal funds received and herein appropriated. The total cost of the renovation and remodeling project herein provided for shall not exceed \$150,000.00.

Approved March 21, 1973

## CHAPTER 110

HOUSE BILL NO. 1048  
(Lee, Berg, Ganser, Gronneberg,  
Jenkins, Meyer, Rivinius, Rundle)  
(From Legislative Council Study)

## AUDITING BOARD FUNCTIONS

AN ACT to amend and reenact sections 12-47-30, 32-12-04, 37-14-08, 54-14-03, 54-14-03.1, 54-14-04, 54-14-04.1, 54-14-07, 54-14-08, and subsection 10 of section 54-44.1-03 of the North Dakota Century Code, relating to the powers and duties of the office of the budget; to provide a statement of legislative intent; and to repeal sections 54-14-01 and 54-14-02 of the North Dakota Century Code, relating to the membership and meetings of the state auditing board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 12-47-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-30. EXPENSE OF TRANSFERRING INMATES TO AND FROM STATE HOSPITAL.) The expense of transferring any person to the state hospital and of his return to the penitentiary shall be approved by the office of the budget and paid out of the state treasury.

SECTION 2. AMENDMENT.) Section 32-12-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12-04. HOW JUDGMENT COLLECTED.) No execution shall issue against the state on any judgment, but whenever a final judgment against the state shall have been obtained in any action, the clerk shall make and furnish to the office of the budget a duly certified copy of such judgment. After approval, and if funds have been appropriated therefor, the office of the budget, in due course, shall prepare and issue a warrant for the amount of such judgment and deliver the same to the person entitled thereto.

SECTION 3. AMENDMENT.) Section 37-14-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-14-08. HOW PAYMENTS ARE MADE.) All payments or other expenditures approved by the department of veterans' affairs shall be made upon vouchers approved by the office of the budget.

SECTION 4. AMENDMENT.) Section 54-14-03 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-14-03. POWERS AND DUTIES OF THE OFFICE OF THE BUDGET.) The office of the budget shall audit and approve or disapprove for payment all claims, accounts, bills, or demands against the state, except those of state-owned utilities, enterprises, and business projects, and such others as are specifically excepted by law.

SECTION 5. AMENDMENT.) Section 54-14-03.1 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-14-03.1. REPORTS TO LEGISLATIVE COUNCIL BUDGET COMMITTEE.) It shall be the duty of the office of the budget, in the course of the preaudit of claims against the state, or in otherwise carrying out its duties, to note irregularities in the fiscal practices of the state and its departments, agencies, and institutions and areas where more uniform and improved fiscal procedures are desirable, and it shall further note expenditures and governmental activities that it may believe to be contrary to law or to the intent of the legislative assembly. The office of the budget shall submit a detailed written report accompanied by adequate documentation to the budget committee of the legislative council, or any division of that committee designated for that purpose, setting out the irregularity, expenditure, or activity. The report shall be presented at the next scheduled meeting of the committee following the discovery of the irregularity, expenditure, or activity.

SECTION 6. AMENDMENT.) Section 54-14-04 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-14-04. CLAIM AGAINST STATE FILED WITH OFFICE OF THE BUDGET.) No bill, claim, account, or demand against the state shall be audited, allowed, or paid until a full itemized statement in writing has been filed with the office of the budget, unless such bill, claim, account, or demand is:

1. For a salary fixed by law;
2. Against a state-owned utility, enterprise, or business project; or
3. Specifically exempt by law.

SECTION 7. AMENDMENT.) Section 54-14-04.1 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-14-04.1 DEPARTMENTAL PAYROLLS.) The office of the



budget is authorized to issue regulations governing methods whereby the regular payrolls for each department, agency, or institution of this state may be prepared and certified by the agency concerned without individually executed or signed certificates of claim by the employees as provided in section 54-14-04. In all such cases, the warrants issued to cover such payroll items shall have the required certificate printed on the back of the warrant in such manner that the endorsement of the warrant will constitute an execution of the certificate provided in section 54-14-04.

SECTION 8. AMENDMENT.) Section 54-14-07 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-14-07. OFFICE OF THE BUDGET TO MAKE RULES - STANDARD VOUCHERS - DISAPPROVAL OF CLAIMS.) In order to ensure that sufficient information is provided to verify claims and determine the exact purpose of expenditures, the office of the budget shall promulgate rules and regulations which it deems necessary for an adequate accounting and shall direct the preparation of standard forms or vouchers upon which claims against any public fund shall be submitted. The standard forms or vouchers shall be prepared in such a manner so as to require an enumeration and description of services performed, purposes of expenditures, types of items or services purchased, number of days of per diem payments, the capacity in which per diem is claimed, and any other information which is deemed necessary or desirable. In the case of travel expenses, the office of the budget shall specifically provide by rule or regulation for certification and a method whereby adequate verification of travel allowances or expenses can be provided, and to this end it may direct individuals or departments to maintain adequate records which they may be called upon to produce for preaudit or postaudit purposes in order to verify any information submitted upon travel vouchers or verify the correctness and lawfulness of the expenditures. The office of the budget shall disapprove all vouchers or expenditures it determines to be in error or unlawful or in excess of the limits of legislative appropriation.

SECTION 9. AMENDMENT.) Section 54-14-08 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-14-08. ALL DEPARTMENTS, AGENCIES, BOARDS, COMMISSIONS, AND INSTITUTIONS IN STATE GOVERNMENT SHALL HAVE THE AUTHORITY TO WITHHOLD CERTAIN AMOUNTS FROM STATE EMPLOYEES' COMPENSATION.) All departments, agencies, boards, commissions, and institutions in state government shall compute and withhold from state employees' monetary compensation only those amounts which are required by law to be withheld and only those other items approved by the office of the budget.

SECTION 10. AMENDMENT.) Subsection 10 of section 54-44.1-03 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10. Perform all other necessary duties to carry out the provisions of this chapter and of chapter 54-14.

SECTION 11. OFFICE OF THE BUDGET TO ASSUME FUNCTIONS OF AUDITING BOARD - SUBSTITUTION OF PHRASES.) The office of the budget authorized in chapter 54-44.1 shall assume all of the functions performed, prior to the effective date of this Act, by the state auditing board. Wherever the phrases "state auditing board", "auditing board", or the word "board", when used in reference to the state auditing board, may appear in the Century Code, they shall be construed to mean the "office of the budget".

SECTION 12. LEGISLATIVE STATEMENT.) The legislative assembly intends that the budget committee of the legislative council, or the division of that committee known as the legislative audit and fiscal review committee, shall periodically review the actions of the office of the budget under this Act. For that purpose, the committee may call the director of the budget, or any employee or employees of the office of the budget before it, along with such of the records of the office as may be deemed necessary.

SECTION 13. REPEAL.) Section 54-14-01 of the North Dakota Century Code and section 54-14-02 of the 1971 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 28, 1973

## CHAPTER 111

HOUSE BILL NO. 1195

(Committee on State and Federal Government)  
(At the request of the Director of Institutions)

## PRISON INDUSTRIES

AN ACT to amend and reenact section 12-48-03.1 of the North Dakota Century Code, relating to the establishment, or discontinuance of prison industries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 12-48-03.1 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-03.1. THE DIRECTOR OF INSTITUTIONS MAY ESTABLISH AND ENGAGE IN NEW PRISON INDUSTRIES.) The warden of the state penitentiary under the direction and with the approval of the director of institutions is authorized to establish, and engage in such new prison industries as said director deems necessary, and which are of greatest benefit to and in the best interest of the state of North Dakota, the state penitentiary, the North Dakota state farm, and the inmates of said institutions. The warden with the approval of the director of institutions may also discontinue existing industries where such discontinuance is deemed necessary. The director and the warden shall make all rules and regulations and do all things necessary or incidental to the establishing and maintaining of such industries including the manufacture, sale, or distribution of the produce or products therefrom, and, so far as is compatible with the efficient operation of the industry, shall use the inmates and employees of the penitentiary as laborers in such industries. The director and warden shall also do all things necessary and incidental to the discontinuance of those industries no longer deemed necessary or of benefit. The provisions of this section are in addition, and subject to statutes governing other specific industries.

Approved March 8, 1973

## CHAPTER 112

SENATE BILL NO. 2421

(Committee on Delayed Bills)

(At the request of the Select Senate Investigating Committee  
on the North Dakota State Penitentiary)  
(Coughlin)

## COMPENSATION OF INMATES

AN ACT to amend and reenact section 12-48-14 of the North Dakota Century Code, relating to the compensation of inmates at the state penitentiary.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 12-48-14 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-14. COMPENSATION OF INMATES.) Prisoners engaged in carrying on the work of the penitentiary and its industries, the work of other state institutions and their industries, or upon public highways, shall receive not less than ten cents nor more than one dollar per day for work actually performed, the maximum compensation to be determined by the director of institutions. The warden shall assign a reasonable daily task to be performed by each prisoner, and the compensation of the prisoner shall be determined by the amount of work he performs on such task. All prisoners faithfully performing the daily task assigned shall receive the maximum compensation determined by the director of institutions, and whenever it becomes necessary in carrying on this work for a prisoner to labor in excess of ten hours per day, he shall receive such additional compensation as is allowed by the director of institutions, not to exceed ten cents per hour. The compensation of all prisoners working at the penitentiary or its industries shall be paid out of such funds as may be appropriated by the legislative assembly for that purpose.

Approved March 28, 1973

## CHAPTER 113

SENATE BILL NO. 2369  
(Freed)

## INTERSTATE PAROLEES AND PROBATIONERS

AN ACT relating to hearing procedures in dealing with interstate parolees or probationers being supervised under the interstate compact for the supervision of parolees and probationers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. HEARING FOR SUPERVISED PAROLEE OR PROBATIONER SUSPECTED OF VIOLATIONS - WAIVER - REPORT TO SENDING STATE - DETENTION OF PAROLEE OR PROBATIONER.) Where supervision of a parolee or probationer is being administered pursuant to the interstate compact contained in chapter 12-56, the appropriate judicial or administrative authorities in this state shall notify the compact administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole or probation violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this Act within a reasonable time, unless such hearing is waived by the parolee or probationer. The appropriate officer or officers of this state shall as soon as practicable following termination of any such hearing: report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this state may take custody of and detain the parolee or probationer involved for a period not to exceed fifteen days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

SECTION 2. WHO MAY HOLD HEARING.) Any hearing pursuant to this Act may be before the chief parole officer, a deputy, or any other person authorized pursuant to the laws of this state to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

SECTION 3. CONDUCT OF HEARING - NOTICE TO AND RIGHTS OF PAROLEE OR PROBATIONER.) With respect to any hearing pursuant

to this Act, the parolee or probationer:

1. Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation.
2. Shall be permitted to advise with any persons whose assistance he reasonably desires, prior to the hearing.
3. Shall have the right to confront and examine any persons who have made allegations against him, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.
4. May admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made and preserved.

SECTION 4. FORCE AND EFFECT OF HEARINGS IN OTHER STATES.)

In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the interstate compact embodied in chapter 12-56, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this Act, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this state, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this state in making disposition of the matter.

Approved March 19, 1973

## CHAPTER 114

SENATE BILL NO. 2219  
(Lee)

## POLICE SCHOOLS

AN ACT to amend and reenact subsection 7 of section 12-60-07 of the North Dakota Century Code, relating to the powers and duties of the bureau of criminal investigation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 7 of section 12-60-07 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. To provide assistance from time to time, in conducting police schools for training peace officers in their powers and duties, and in the use of approved methods for detection, identification, and apprehension of criminals and to require attendance at such police schools;

Approved March 28, 1973

## CHAPTER 115

SENATE BILL NO. 2262  
(Goldberg, Reiten, Redlin)

## STATE CRIME LABORATORY

AN ACT to establish a state crime laboratory.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. STATE CRIME LABORATORY.) The attorney general shall have authority to establish a scientific laboratory to be a part of the bureau of criminal investigation. The attorney general shall specify the functions and duties of the laboratory.

SECTION 2. PROVISION OF LABORATORY FACILITIES AND TECHNICAL PERSONNEL - REQUEST.) The attorney general may, upon the request of any state's attorney, sheriff, chief of police or other local, state or federal law enforcement official, make available to such official so requesting, the bureau's laboratory facilities and personnel for the purpose of assisting in the investigation or detection of crimes and the apprehension or prosecution of criminals.

Approved March 13, 1973



## CHAPTER 116

SENATE BILL NO. 2045

(Freed, Page)

(From Legislative Council Study)

## CRIMINAL LAW REVISION

AN ACT to create and enact chapters 12.1-01, 12.1-02, 12.1-03, 12.1-04, 12.1-05, 12.1-06, 12.1-07, 12.1-08, 12.1-09, 12.1-10, 12.1-11, 12.1-12, 12.1-13, 12.1-14, 12.1-15, 12.1-16, 12.1-17, 12.1-18, 12.1-19, 12.1-21, 12.1-22, 12.1-23, 12.1-24, 12.1-25, 12.1-26, 12.1-27, 12.1-28, 12.1-29, 12.1-30, 12.1-31, 12.1-32, and 12.1-33, and to create and enact sections 16-12-16, 29-03-01.1, and 29-03-21, all of the North Dakota Century Code, comprising a new criminal code defining all major offenses and providing penalties, providing for alternative sentencing limits and procedures, defining certain electoral offenses, providing jurisdiction over certain offenses commenced outside this state, and providing venue where the offense involves the mailing of a letter; to amend and reenact section 12-53-14, subsection 1 of section 12-55-07, and sections 12-59-17, 16-12-14, and 29-03-01 of the North Dakota Century Code, relating to parole board jurisdiction, to crimes committed partially without this state, and to criminal penalties for causing probationer or parolee to violate parole, to voting right challenges; to repeal chapters 12-01 through 12-06, chapters 12-08 through 12-21.1, chapters 12-23 through 12-29, chapters 12-31 through 12-43, chapter 12-50, chapter 12-54, and sections 12-07-01, 12-07-02, 12-07-03, 12-07-04, 12-07-05, 12-07-06, 12-22-01, 12-22-14, 12-22-15, 12-22-17, 12-22-19, 12-22-20, 12-22-21, 12-22-22, 12-22-23, 12-22-24, 12-22-25, 12-22-26, 12-22-27, 12-22-28, 12-22-29, 12-22-30, 12-55-21, 12-59-11, 12-59-13, 12-59-13.1, chapter 29-20, and sections 29-26-20 and 31-01-08 of the North Dakota Century Code, relating to definitions of various offenses, to posting notice of probation or parole hearings, to procedures for determining a defendant's mental capacity to stand trial, to provision for successive terms of imprisonment, and to indeterminate sentences; and providing an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1.) Chapter 12.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-01-01. TITLE; RETROACTIVITY; APPLICATION; CONTEMPT POWER.)

1. Title 12.1 of the Century Code may be cited as the North Dakota Criminal Code.

2. This title, except as provided in subsection 3 of this section, shall not apply to offenses committed prior to its effective date. Prosecutions for such offenses shall be governed by prior law, which is continued in effect for that purpose. For the purposes of this section, an offense was committed prior to the effective date of this title if any of the elements of the offense occurred prior thereto.

3. In cases pending on or after the effective date of this title, and involving offenses committed prior thereto:

- a. The provisions of this title according a defense or mitigation shall apply, with the consent of the defendant; and
- b. The court, with the consent of the defendant, may impose sentence under the provisions of this title which are applicable to the offense and the offender.

4. This section does not affect the power of a court or legislature to punish for contempt, or to employ any enforcement sanction authorized by law, nor does this section affect any power conferred by law upon military authority to impose punishment upon offenders.

12.1-01-02. GENERAL PURPOSES.) The general purposes of this title are to establish a system of prohibitions, penalties, and correctional measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which governmental protection is appropriate. To this end, the provisions of this title are intended, and shall be construed, to achieve the following objectives:

1. To ensure the public safety through: a. vindication of public norms by the imposition of merited punishment; b. the deterrent influence of the penalties hereinafter provided; c. the rehabilitation of those convicted of violations of this title; and d. such confinement as may be necessary to prevent likely recurrence of serious criminal behavior;
2. By definition and grading of offenses, to define the limits and systematize the exercise of discretion in punishment and to give fair warning of what is prohibited and of the consequences of violation;
3. To prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders;
4. To safeguard conduct that is without guilt from condemnation as criminal and to condemn conduct that is with guilt as criminal;
5. To prevent arbitrary or oppressive treatment of persons accused or convicted of offenses; and

6. To define the scope of state interest in law enforcement against specific offenses and to systematize the exercise of state criminal jurisdiction.

12.1-01-03. PROOF AND PRESUMPTIONS.) 1. No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. An accused is presumed innocent until proven guilty. The fact that he has been arrested, confined, or charged with the offense gives rise to no inference of guilt at his trial. "Element of an offense" means: a. the forbidden conduct; b. the attendant circumstances specified in the definition and grading of the offense; c. the required culpability; d. any required result; and e. the nonexistence of a defense as to which there is evidence in the case sufficient to give rise to a reasonable doubt on the issue.

2. Subsection 1 does not require negating a defense: a. by allegation in the charging document; or b. by proof, unless the issue is in the case as a result of evidence sufficient to raise a reasonable doubt on the issue. Unless it is otherwise provided or the context plainly requires otherwise, if a statute outside this title defining an offense, or a related statute, or a rule or regulation thereunder, contains a provision constituting an exception from criminal liability for conduct which would otherwise be included within the prohibition of the offense, that the defendant came within such exception is a defense.

3. Subsection 1 does not apply to any defense which is explicitly designated an "affirmative defense". An affirmative defense must be proved by the defendant by a preponderance of evidence.

4. When a statute establishes a presumption, it has the following consequences:

- a. If there is sufficient evidence of the facts which gave rise to the presumption, the presumed fact is deemed sufficiently proved to warrant submission of the issue to a jury unless the court is satisfied that the evidence as a whole clearly negates the presumed fact; and
- b. In submitting the issue of the existence of the presumed fact to a jury, the court shall charge that, although the evidence as a whole must establish the presumed fact beyond a reasonable doubt, the jury may arrive at that judgment on the basis of the presumption alone, since the law regards the facts giving rise to the presumption as strong evidence of the fact presumed.

5. When a statute declares that given facts constitute a prima facie case, proof of such facts warrants submission of a case to the jury with the usual instructions on burden of proof and without additional instructions attributing any special probative force to the facts proved.

12.1-01-04. GENERAL DEFINITIONS.) As used in this title, unless a different meaning plainly is required:

1. "Act" or "action" means a bodily movement, whether voluntary or involuntary;

2. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act";
3. "Actor" includes, where relevant, a person guilty of an omission;
4. "Bodily injury" means any impairment of physical condition, including physical pain;
5. "Court" means any of the following courts: the supreme court, a district court, a county court with increased jurisdiction, a county justice, and where relevant, a municipal court and a county court;
6. "Dangerous weapon" means any switch blade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles or sand club; any slungshot; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance;
7. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade, mine, rocket, missile, or similar device;
8. "Explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material or any part thereof may cause an explosion;
9. "Felony" means an offense for which a term of imprisonment of one year or more is authorized by statute outside this title, or a felony as defined in section 12.1-32-01;
10. "Firearm" means any weapon which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such weapon, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon;
11. "Force" means physical action;
12. "Government" means: (a) the government of this state or any political subdivision of this state; (b) any agency, subdivision, or department of the foregoing, including the executive, legislative, and judicial branches; (c) any corporation or other entity established by law to carry on any governmental function; and (d) any commission, corporation, or agency established by statute, compact, or contract between or among governments for the execution of intergovernmental programs;

13. "Governmental function" includes any activity which one or more public servants are legally authorized to undertake on behalf of government;
14. "Harm" means loss, disadvantage, or injury to the person affected, and includes loss, disadvantage, or injury to any other person in whose welfare he is interested;
15. "Included offense" means an offense: a. which is established by proof of the same or less than all the facts required to establish commission of the offense charged; b. which consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or c. which differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission;
16. "Includes" should be read as if the phrase "but is not limited to" were also set forth;
17. "Judge" includes a county justice;
18. "Law enforcement officer" or "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law;
19. "Local" means of or pertaining to any political subdivision of the state;
20. "Misdemeanor" means an offense for which a term of imprisonment of one year or less is authorized by statute;
21. "Offense" means conduct for which a term of imprisonment or a fine is authorized by statute after conviction;
22. "Official action" includes a decision, opinion, recommendation, vote, or other exercise of discretion by any governmental agency;
23. "Official proceeding" means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding;
24. "Omission" means a failure to act;
25. "Person" includes, where relevant, a corporation, partnership, unincorporated association, or other legal entity. When used to designate a party whose property may be the subject of action constituting an offense, the word "person" includes a government which may lawfully own property in this state;

26. "Property" includes both real and personal property;
27. "Public servant" means any officer or employee of government, including law enforcement officers, whether elected or appointed, and any person participating in the performance of a governmental function, but the term does not include witnesses;
28. "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ;
29. "Signature" includes any name, mark, or sign written or affixed with intent to authenticate any instrument or writing;
30. "Thing of value" or "thing of pecuniary value" means a thing of value in the form of money, tangible or intangible property, commercial interests or anything else the primary significance of which is economic gain to the recipient; and
31. "Writing" includes printing, typewriting, and copying.

Words used in the singular include the plural, and the plural the singular. Words in the masculine gender include the feminine and neuter genders. Words used in the present tense include the future tense, but exclude the past tense.

SECTION 2.) Chapter 12.1-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-02-01. BASIS OF LIABILITY FOR OFFENSES.) 1. A person commits an offense only if he engages in conduct, including an act, an omission, or possession, in violation of a statute which provides that the conduct is an offense.

2. A person who omits to perform an act does not commit an offense unless he has a legal duty to perform the act, nor shall such an omission be an offense if the act is performed on his behalf by a person legally authorized to perform it.

12.1-02-02. REQUIREMENTS OF CULPABILITY.) 1. For the purposes of this title, a person engages in conduct:

- a. "Intentionally" if, when he engages in the conduct, it is his purpose to do so;
- b. "Knowingly" if, when he engages in the conduct, he knows or has a firm belief, unaccompanied by substantial doubt, that he is doing so, whether or not it is his purpose to do so;
- c. "Recklessly" if he engages in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood

of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct, except that, as provided in section 12.1-04-02, awareness of the risk is not required where its absence is due to self-induced intoxication;

- d. "Negligently" if he engages in the conduct in unreasonable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct; and
- e. "Willfully" if he engages in the conduct intentionally, knowingly, or recklessly.

2. If a statute or regulation thereunder defining a crime does not specify any culpability and does not provide explicitly that a person may be guilty without culpability, the culpability that is required is willfully.

- 3. a. Except as otherwise expressly provided, where culpability is required, that kind of culpability is required with respect to every element of the conduct and to those attendant circumstances specified in the definition of the offense, except that where the required culpability is "intentionally", the culpability required as to an attendant circumstance is "knowingly".
- b. Except as otherwise expressly provided, if conduct is an offense if it causes a particular result, the required degree of culpability is required with respect to the result.
- c. Except as otherwise expressly provided, culpability is not required with respect to any fact which is solely a basis for grading.
- d. Except as otherwise expressly provided, culpability is not required with respect to facts which establish that a defense does not exist, if the defense is defined in chapters 12.1-01 through 12.1-06; otherwise the least kind of culpability required for the offense is required with respect to such facts.
- e. A factor as to which it is expressly stated that it must "in fact" exist is a factor for which culpability is not required.

4. Any lesser degree of required culpability is satisfied if the proven degree of culpability is higher.

5. Culpability is not required as to the fact that conduct is an offense, except as otherwise expressly provided in a provision outside this title.

12.1-02-03. MISTAKE OF FACT IN AFFIRMATIVE DEFENSES.)

Unless otherwise expressly provided, a mistaken belief that the facts which constitute an affirmative defense exist is not a defense.

**12.1-02-04. IGNORANCE OR MISTAKE NEGATING CULPABILITY.)**

A person does not commit an offense if, when he engages in conduct, he is ignorant or mistaken about a matter of fact or law and the ignorance or mistake negates the kind of culpability required for commission of the offense.

**12.1-02-05. CAUSAL RELATIONSHIP BETWEEN CONDUCT AND RESULT.)** Causation may be found where the result would not have occurred but for the conduct of the accused operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the accused clearly insufficient.

**SECTION 3.)** Chapter 12.1-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

**12.1-03-01. ACCOMPLICES.)** 1. A person may be convicted of an offense based upon the conduct of another person when:

- a. Acting with the kind of culpability required for the offense, he causes the other to engage in such conduct;
- b. With intent that an offense be committed, he commands, induces, procures, or aids the other to commit it, or, having a legal duty to prevent its commission, he fails to make proper effort to do so; or
- c. He is a co-conspirator and his association with the offense meets the requirements of either of the other paragraphs of this subsection.

A person is not liable under this subsection for the conduct of another person when he is either expressly or by implication made not accountable for such conduct by the statute defining the offense or related provisions because he is a victim of the offense or otherwise.

2. Unless otherwise provided, in a prosecution in which the liability of the defendant is based upon the conduct of another person, it is no defense that:

- a. The defendant does not belong to the class of persons who, because of their official status or other capacity or characteristic, are by definition of the offense the only persons capable of directly committing it; or
- b. The person for whose conduct the defendant is being held liable has been acquitted, has not been prosecuted or convicted or has been convicted of a different offense, or is immune from prosecution, or is otherwise not subject to justice.

**12.1-03-02. CORPORATE CRIMINAL RESPONSIBILITY.)** 1. A corporation may be convicted of:



- a. Any offense committed by an agent of the corporation within the scope of his employment on the basis of conduct authorized, requested, or commanded, by any of the following or a combination of them:
  - (1) The board of directors.
  - (2) An executive officer or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.
  - (3) Any person, whether or not an officer of the corporation, who controls the corporation or is responsibly involved in forming its policy.
  - (4) Any other person for whose act or omission the statute defining the offense provides corporate responsibility for offenses;
- b. Any offense consisting of an omission to discharge a specific duty of affirmative conduct imposed on corporations by law;
- c. Any misdemeanor committed by an agent of the corporation within the scope of his employment; or
- d. Any offense for which an individual may be convicted without proof of culpability, committed by an agent of the corporation within the scope of his employment.

2. It is no defense that an individual upon whose conduct liability of the corporation for an offense is based has been acquitted, has not been prosecuted or convicted or has been convicted of a different offense, or is immune from prosecution, or is otherwise not subject to justice.

12.1-03-03. INDIVIDUAL ACCOUNTABILITY FOR CONDUCT ON BEHALF OF ORGANIZATIONS.) 1. A person is legally accountable for any conduct he performs or causes to be performed in the name of an organization or in its behalf to the same extent as if the conduct were performed in his own name or his behalf.

2. Except as otherwise expressly provided, whenever a duty to act is imposed upon an organization by a statute or regulation thereunder, any agent of the organization having primary responsibility for the subject matter of the duty is legally accountable for an omission to perform the required act to the same extent as if the duty were imposed directly upon himself.

3. When an individual is convicted of an offense as an accomplice of an organization, he is subject to the sentence authorized when a natural person is convicted of that offense.

12.1-03-04. DEFINITIONS AND GENERAL PROVISIONS.) 1.  
In this chapter:

- a. "Organization" means any legal entity, whether or not organized as a corporation or unincorporated association, but does not include an entity organized as or by a governmental agency for the execution of a governmental program; and
- b. "Agent" means any partner, director, officer, servant, employee, or other person authorized to act in behalf of an organization.

2. Nothing in this chapter shall limit or extend the criminal liability of an unincorporated association.

SECTION 4.) Chapter 12.1-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-04-01. JUVENILES.) Persons under the age of seven years shall be deemed incapable of commission of an offense defined by the Constitution or statutes of this state. The prosecution of any person as an adult shall be barred if the offense was committed when the person was less than sixteen years of age.

12.1-04-02. INTOXICATION.) 1. Intoxication is a defense to the criminal charge only if it negates the culpability required as an element of the offense charged. In any prosecution for an offense, evidence of intoxication of the defendant may be admitted whenever it is relevant to negate the culpability required as an element of the offense charged, except as provided in subsection 2 of this section.

2. A person is reckless with respect to an element of an offense even though his disregard thereof is not conscious, if his not being conscious thereof is due to self-induced intoxication.

12.1-04-03. MENTAL DISEASE OR DEFECT.) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. "Mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. Lack of criminal responsibility under this section is a defense.

12.1-04-04.) No person who, as a result of mental disease or defect, lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

12.1-04-05.) Evidence of mental disease or defect submitted for the purpose of excluding responsibility is not admissible unless the defendant, not later than the time of entering his plea of not guilty or within ten days thereafter or at such later time as the court may for good cause permit, files a written notice of his purpose to rely on such defense.

12.1-04-06.) Whenever the defendant has filed a notice of intention to rely on the defense of mental disease or defect for the purpose of excluding responsibility, or there is reason to doubt his

fitness to proceed, or reason to believe that mental disease or defect will otherwise become an issue in the case, the court may order the defendant to undergo an examination by a licensed psychiatrist and may order him committed to the state hospital or other suitable facility for a period not to exceed thirty days for such examination. The court may, by subsequent order, extend the period of commitment for not to exceed thirty additional days. While the defendant is committed, his legal counsel, family, and others necessary to assist in his case shall have reasonable opportunity to examine and confer with him.

12.1-04-07.) The report of the examining psychiatrists shall be given in writing to the court, who shall cause copies to be delivered to the prosecutor and counsel for the defendant. If the findings of the report are contested, the court shall hold a hearing prior to deciding the issue. Upon hearing, the prosecution and defense shall have the right to summon and cross-examine the persons responsible for the report and to offer evidence upon the issues.

12.1-04-08.) If the court determines that the defendant lacks fitness to proceed, the proceedings against him shall be suspended, except as provided in section 12.1-04-09, and the court shall commit him to the custody of the superintendent of the state hospital or the state school. However, the defendant cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain fitness to proceed in the foreseeable future. Continued commitment of the defendant must be justified by progress toward fitness to proceed. The entire period of such commitment shall not exceed the maximum period for which the defendant could be sentenced and in no event shall exceed three years. When the court determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If prosecution of the defendant has not resumed prior to the expiration of the maximum period for which the defendant could be committed, or it is obvious that the defendant will not regain fitness to proceed, the charges against him shall be dismissed and the defendant shall be subject to laws governing civil commitment of persons suffering from mental disease or defect.

12.1-04-09.) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible of fair determination prior to trial and without the personal participation of the defendant.

12.1-04-10.) When the defendant is acquitted on the ground of mental disease or defect which excludes responsibility, the state's attorney shall file a written application with the county mental health board for determination of the defendant's need for institutional custody, care, or treatment pursuant to section 25-03-11.

SECTION 5.) Chapter 12.1-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-05-01. JUSTIFICATION.) 1. Except as otherwise expressly

provided, justification or excuse under this chapter is a defense.

2. If a person is justified or excused in using force against another, but he recklessly or negligently injures or creates a risk of injury to other persons, the justifications afforded by this chapter are unavailable in a prosecution for such recklessness or negligence.

3. That conduct may be justified or excused within the meaning of this chapter does not abolish or impair any remedy for such conduct which is available in any civil action.

12.1-05-02. EXECUTION OF PUBLIC DUTY.) 1. Conduct engaged in by a public servant in the course of his official duties is justified when it is required or authorized by law.

2. A person who has been directed by a public servant to assist that public servant is justified in using force to carry out the public servant's direction, unless the action directed by the public servant is plainly unlawful.

3. A person is justified in using force upon another to effect his arrest or prevent his escape when a public servant authorized to make the arrest or prevent the escape is not available if the other person has committed, in the presence of the actor, any crime which the actor is justified in using force to prevent, or if the other person has committed a felony involving force or violence.

12.1-05-03. SELF-DEFENSE.) A person is justified in using force upon another person to defend himself against danger of imminent unlawful bodily injury, sexual assault, or detention by such other person, except that:

1. A person is not justified in using force for the purpose of resisting arrest, execution of process, or other performance of duty by a public servant under color of law, but excessive force may be resisted; and
2. A person is not justified in using force if:
  - a. He intentionally provokes unlawful action by another person to cause bodily injury or death to such other person; or
  - b. He has entered into a mutual combat with another person or is the initial aggressor unless he is resisting force which is clearly excessive in the circumstances. A person's use of defensive force after he withdraws from an encounter and indicates to the other person that he has done so is justified if the latter nevertheless continues or menaces unlawful action.

12.1-05-04. DEFENSE OF OTHERS.) A person is justified in using force upon another person in order to defend anyone else if:

1. The person defended would be justified in defending himself; and
2. The person coming to the defense has not, by provocation or otherwise, forfeited the right of self-defense.

12.1-05-05. USE OF FORCE BY PERSONS WITH PARENTAL, CUSTODIAL, OR SIMILAR RESPONSIBILITIES.) The use of force upon another person is justified under any of the following circumstances:

1. A parent, guardian, or other person responsible for the care and supervision of a minor, or teacher, or other person responsible for the care and supervision of such a minor for a special purpose, or a person acting at the direction of any of the foregoing persons, may use reasonable force upon the minor for the purpose of safeguarding or promoting his welfare, including prevention and punishment of his misconduct, and the maintenance of proper discipline. The force may be used for this purpose, whether or not it is "necessary" as required by subsection 1 of section 12.1-05-07. The force used must not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.
2. A guardian or other person responsible for the care and supervision of an incompetent person, or a person acting at the direction of the guardian or responsible person, may use reasonable force upon the incompetent person for the purpose of safeguarding or promoting his welfare, including the prevention of his misconduct or, when he is in a hospital or other institution for care and custody, for the purpose of maintaining reasonable discipline in the institution. The force may be used for these purposes, whether or not it is "necessary" as required by subsection 1 of section 12.1-05-07. The force used must not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.
3. A person responsible for the maintenance of order in a vehicle, train, vessel, aircraft, or other carrier, or in a place where others are assembled, or a person acting at the responsible person's direction, may use force to maintain order.
4. A duly licensed physician, or a person acting at his direction, may use force in order to administer a recognized form of treatment to promote the physical or mental health of a patient if the treatment is administered:
  - a. In an emergency;
  - b. With the consent of the patient, or, if the patient is a minor or an incompetent person, with the consent

of his parent, guardian, or other person entrusted with his care and supervision; or

c. By order of a court of competent jurisdiction.

5. A person may use force upon another person, about to commit suicide or suffer serious bodily injury, to prevent the death or serious bodily injury of such other person.

12.1-05-06. USE OF FORCE IN DEFENSE OF PREMISES AND PROPERTY.) Force is justified if it is used to prevent or terminate an unlawful entry or other trespass in or upon premises, or to prevent an unlawful carrying away or damaging of property, if the person using such force first requests the person against whom such force is to be used to desist from his interference with the premises or property, except that a request is not necessary if it would be useless or dangerous to make the request; or substantial damage would be done to the property sought to be protected before the request could effectively be made.

12.1-05-07. LIMITS ON THE USE OF FORCE; EXCESSIVE FORCE; DEADLY FORCE.) 1. A person is not justified in using more force than is necessary and appropriate under the circumstances.

2. Deadly force is justified in the following instances:

- a. When it is expressly authorized by law or occurs in the lawful conduct of war;
- b. When used in lawful self-defense, or in lawful defense of others, if such force is necessary to protect the actor or anyone else against death, serious bodily injury, or the commission of a felony involving violence. The use of deadly force is not justified if it can be avoided, with safety to the actor and others, by retreat or other conduct involving minimal interference with the freedom of the person menaced. A person seeking to protect someone else must, before using deadly force, try to cause that person to retreat, or otherwise comply with the requirements of this provision, if safety can be obtained thereby. But, (1) a public servant justified in using force in the performance of his duties or a person justified in using force in his assistance need not desist from his efforts because of resistance or threatened resistance by or on behalf of the person against whom his action is directed; and (2) no person is required to retreat from his dwelling, or place of work, unless he was the original aggressor or is assailed by a person who he knows also dwells or works there;
- c. When used by a person in possession or control of a dwelling or place of work, or a person who is licensed or privileged to be there, if such force is necessary to prevent commission of arson, burglary, robbery, or a felony involving violence

upon or in the dwelling or place of work, and the use of force other than deadly force for such purposes would expose anyone to substantial danger of serious bodily injury;

- d. When used by a public servant authorized to effect arrests or prevent escapes, if such force is necessary to effect an arrest or to prevent the escape from custody of a person who has committed or attempted to commit a felony involving violence, or is attempting to escape by the use of a deadly weapon, or has otherwise indicated that he is likely to endanger human life or to inflict serious bodily injury unless apprehended without delay;
- e. When used by a guard or other public servant, if such force is necessary to prevent the escape of a prisoner from a detention facility, unless he knows that the prisoner is not such a person as described in subdivision d above. A detention facility is any place used for the confinement, pursuant to a court order, of a person (1) charged with or convicted of an offense; or (2) charged with being or adjudicated a juvenile delinquent; or (3) held for extradition; or (4) otherwise confined pursuant to court order;
- f. When used by a duly licensed physician, or a person acting at his direction, if such force is necessary to administer a recognized form of treatment to promote the physical or mental health of a patient and if the treatment is administered (1) in an emergency; (2) with the consent of the patient, or, if the patient is a minor or an incompetent person, with the consent of his parent, guardian, or other person entrusted with his care and supervision; or (3) by order of a court of competent jurisdiction; or
- g. When used by a person who is directed or authorized by a public servant, and who does not know that, if such is the case, the public servant is himself not authorized to use deadly force under the circumstances.

12.1-05-08. EXCUSE.) A person's conduct is excused if he believes that the facts are such that his conduct is necessary and appropriate for any of the purposes which would establish a justification or excuse under this chapter, even though his belief is mistaken. However, if his belief is negligently or recklessly held, it is not an excuse in a prosecution for an offense for which negligence or recklessness, as the case may be, suffices to establish culpability. Excuse under this subsection is a defense or affirmative defense according to which type of defense would be established had the facts been as the person believed them to be.

12.1-05-09. MISTAKE OF LAW.) Except as otherwise expressly provided, a person's good faith belief that conduct does not constitute a crime is an affirmative defense if he acted in reasonable reliance upon a statement of the law contained in:

1. A statute or other enactment;
2. A judicial decision, opinion, order, or judgment;
3. An administrative order or grant of permission; or
4. An official interpretation of the public servant or body charged by law with responsibility for the interpretation, administration, or enforcement of the law defining the crime.

12.1-05-10. DURESS.) 1. In a prosecution for any offense it is an affirmative defense that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or to another. In a prosecution for an offense which does not constitute a felony, it is an affirmative defense that the actor engaged in the proscribed conduct because he was compelled to do so by force or threat of force. Compulsion within the meaning of this section exists only if the force, threat, or circumstances are such as would render a person of reasonable firmness incapable of resisting the pressure.

2. The defense defined in this section is not available to a person who, by voluntarily entering into a criminal enterprise, or otherwise, willfully placed himself in a situation in which it was foreseeable that he would be subjected to duress. The defense is also unavailable if he was negligent in placing himself in such a situation, whenever negligence suffices to establish culpability for the offense charged.

12.1-05-11. ENTRAPMENT.) 1. It is an affirmative defense that the defendant was entrapped into committing the offense.

2. Entrapment occurs when a law enforcement agent induces the commission of an offense, using persuasion or other means likely to cause normally law-abiding persons to commit the offense. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

3. In this section "law enforcement agent" includes personnel of federal and local law enforcement agencies as well as state agencies, and any person cooperating with such an agency.

12.1-05-12. DEFINITIONS.) In this chapter:

1. "Force" means physical action, threat, or menace against another, and includes confinement.
2. "Deadly force" means force which a person uses with the intent of causing, or which he knows creates a substantial risk of causing, death or serious bodily injury. A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor's intent



is limited to creating an apprehension that he will use deadly force if necessary, does not constitute deadly force.

3. "Premises" means all or any part of a building or real property, or any structure, vehicle, or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein.
4. "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being a person's home or place of lodging.

SECTION 6.) Chapter 12.1-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-06-01. CRIMINAL ATTEMPT.) 1. A person is guilty of criminal attempt if, acting with the kind of culpability otherwise required for commission of a crime, he intentionally engages in conduct which, in fact, constitutes a substantial step toward commission of the crime. A "substantial step" is any conduct which is strongly corroborative of the firmness of the actor's intent to complete the commission of the crime. Factual or legal impossibility of committing the crime is not a defense, if the crime could have been committed had the attendant circumstances been as the actor believed them to be.

2. A person who engages in conduct intending to aid another to commit a crime is guilty of criminal attempt if the conduct would establish his complicity under section 12.1-03-01 were the crime committed by the other person, even if the other is not guilty of committing or attempting the crime, for example, because he has a defense of justification or entrapment.

3. Criminal attempt is an offense of the same class as the offense attempted, except that: (a) an attempt to commit a class A felony shall be a class B felony, and (b) whenever it is established by a preponderance of the evidence at sentencing that the conduct constituting the attempt did not come dangerously close to commission of the crime, an attempt to commit a class B felony shall be a class C felony and an attempt to commit a class C felony shall be a class A misdemeanor.

12.1-06-02. CRIMINAL FACILITATION.) 1. A person is guilty of criminal facilitation if he knowingly provides substantial assistance to a person intending to commit a felony and that person, in fact, commits the crime contemplated, or a like or related felony, employing the assistance so provided. The ready lawful availability from others of the goods or services provided by a defendant is a factor to be considered in determining whether or not his assistance was substantial. This section does not apply to a person who is either expressly or by implication made not accountable by the statute defining the felony facilitated or related statutes.

2. Except as otherwise provided, it is no defense to a prosecution under this section that the person whose conduct the defendant facilitated has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

3. Facilitation of a class A felony is a class C felony. Facilitation of a class B or class C felony is a class A misdemeanor.

12.1-06-03. CRIMINAL SOLICITATION.) 1. A person is guilty of criminal solicitation if he commands, induces, entreats, or otherwise attempts to persuade another person to commit a particular felony, whether as principal or accomplice, with intent to promote or facilitate the commission of that felony, under circumstances strongly corroborative of that intent, and if the person solicited commits an overt act in response to the solicitation.

2. It is a defense to a prosecution under this section that, if the criminal object were achieved, the defendant would be a victim of the offense, or the offense is so defined that his conduct would be inevitably incident to its commission, or he otherwise would not be guilty under the statute defining the offense or as an accomplice under section 12.1-03-01.

3. It is no defense to a prosecution under this section that the person solicited could not be guilty of the offense because of lack of responsibility or culpability, or other incapacity or defense.

4. Criminal solicitation is an offense of the class next below that of the offense solicited.

12.1-06-04. CRIMINAL CONSPIRACY.) 1. A person commits conspiracy if he agrees with one or more persons to engage in or cause conduct which, in fact, constitutes an offense or offenses, and any one or more of such persons does an overt act to effect an objective of the conspiracy. The agreement need not be explicit, but may be implicit in the fact of collaboration or existence of other circumstances.

2. If a person knows or could expect that one with whom he agrees has agreed or will agree with another to effect the same objective, he shall be deemed to have agreed with the other, whether or not he knows the other's identity.

3. A conspiracy shall be deemed to continue until its objectives are accomplished, frustrated, or abandoned. "Objectives" includes escape from the scene of the crime, distribution of booty, and measures, other than silence, for concealing the crime or obstructing justice in relation to it. A conspiracy shall be deemed abandoned if no overt act to effect its objectives has been committed by any conspirator during the applicable period of limitations.

4. It is no defense to a prosecution under this section that the person with whom such person is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

5. Accomplice liability for offenses committed in furtherance of the conspiracy is to be determined as provided in section 12.1-03-01.

6. Conspiracy shall be subject to the penalties provided for attempt in subsection 3 of section 12.1-06-01.

12.1-06-05. GENERAL PROVISIONS.) 1. The definition of an offense in sections 12.1-06-01 to 12.1-06-04 shall not apply to another offense also defined in sections 12.1-06-01 to 12.1-06-04.

2. Whenever "attempt" or "conspiracy" is made an offense outside this chapter, it shall mean attempt or conspiracy, as the case may be, as defined in this chapter.

3. a. In a prosecution under section 12.1-06-01, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant avoided the commission of the crime attempted by abandoning his criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.
- b. In a prosecution under sections 12.1-06-03 or 12.1-06-04, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the crime solicited or of the crime or crimes contemplated by the conspiracy.
- c. A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by (1) a belief that a circumstance exists which increases the probability of detection of apprehension of the defendant or another participant in the criminal operation, or which makes more difficult the consummation of the crime, or (2) a decision to postpone the criminal conduct until another time or to substitute another victim, or another but similar objective.

SECTION 7.) Chapter 12.1-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-07-01. TREASON.) Treason as defined in section 19 of the Constitution of the state of North Dakota is a class A felony.

12.1-07-02. DESECRATION OF THE FLAG OF THE UNITED STATES.) 1. A person is guilty of a class A misdemeanor if he

knowingly casts contempt upon any flag of the United States by publicly mutilating, defacing, defiling, burning, or trampling upon it.

2. The term "flag of the United States" as used in this section shall include any flag, standard, colors, ensign, or any picture or representation of either, or of any part or parts of either, made of any substance or represented on any substance, of any size evidently purporting to be either of said flag, standard, colors, or ensign of the United States of America, or a picture or a representation of either, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or of any part or parts of either, by which the average person seeing the same without deliberation may believe the same to represent the flag, standard, colors, or ensign of the United States of America.

SECTION 8.) Chapter 12.1-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-08-01. PHYSICAL OBSTRUCTION OF GOVERNMENT FUNCTION.)

1. A person is guilty of a class A misdemeanor if, by physical interference or obstacle, he intentionally obstructs, impairs, or perverts the administration of law or other government function.

2. This section does not apply to the conduct of a person obstructing arrest of himself, but such conduct is subject to section 12.1-08-02. This section does apply to the conduct of a person obstructing arrest of another. Inapplicability under this subsection is a defense.

3. It is a defense to a prosecution under this section that the administration of law or other government function was not lawful, but it is no defense that the defendant mistakenly believed that the administration of law or other government function was not lawful. For the purposes of this subsection, the conduct of a public servant acting in good faith and under color of law in the execution of a warrant or other process for arrest or search and seizure shall be deemed lawful.

12.1-08-02. PREVENTING ARREST OR DISCHARGE OF OTHER DUTIES.) 1. A person is guilty of a class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another, or from discharging any other official duty, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty.

2. It is a defense to a prosecution under this section that the public servant was not acting lawfully, but it is no defense that the defendant mistakenly believed that the public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully.

12.1-08-03. HINDERING LAW ENFORCEMENT.) 1. A person is guilty of hindering law enforcement if he intentionally interferes with, hinders, delays, or prevents the discovery, apprehension, prosecution, conviction, or punishment of another for an offense by:

- a. Harboring or concealing the other;
  - b. Providing the other with a weapon, money, transportation, disguise, or other means of avoiding discovery or apprehension;
  - c. Concealing, altering, mutilating, or destroying a document or thing, regardless of its admissibility in evidence; or
  - d. Warning the other of impending discovery or apprehension other than in connection with an effort to bring another into compliance with the law.
2. Hindering law enforcement is a class C felony if the actor:
- a. Knows of the conduct of the other and such conduct constitutes a class A or class B felony; or
  - b. Knows that the other has been charged with or convicted of a crime and such crime is a class A or class B felony.

Otherwise hindering law enforcement is a class A misdemeanor.

12.1-08-04. AIDING CONSUMMATION OF CRIME.) 1. A person is guilty of aiding consummation of crime if he intentionally aids another to secrete, disguise, or convert the proceeds of a crime or otherwise profit from a crime.

2. Aiding consummation of a crime:
- a. Is a class C felony if the actor knows of the conduct of the other and such conduct constitutes a class A or class B felony; and
  - b. Is a class A misdemeanor if the actor knows of the conduct of the other and such conduct constitutes a class C felony or class A misdemeanor.

Otherwise aiding consummation of a crime is a class B misdemeanor.

12.1-08-05. FAILURE TO APPEAR AFTER RELEASE; BAIL JUMPING.) 1. A person is guilty of an offense if, after having been released upon condition or undertaking that he will subsequently appear before a court or judicial officer as required, he willfully fails to appear as required.

2. The offense is a class C felony if the actor was released in connection with a charge of felony or while awaiting sentence

or pending appeal after conviction of any crime. Otherwise it is a class A misdemeanor.

12.1-08-06. ESCAPE.) 1. A person is guilty of escape if, without lawful authority, he removes or attempts to remove himself from official detention or fails to return to official detention following temporary leave granted for a specified purpose or limited period.

2. Escape is a class B felony if the actor uses a firearm, destructive device, or other dangerous weapon in effecting or attempting to effect his removal from official detention. Escape is a class C felony if:

- a. The actor uses any other force or threat of force against another in effecting or attempting to effect his removal from official detention; or
- b. The person escaping was in official detention by virtue of his arrest for, or on charge of, a felony, or pursuant to his conviction of any offense. Otherwise escape is a class A misdemeanor.

3. In this section:

- a. "Official detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of an offense or alleged or found to be delinquent, detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance, detention for extradition, or custody for purposes incident to the foregoing, including transportation, medical diagnosis or treatment, court appearances, work and recreation, but "official detention" does not include supervision on probation or parole or constraint incidental to release.
- b. "Conviction of an offense" does not include an adjudication of juvenile delinquency.

4. Irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, shall not be a defense to a prosecution under this section if the escape is from the penitentiary or other facility used for official detention or from detention pursuant to commitment by an official proceeding. In the case of other detentions, irregularity or lack of jurisdiction shall be an affirmative defense if: (a) the escape involved no substantial risk of harm to the person or property of anyone other than the detainee; or (b) the detaining authority did not act in good faith under color of law.

12.1-08-07. PUBLIC SERVANTS PERMITTING ESCAPE.) A public servant concerned in official detention pursuant to process issued by a court, judge, or magistrate is guilty of a class A

misdemeanor if he recklessly permits an escape and is guilty of a class B misdemeanor if he negligently permits an escape. "Official detention" has the meaning prescribed in subsection 3 of section 12.1-08-06.

12.1-08-08. INCITING OR LEADING RIOT IN DETENTION FACILITIES.)

1. A person is guilty of a class C felony if, with intent to cause, continue, or enlarge a riot, he solicits a group of five or more persons to engage in a riot in a facility used for official detention or engages in conduct intended to serve as the beginning of or signal for such riot, or participates in planning such riot, or, in the course of such riot, issues commands or instructions in furtherance thereof.

2. In this section:

- a. "Riot" means a disturbance involving an assemblage of five or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs the operation of the facility or other government function; and
- b. "Official detention" has the meaning prescribed in subsection 3 of section 12.1-08-06.

12.1-08-09. INTRODUCING OR POSSESSING CONTRABAND USEFUL FOR ESCAPE.) 1. A person is guilty of a class C felony if he unlawfully provides an inmate of an official detention facility with any tool, weapon, or other object which may be useful for escape. Such person is guilty of a class B felony if the object is a firearm, destructive device, or other dangerous weapon.

2. An inmate of an official detention facility is guilty of a class C felony if he unlawfully procures, makes, or otherwise provides himself with, or has in his possession, any tool, weapon, or other object which may be useful for escape. Such person is guilty of a class B felony if the object is a firearm, destructive device, or other dangerous weapon.

3. In this section:

- a. "Unlawfully" means surreptitiously or contrary to a statute or regulation, rule, or order issued pursuant thereto; and
- b. "Official detention" has the meaning prescribed in subsection 3 of section 12.1-08-06.

SECTION 9.) Chapter 12.1-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-09-01. TAMPERING WITH WITNESSES AND INFORMANTS IN PROCEEDINGS.)

1. A person is guilty of a class C felony if he uses force, threat, deception, or bribery:

- a. With intent to influence another's testimony in an official proceeding; or
- b. With intent to induce or otherwise cause another:
  - (1) To withhold any testimony, information, document, or thing from an official proceeding, whether or not the other person would be legally privileged to do so;
  - (2) To violate section 12-09-03;
  - (3) To elude legal process summoning him to testify in an official proceeding; or
  - (4) To absent himself from an official proceeding to which he has been summoned.

2. A person is guilty of a class C felony if he solicits, accepts, or agrees to accept from another a thing of pecuniary value as consideration for:

- a. Influencing the actor's testimony in an official proceeding; or
  - b. The actor's engaging in the conduct described in paragraphs (1) through (4) of subsection 1b.
3. a. It is a defense to a prosecution under this section for use of threat with intent to influence another's testimony that the threat was not of unlawful harm and was used solely to influence the other to testify truthfully.
- b. In a prosecution under this section based on bribery, it shall be an affirmative defense that any consideration for a person's refraining from instigating or pressing the prosecution of an offense was to be limited to restitution or indemnification for harm caused by the offense.
  - c. It is no defense to a prosecution under this section that an official proceeding was not pending or about to be instituted.

4. This section shall not be construed to prohibit the payment or receipt of witness fees provided by statute, or the payment, by the part upon whose behalf a witness is called, and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time spent in attendance at an official proceeding, or in the case of expert witnesses, a reasonable fee for preparing and presenting an expert opinion.



12.1-09-02. TAMPERING WITH INFORMANTS IN CRIMINAL INVESTIGATIONS.) A person is guilty of a class C felony if, believing another may have information relating to an offense, he deceives such other person or employs force, threat, or bribery with intent to hinder, delay, or prevent communication of such information to a law enforcement officer. The affirmative defense in subdivision b of subsection 3 of section 12.1-09-01 applies to this section.

12.1-09-03. TAMPERING WITH PHYSICAL EVIDENCE.)

1. A person is guilty of an offense if, believing an official proceeding is pending or about to be instituted, or believing process, demand, or order has been issued or is about to be issued, he alters, destroys, mutilates, conceals, or removes a record, document, or thing with intent to impair its verity or availability in such official proceeding or for the purposes of such process, demand, or order.

2. The offense is a class C felony if the actor substantially obstructs, impairs, or perverts prosecution for a felony. Otherwise it is a class A misdemeanor.

3. In this section, "process, demand, or order" means process, demand, or order authorized by law for the seizure, production, copying, discovery, or examination of a record, document, or thing.

12.1-09-04. HARASSMENT OF AND COMMUNICATION WITH JURORS.)

1. A person is guilty of a class A misdemeanor if, with intent to influence the official action of another as juror, he communicates with him orally or by means of a sound broadcasting or transmitting device, other than as part of the proceedings in a case, or harasses or alarms him. Conduct directed against the juror's spouse or other relative residing in the same household with the juror shall be deemed conduct directed against the juror.

2. In this section, "juror" means a grand juror or a petit juror and includes a person who has been drawn or summoned to attend as a prospective juror, and any referee, arbitrator, umpire, or assessor authorized by law to hear and determine any controversy.

12.1-09-05. EAVESDROPPING ON JURY DELIBERATIONS.)

1. A person is guilty of a class A misdemeanor if he intentionally:

- a. Records the proceedings of a jury while such jury is deliberating or voting; or
- b. Listens to or observes the proceedings of any jury of which he is not a member while such jury is deliberating or voting.

2. This section shall not apply to the taking of notes by a juror in connection with and solely for the purpose of assisting him in the performance of his official duties. Nor does this section apply to a person studying the jury process in the manner provided by statute, and under the control and supervision of the court. Inapplicability under this subsection is a defense.

3. In this section, "jury" means grand jury or petit jury, and "juror" means grand juror or petit juror.

12.1-09-06. NONDISCLOSURE OF RETAINER IN CRIMINAL MATTER.)

1. A person employed for compensation to influence the official action of a public servant with respect to: a. the initiation, conduct, or dismissal of a prosecution; b. the imposition or modification of a sentence; or c. the granting of parole or probation is guilty of a class A misdemeanor if he privately addresses to such public servant any representation, entreaty, argument, or other communication intended to influence official action without disclosing the fact of such employment, knowing that the public servant is unaware of it.

2. This section does not apply to an attorney at law or to a person authorized by statute or regulation to act in a representative capacity with respect to the official action when he is acting in such capacity and makes known to the public servant or has indicated in any manner authorized by law that he is acting in such capacity. Inapplicability under this subsection is a defense.

SECTION 10.) Chapter 12.1-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-10-01. CRIMINAL CONTEMPT.) 1. A court of this state has power to punish for contempt of its authority only for the following offenses:

- a. Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
- b. Misbehavior of any of its officers in their official transactions; or
- c. Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

2. Except as otherwise provided, a criminal contempt proceeding under this section shall be deemed a prosecution for an offense for the purposes of chapters 12.1-01 through 12.1-05 and chapter 12.1-32. Criminal contempt shall be treated as a class B misdemeanor, except that the defendant may be sentenced to a term of imprisonment of no more than six months, and, if the criminal contempt is disobedience of or resistance to a court's lawful temporary restraining order or preliminary or final injunction or other final order, other than for the payment of money, the defendant may be sentenced to pay a fine in any amount deemed just by the court.

3. A criminal contempt proceeding under this section is not a bar to subsequent prosecution for a specific offense if the court certifies in the judgment of conviction of criminal contempt, or the order terminating the proceeding without acquittal or dismissal, that a summary criminal contempt proceeding was necessary to prevent

repetition of misbehavior disruptive of an ongoing proceeding and that subsequent prosecution as a specific offense is warranted. In a subsequent prosecution, the defendant shall receive credit for all time spent in custody and any fine paid by him pursuant to the criminal contempt proceeding.

4. This section shall not be construed to deprive a court of its power, by civil contempt proceedings, to compel compliance with its lawful writ, process, order, rule, decree, or command, or to compensate a complainant for losses sustained by reason of disobedience or resistance thereto, in accordance with the prevailing usages of law and equity, including the power of detention.

12.1-10-02. FAILURE TO APPEAR AS WITNESS, TO PRODUCE INFORMATION, OR TO BE SWORN.) 1. A person who has been lawfully ordered to appear at a specified time and place to testify or to produce information in an official proceeding is guilty of a class A misdemeanor if, without lawful privilege, he fails to appear or to produce the information at that time and place.

2. A person attending an official proceeding is guilty of a class A misdemeanor if, without lawful privilege, he fails to comply with a lawful order:

- a. To occupy or remain at the designated place from which he is to testify as a witness in such proceeding; or
- b. To be sworn or to make equivalent affirmation as a witness in such proceeding.

3. It is a defense to a prosecution under this section that the defendant:

- a. Was prevented from appearing at the specified time and place or unable to produce the information because of circumstances to the creation of which he did not contribute in reckless disregard of the requirement to appear or to produce; or
  - b. Complied with the order before his failure to do so substantially affected the proceeding.
4. In this section, and in section 12.1-10-03:
- a. "Official proceeding" means:
    - (1) An official proceeding before a judge or court of this state, a magistrate, or a grand jury.
    - (2) An official proceeding before the legislative assembly, or one of its session or interim committees.
    - (3) An official proceeding in which, pursuant to lawful

authority, a court orders attendance or the production of information.

- (4) An official proceeding before an authorized agency.
- (5) An official proceeding which otherwise is made expressly subject to this section.
- b. "Authorized agency" means an agency authorized by statute to issue subpoenas or similar process supported by the sanctions of this section.
- c. "Information" means a book, paper, document, record, or other tangible object.

12.1-10-03. REFUSAL TO TESTIFY.) 1. A person is guilty of a class A misdemeanor if, without lawful privilege, he refuses:

- a. To answer a question pertinent to the subject under inquiry in an official proceeding before the legislative assembly, or one of its session or interim committees, and continues in such a refusal after the presiding officer directs him to answer, and advises him that his continuing refusal may make him subject to criminal prosecution; or
- b. To answer a question in any other official proceeding and continues in such refusal after a court or judge directs or orders him to answer and advises him that his continuing refusal may make him subject to criminal prosecution.

2. It is a defense to a prosecution under this section that the defendant complied with the direction or order before his refusal to do so substantially affected the proceeding.

12.1-10-04. HINDERING PROCEEDINGS BY DISORDERLY CONDUCT.)

1. A person is guilty of a class A misdemeanor if he intentionally hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.

2. A person is guilty of a class B misdemeanor if he recklessly hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.

12.1-10-05. DISOBEDIENCE OF JUDICIAL ORDER.) 1. A person is guilty of a class A misdemeanor if he disobeys or resists a lawful temporary restraining order or preliminary or final injunction or other final order, other than for the payment of money, of a court of this state.

2. Notwithstanding the limitations of section 12.1-32-01, the defendant may be sentenced to pay a fine in any amount deemed just by the court.

**12.1-10-06. SOLICITING OBSTRUCTION OF PROCEEDINGS.)**

A person is guilty of a class A misdemeanor if he solicits another to commit an offense defined in sections 12.1-10-02 through 12.1-10-05.

**SECTION 11.)** Chapter 12.1-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

**12.1-11-01. PERJURY.)** 1. A person is guilty of perjury, a class C felony, if, in an official proceeding, he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a false statement previously made, when the statement is material and he does not believe it to be true.

2. Commission of perjury need not be proved by any particular number of witnesses or by documentary or other types of evidence.

3. Where in the course of one or more official proceedings, the defendant made a statement under oath or equivalent affirmation inconsistent with another statement made by him under oath or equivalent affirmation to the degree that one of them is necessarily false, both having been made within the period of the statute of limitations, the prosecution may set forth the statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant to be true. Proof that the defendant made such statements shall constitute a prima facie case that one or the other of the statements was false, but in the absence of sufficient proof of which statement was false, the defendant may be convicted under this section only if each of such statements was material to the official proceeding in which it was made.

**12.1-11-02. FALSE STATEMENTS.)** 1. A person is guilty of a class A misdemeanor if, in an official proceeding, he makes a false statement, whether or not material, under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, if he does not believe the statement to be true.

2. A person is guilty of a class A misdemeanor if, in a governmental matter, he:

- a. Makes a false written statement, when the statement is material and he does not believe it to be true;
- b. Intentionally creates a false impression in a written application for a pecuniary or other benefit, by omitting information necessary to prevent a material statement therein from being misleading;
- c. Submits or invites reliance on any material writing which he knows to be forged, altered, or otherwise lacking in authenticity;
- d. Submits or invites reliance on any sample, specimen, map, boundarymark or other objection which he knows to be false in a material respect; or

- e. Uses a trick, scheme, or device which he knows to be misleading in a material respect.

3. This section does not apply to information given during the course of an investigation into possible commission of an offense unless the information is given in an official proceeding or the declarant is otherwise under a legal duty to give the information. Inapplicability under this subsection is a defense.

4. A matter is a "governmental matter" if it is within the jurisdiction of a government office or agency, or of an office, agency, or other establishment in the legislative or the judicial branch of government.

12.1-11-03. FALSE REPORTS TO LAW ENFORCEMENT OFFICERS OR SECURITY OFFICIALS.) A person is guilty of a class A misdemeanor if he:

1. Gives false information to a law enforcement officer with intent to falsely implicate another; or
2. Falsely reports to a law enforcement officer or other security official the occurrence of a crime of violence or other incident calling for an emergency response when he knows that the incident did not occur. "Security official" means a public servant responsible for averting or dealing with emergencies involving public safety.

12.1-11-04. GENERAL PROVISIONS.) 1. Falsification is material under sections 12.1-11-01, 12.1-11-02, and 12.1-11-03 regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the official proceeding or the disposition of the matter in which the statement is made. Whether a falsification is material in a given factual situation is a question of law. It is no defense that the declarant mistakenly believed the falsification to be immaterial.

2. It is no defense to a prosecution under sections 12.1-11-01 or 12.1-11-02 that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at a time when the actor represents it as being so verified shall be deemed to have been duly sworn or affirmed.

3. It is a defense to a prosecution under sections 12.1-11-01, 12.1-11-02, or 12.1-11-03 that the actor retracted the falsification in the course of the official proceeding or matter in which it was made, if in fact he did so before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding or the matter.

4. In sections 12.1-11-01 and 12.1-11-02, "statement" means any representation, but includes a representation of opinion, belief,

or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

12.1-11-05. TAMPERING WITH PUBLIC RECORDS.) 1. A person is guilty of an offense if he:

- a. Knowingly makes a false entry in or false alteration of a government record; or
- b. Knowingly, without lawful authority, destroys, conceals, removes, or otherwise impairs the verity or availability of a government record; or

2. The offense is:

- a. A class C felony if committed by a public servant who has custody of the government record; and
- b. A class A misdemeanor if committed by any other person.

3. In this section "government record" means:

- a. Any record, document, or thing belonging to, or received or kept by the government for information or record; and
- b. Any other record, document, or thing required to be kept by law, pursuant, in fact, to a statute which expressly invokes the sanctions of this section.

12.1-11-06. PUBLIC SERVANT REFUSING TO PERFORM DUTY.)

Any public servant who knowingly refuses or neglects to perform any duty imposed upon him by law is guilty of a class A misdemeanor.

SECTION 12.) Chapter 12.1-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-12-01. BRIBERY.) 1. A person is guilty of bribery, a class C felony, if he knowingly offers, gives, or agrees to give to another, or solicits, accepts, or agrees to accept from another, a thing of value as consideration for:

- a. The recipient's official action as a public servant; or
- b. The recipient's violation of a known legal duty as a public servant.

2. It is no defense to a prosecution under this section that a recipient was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

3. A prima facie case is established under this section upon proof that the actor knew that a thing of pecuniary value was offered,

given, or agreed to be given by, or solicited, accepted, or agreed to be accepted from, a person having an interest in an imminent or pending (a) examination, investigation, arrest, or judicial or administrative proceeding; or (b) bid, contract, claim, or application, and that interest could be affected by the recipient's performance or nonperformance of his official action or violation of his known legal duty as a public servant.

12.1-12-02. ILLEGAL INFLUENCE BETWEEN LEGISLATORS OR BETWEEN LEGISLATORS AND GOVERNOR.) Any person who violates the provisions of section 40 or section 81 of the Constitution of this state is guilty of a class C felony.

12.1-12-03. UNLAWFUL COMPENSATION FOR ASSISTANCE IN GOVERNMENT MATTERS.) 1. A public servant is guilty of a class A misdemeanor if he solicits, accepts, or agrees to accept a thing of pecuniary value from nongovernmental sources:

- a. As compensation for advice or other assistance in preparing or promoting a bill, contract, claim, or other matter which is or is likely to be subject to his official action;
- b. As compensation for omitting or delaying official action; or
- c. As a fee or compensation for services not rendered or to which he was not legally entitled.

2. A person is guilty of a class A misdemeanor if he knowingly offers, gives, or agrees to give a thing of pecuniary value to a public servant, receipt of which is prohibited by this section.

12.1-12-04. TRADING IN PUBLIC OFFICE AND POLITICAL ENDORSEMENT.) 1. A person is guilty of a class A misdemeanor if he solicits, accepts, or agrees to accept, or offers, gives, or agrees to give, a thing of pecuniary value as consideration for approval or disapproval by a public servant or party official of a person for:

- a. Appointment, employment, advancement, or retention as a public servant; or
  - b. Designation or nomination as a candidate for elective office.
2. In this section:
- a. "Approval" includes recommendation, failure to disapprove, or any other manifestation of favor or acquiescence.
  - b. "Disapproval" includes failure to approve, or any other manifestation of disfavor or nonacquiescence.
  - c. "Party official" means a person who holds a position or office in a political party, whether by election, appointment, or otherwise.



3. Any appointment of a public servant made in violation of this section is void, but any official action taken by the appointee prior to conviction under this section is valid.

12.1-12-05. TRADING IN SPECIAL INFLUENCE.) A person is guilty of a class A misdemeanor if he knowingly offers, gives, or agrees to give, or solicits, accepts, or agrees to accept a thing of pecuniary value for exerting, or procuring another to exert, special influence upon a public servant with respect to his legal duty or official action as a public servant. "Special influence" means power to influence through kinship or by reason of position as a public servant or party official, as defined in section 12.1-12-04.

12.1-12-06. THREATENING PUBLIC SERVANTS.) 1. A person is guilty of a class C felony if he threatens harm to another with intent to influence his official action as a public servant in a pending or prospective judicial or administrative proceeding held before him, or with intent to influence him to violate his duty as a public servant.

2. A person is guilty of a class C felony if, with intent to influence another's official action as a public servant, he threatens:

- a. To commit any crime or to do anything unlawful;
- b. To accuse anyone of a crime; or
- c. To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person, living or deceased, to hatred, contempt, or ridicule, or to impair another's credit or business repute.

3. It is no defense to a prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

12.1-12-07. SPORTS BRIBERY.) 1. A person is guilty of a class C felony if, with intent to prevent a publicly exhibited sporting contest from being conducted in accordance with the rules and usages purporting to govern it, he:

- a. Confers, offers, or agrees to confer any benefit upon, or threatens any harm to, a participant, official, or other person associated with the contest; or
- b. Tampers with any person, animal, or thing.

2. A person is guilty of a class C felony if he knowingly solicits, accepts, or agrees to accept any benefit, the giving of which is prohibited under subsection 1.

3. A "publicly exhibited sporting contest" is any contest in any sport, between individual contestants or teams of contestants,

the occurrence of which is publicly announced in advance of the event.

4. The status of the contestant as amateur or professional is not material to the commission of the offense described in this section.

12.1-12-08. COMMERCIAL BRIBERY.) 1. A person is guilty of a class C felony if he:

- a. Confers, agrees, or offers to confer any benefit upon an employee or agent without the consent of the latter's employer or principal, with intent to influence his conduct in relation to his employer's or principal's affairs; or
- b. Confers, agrees, or offers to confer any benefit upon any fiduciary without the consent of the beneficiary, with intent to influence the fiduciary to act or conduct himself contrary to his fiduciary obligation.

2. A person is guilty of a class C felony if he knowingly solicits, accepts, or agrees to accept any benefit, the giving of which is prohibited under subsection 1.

12.1-12-09. DEFINITIONS FOR CHAPTER.) In this chapter, "thing of value" and "thing of pecuniary value" do not include: (a) salary, fees, and other compensation paid by the government in consideration for which the official action or legal duty is performed; or (b) concurrence in official action in the course of legitimate compromise among public servants, except as provided in section 40 or section 81 of the Constitution.

SECTION 13.) Chapter 12.1-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-13-01. DISCLOSURE OF CONFIDENTIAL INFORMATION PROVIDED TO GOVERNMENT.) A person is guilty of a class A misdemeanor if, in knowing violation of a statutory duty imposed on him as a public servant, he discloses any confidential information which he has acquired as a public servant. "Confidential information" means information made available to the government under a governmental assurance of confidence as provided by statute.

12.1-13-02. SPECULATING OR WAGERING ON OFFICIAL ACTION OR INFORMATION.) 1. A person is guilty of a class A misdemeanor if during employment as a public servant, or within one year thereafter, in contemplation of official action by himself as a public servant or by a government agency with which he is or has been associated as a public servant, or in reliance on information to which he has or had access only in his capacity as a public servant, he:

- a. Acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action;

- b. Speculates or wagers on the basis of such information or official action; or
- c. Aids another to do any of the foregoing.

2. A person is guilty of a class A misdemeanor if as a public servant he takes official action which is likely to benefit him as a result of an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a speculation or wager, which he made, or caused or aided another to make, in contemplation of such official action.

12.1-13-03. PUBLIC SERVANT'S INTEREST IN PUBLIC CONTRACTS.)

1. Every public servant authorized to sell or lease any property, or to make any contract in his official capacity, alone or in conjunction with other public servants, who voluntarily becomes interested individually in the sale, lease, or contract, directly or indirectly, is guilty of a class A misdemeanor.

2. Subsection 1 shall not apply to:

- a. Contracts of purchase or employment between a political subdivision and an officer of that subdivision, if the contracts are first unanimously approved by the other members at a meeting of the governing body of the political subdivision, and a unanimous finding is entered in the official minutes of that body that the contract is necessary because the services or property contracted for are not otherwise obtainable at equal cost.
- b. Sales, leases, or contracts entered into between school boards and school board members or school officers.

12.1-13-04. IMPERSONATING OFFICIALS.) 1. A person is guilty of an offense if he falsely pretends to be:

- a. A public servant and acts as if to exercise the authority of such public servant; or
- b. A public servant or a former public servant and thereby obtains a thing of value.

2. It is no defense to prosecution under this section that the pretended capacity did not exist or the pretended authority could not legally or otherwise have been exercised or conferred.

3. An offense under subdivision b of subsection 1 is a class A misdemeanor. An offense under subdivision a of subsection 1 is a class B misdemeanor.

SECTION 14.) Chapter 12.1-14 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-14-01. OFFICIAL OPPRESSION.) A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity is guilty of a class A misdemeanor if, knowing that his conduct is illegal, he:

1. Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or
2. Denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity.

12.1-14-02. INTERFERENCE WITH ELECTIONS.) A person is guilty of a class A misdemeanor if, whether or not acting under color of law, he, by force or threat of force or by economic coercion, intentionally:

1. Injures, intimidates, or interferes with another because he is or has been voting for any candidate or issue or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher or other election official, in any primary, special, or general election.
2. Injures, intimidates, or interferes with another in order to prevent him or any other person from voting for any candidate or issue or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher or other election official, in any primary, special, or general election.

12.1-14-03. SAFEGUARDING ELECTIONS.) A person is guilty of a class A misdemeanor if, in connection with any election, he:

1. Makes or induces any false voting registration;
2. Offers, gives, or agrees to give a thing of pecuniary value to another as consideration for the recipient's voting or withholding his vote or voting for or against any candidate or issue or for such conduct by another;
3. Solicits, accepts, or agrees to accept a thing of pecuniary value as consideration for conduct prohibited under subsections 1 or 2; or
4. Otherwise obstructs or interferes with the lawful conduct of such election or registration therefor.

12.1-14-04. DISCRIMINATION IN PUBLIC PLACES.) A person is guilty of a class B misdemeanor if, whether or not acting under color of law, he, by force, or threat of force or by economic coercion, intentionally:

1. Injures, intimidates, or interferes with another because

of his sex, race, color, religion, or national origin and because he is or has been exercising or attempting to exercise his right to full and equal enjoyment of any facility open to the public.

2. Injures, intimidates, or interferes with another because of his sex, race, color, religion, or national origin in order to intimidate him or any other person from exercising or attempting to exercise his right to full and equal enjoyment of any facility open to the public.

12.1-14-05. PREVENTING EXERCISE OF CIVIL RIGHTS - HINDERING OR PREVENTING ANOTHER AIDING THIRD PERSON TO EXERCISE CIVIL RIGHTS.) A person is guilty of a class B misdemeanor if, whether or not acting under color of law, he, by force or threat of force or by economic coercion, intentionally:

1. Injures, intimidates, or interferes with another because he is or is about to exercise his civil rights, or because he has exercised his civil rights.
2. Intimidates or prevents another from aiding a third person to exercise his civil rights.

SECTION 15.) Chapter 12.1-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-15-01. CRIMINAL DEFAMATION.) 1. A person is guilty of a class A misdemeanor if he willfully publishes defamatory matter or knowingly procures such publication, or in any way knowingly aids or assists in the same being done.

2. It is a defense to a prosecution under this section that:
  - a. The matter alleged to be defamatory is true; or
  - b. The matter alleged to be defamatory was contained in a privileged communication.
3. In this section:
  - a. "Defamatory matter" means any written or oral communication concerning a natural person made public with actual malice or with reckless disregard of the truth by any utterance, printing, writing, sign, picture, representation, or effigy tending to expose such person to public hatred, contempt, or ridicule, or to deprive him of the benefits of public confidence and social intercourse, or any written or oral communication concerning a natural person made public as aforesaid designed to blacken and vilify the memory of one who is dead and tending to scandalize or provoke his surviving relatives and friends.

- b. "Publication" means a knowing display of defamatory matter, or the parting with its immediate custody under circumstances which exposed the defamatory matter to be read or seen or understood by a person other than the publisher of the defamatory matter, although it is not necessary that the matter complained of should have been seen or read by another.
- c. "Privileged communication" means a communication made to a person entitled to or interested in the communication by one who is also entitled to or interested or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent.

12.1-15-02. INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS - EAVESDROPPING.) 1. A person is guilty of a class C felony if he:

- a. Intentionally intercepts any wire or oral communication by use of any electronic, mechanical, or other device; or
- b. Intentionally discloses to any other person or intentionally uses the contents of any wire or oral communication, knowing that the information was obtained through the interception of a wire or oral communication.

2. A person is guilty of a class A misdemeanor if he secretly loiters about any building with intent to overhear discourse or conversation therein and to repeat or publish the same with intent to vex, annoy, or injure others.

3. It is a defense to a prosecution under subsection 1 that:

- a. The actor was authorized by law to intercept, disclose, or use, as the case may be, the wire or oral communication.
- b. The actor was (1) a person acting under color of law to intercept a wire or oral communication, and (2) he was a party to the communication or one of the parties to the communication had given prior consent to such interception.
- c. (1) The actor was a party to the communication or one of the parties to the communication had given prior consent to such interception, and (2) such communication was not intercepted for the purpose of committing a crime or other unlawful harm.

12.1-15-03. TRAFFIC IN INTERCEPTING DEVICES.) 1. A person is guilty of a class C felony if, within this state, he manufactures, assembles, possesses, transports, or sells an electronic, mechanical, or other device, knowing that the design of such device renders it primarily useful to the purpose of the surreptitious interception of wire or oral communications.

2. A person is guilty of a class A misdemeanor if he places, in a newspaper, magazine, handbill, or other publication published in this state, an advertisement of an electronic, mechanical, or other device, knowing that the design of such device renders it primarily useful for surreptitious interception of wire or oral communications, or knowing that such advertisement promotes the use of such device for surreptitious interception of wire or oral communications.

3. It is a defense to a prosecution under this section that the actor was:

- a. An officer, agent, or employee of, or a person under contract with, a communications common carrier, acting within the normal course of the business of the communications common carrier; or
- b. A public servant acting in the course of his official duties or a person acting within the scope of a government contract made by a person acting in the course of his official duties.

12.1-15-04. DEFINITIONS FOR SECTIONS 12.1-15-02 TO 12.1-15-04.) In sections 12.1-15-02 through 12.1-15-04:

1. "Wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of communications.
2. "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.
3. "Intercept" means the aural acquisition of the contents of any wire or oral communication through the use of an electronic, mechanical, or other device, or by secretly overhearing the communication.
4. "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire or oral communication other than:
  - a. Any telephone or telegraph instrument, equipment, or facility, or any component thereof, (A) furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by subscriber or user in the ordinary course of its business; or (B) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties.

- b. A hearing aid or similar device being used to correct subnormal hearing to not better than normal.
- 5. "Contents", when used with respect to any wire or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication;
- 6. "Communications common carrier" shall have the meaning prescribed for the term "common carrier" by section 8-07-01.

12.1-15-05. INTERCEPTION OF CORRESPONDENCE.) 1. A person is guilty of a class A misdemeanor if, knowing that a letter, postal card, or other written private correspondence has not yet been delivered to the person to whom it is directed, and knowing that he does not have the consent of the sender or receiver of the correspondence, he:

- a. Damages or destroys the correspondence, with intent to prevent its delivery;
- b. Opens or reads sealed correspondence, with intent to discover its contents; or
- c. Knowing that sealed correspondence has been opened or read in violation of subparagraph b, intentionally divulges its contents, in whole or in part, or a summary of any portion thereof.

SECTION 16.) Chapter 12.1-16 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-16-01. MURDER.) A person is guilty of murder, a class A felony, if he:

- 1. Intentionally or knowingly causes the death of another human being;
- 2. Causes the death of another human being under circumstances manifesting extreme indifference to the value of human life; or
- \* 3. Acting either alone or with one or more other persons, commits or attempts to commit treason, robbery, burglary, kidnapping, felonious restraint, arson, rape, aggravated involuntary sodomy, or escape and, in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of a person other than one of the participants; except that in any prosecution under this subsection in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

\*NOTE: Subsection 3 of section 12.1-16-01 was further amended by section 2 of Senate Bill No. 2049, chapter 117.



- a. Did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid the commission thereof; and
- b. Was not armed with a firearm, destructive device, dangerous weapon, or other weapon which under the circumstances indicated a readiness to inflict serious bodily injury; and
- c. Reasonably believed that no other participant was armed with such a weapon; and
- d. Reasonably believed that no other participant intended to engaged in conduct likely to result in death or serious bodily injury.

Subsections 1 and 2 shall be inapplicable in the circumstances covered by subsection 2 of section 12.1-16-02.

12.1-16-02. MANSLAUGHTER.) A person is guilty of manslaughter, a class B felony, if he:

1. Recklessly causes the death of another human being; or
2. Causes the death of another human being under circumstances which would be murder, except that he causes the death under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse shall be determined from the viewpoint of a person in his situation under the circumstances as he believes them to be. An emotional disturbance is excusable, within the meaning of this subsection, if it is occasioned by any provocation, event, or situation for which the offender was not culpably responsible.

12.1-16-03. NEGLIGENCE HOMICIDE.) A person is guilty of a class C felony if he negligently causes the death of another human being.

SECTION 17.) Chapter 12.1-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-17-01. SIMPLE ASSAULT.) 1. A person is guilty of an offense if he:

- a. Willfully causes bodily injury to another human being;  
or
- b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.

2. Simple assault is a class B misdemeanor except when the victim is a peace officer on duty, and the actor knows that to be a fact, in which case the offense is a class C felony.

12.1-17-02. AGGRAVATED ASSAULT.) A person is guilty of a class C felony if he:

1. Willfully causes serious bodily injury to another human being;
2. Knowingly causes bodily injury to another human being with a dangerous weapon or other weapon, the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury;
3. Causes bodily injury to another human being while attempting to inflict serious bodily injury on any human being; or
4. Fires a firearm or hurls a destructive device at another human being.

12.1-17-03. RECKLESS ENDANGERMENT.) A person is guilty of an offense if he creates a substantial risk of serious bodily injury or death to another. The offense is a class C felony if the circumstances manifest his extreme indifference to the value of human life. Otherwise it is a class A misdemeanor. There is risk within the meaning of this section if the potential for harm exists, whether or not a particular person's safety is actually jeopardized.

12.1-17-04. TERRORIZING.) A person is guilty of a class C felony if he:

1. Threatens to commit any crime of violence or act dangerous to human life; or
2. Falsely informs another that a situation dangerous to human life or commission of a crime of violence is imminent knowing that the information is false, with intent to keep another human being in sustained fear for his or another's safety or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious disruption or public inconvenience, or in reckless disregard of the risk of causing such terror, disruption, or inconvenience.

12.1-17-05. MENACING.) A person is guilty of a class A misdemeanor if he knowingly places or attempts to place another human being in fear by menacing him with imminent serious bodily injury.

12.1-17-06. CRIMINAL COERCION.) 1. A person is guilty of a class A misdemeanor if, with intent to compel another to engage in or refrain from conduct, he threatens to:

- a. Commit any crime;
- b. Accuse anyone of a crime;
- c. Expose a secret or publicize an asserted fact, whether true or false, tending to subject any person, living or deceased, to hatred, contempt, or ridicule, or to impair another's credit or business repute; or
- d. Take or withhold official action as a public servant, or cause a public servant to take or withhold official action.

2. It is an affirmative defense to a prosecution under this section that the actor believed, whether or not mistakenly: (a) that the primary purpose of the threat was to cause the other to conduct himself in his own best interest; or (b) that a purpose of the threat was to cause the other to desist from misbehavior, engage in behavior from which he could not lawfully abstain, make good a wrong done by him, or refrain from taking any action or responsibility for which he was disqualified.

12.1-17-07. HARASSMENT.) 1. A person is guilty of an offense if, with intent to frighten or harass another, he:

- a. Communicates in writing or by telephone a threat to commit any violent felony;
- b. Makes a telephone call anonymously or in offensively coarse language; or
- c. Makes repeated telephone calls, whether or not a conversation ensues, with no purpose of legitimate communication.

2. The offense is a class A misdemeanor if it is under subdivision a of subsection 1. Otherwise it is a class B misdemeanor.

12.1-17-08. CONSENT AS A DEFENSE.) 1. When conduct is an offense because it causes or threatens bodily injury, consent to such conduct or to the infliction of such injury by all persons injured or threatened by the conduct is a defense if:

- a. Neither the injury inflicted nor the injury threatened is such as to jeopardize life or seriously impair health;
- b. The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or
- c. The conduct and the injury are reasonably foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods, and the persons subjected to such conduct or injury, having been made aware of the risks involved, consent to the performance of the conduct or the infliction of the injury.

2. Assent does not constitute consent, within the meaning of this section, if:

- a. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense and such incompetence is manifest or known to the actor;
- b. It is given by a person who by reason of youth, mental disease or defect, or intoxication, is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or
- c. It is induced by force, duress, or deception.

SECTION 18.) Chapter 12.1-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-18-01. KIDNAPPING.) 1. A person is guilty of kidnapping if he abducts another or, having abducted another, continues to restrain him with intent to do the following:

- a. Hold him for ransom or reward;
- b. Use him as a shield or hostage;
- c. Hold him in a condition of involuntary servitude;
- d. Terrorize him or a third person;
- e. Commit a felony or attempt to commit a felony; or
- f. Interfere with the performance of any government or political function.

2. Kidnapping is a class A felony unless the actor voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a class B felony.

12.1-18-02. FELONIOUS RESTRAINT.) A person is guilty of a class C felony, if he:

1. Knowingly abducts another;
2. Knowingly restrains another under terrorizing circumstances or under circumstances exposing him to risk of serious bodily injury; or
3. Restrains another with intent to hold him in a condition of involuntary servitude.

12.1-18-03. UNLAWFUL IMPRISONMENT.) 1. A person is guilty of a class A misdemeanor if he knowingly subjects another to unlawful restraint.

2. It is a defense to a prosecution under this section that the actor is a parent or person in equivalent relation to the person restrained and that the person restrained is a minor.

12.1-18-04. DEFINITIONS FOR CHAPTER 12.1-18.) In this chapter:

1. "Restrain" means to restrict the movement of a person unlawfully and without consent, so as to interfere substantially with his liberty by removing him from his place of residence or business, by moving him a substantial distance from one place to another, or by confining him for a substantial period. Restraint is "without consent" if it is accomplished by: (a) force, intimidation, or deception; or (b) any means, including acquiescence of the victim, if he is a child less than fourteen years old or an incompetent person, and if the parent, guardian, or person or institution responsible for the general supervision of his welfare has not acquiesced in the movement or confinement;
2. "Abduct" means to restrain a person with intent to prevent his liberation by: (a) secreting or holding him in a place where he is not likely to be found; or (b) endangering or threatening to endanger the safety of any human being.

SECTION 19.) Chapter 12.1-19 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-19-01. PROCURING AN ABORTION - PUNISHMENT.)

Every person who administers to any pregnant woman, or who prescribes for any such woman, or who advises or procures any such woman to take, any medicine, drug, or substance, or uses or employs, or procures or advises the use, of any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, shall be guilty of a class C felony.

12.1-19-02. ABORTION - IF MOTHER OR CHILD DIES - PUNISHMENT.) Every person who administers to any woman pregnant with a quick child, or who prescribes for such woman, or who advises or procures any such woman to take, any medicine, drug, or substance whatever, or who uses or employs, or procures or advises the use, of any instrument or other means with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, in case the death of the child or of the mother is produced thereby, is guilty of a class B felony.

12.1-19-03. KILLING UNBORN QUICK CHILD IN PERFORMING ABORTION -PUNISHMENT.) The willful killing of an unborn quick child by an injury committed upon the person of the mother of such child, and not prohibited in the preceding section, is a class B felony.

12.1-19-04. SOLICITING OR SUBMITTING TO ATTEMPT AT ABORTION - PUNISHMENT.) Every woman who solicits of any person

any medicine, drug, or substance whatever and takes the same, or who submits to any operation or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, shall be guilty of a class A misdemeanor.

12.1-19-05. CONCEALING STILLBIRTH OR DEATH OF INFANT - PUNISHMENT.) Every woman who endeavors either by herself or by the aid of others to conceal the stillbirth of an issue of her body, or the death of any issue under the age of two years, shall be guilty of a class A misdemeanor.

12.1-19-06. CONCEALING STILLBIRTH OR DEATH OF CHILD - SECOND OFFENSE - PUNISHMENT.) Every woman who, having been convicted of endeavoring to conceal the birth of any issue of her body or the death of any such issue under the age of two years, subsequently to such conviction endeavors to conceal any such birth or death of issue of her body, shall be guilty of a class C felony. Every person convicted in any other state or country of this offense shall be punished for any subsequent conviction in this state to the same extent as if the first conviction had taken place in a court of this state.

12.1-19-07. ABORTION - TESTIMONY OF PERSON INJURED MUST BE CORROBORATED.) Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, the defendant cannot be convicted upon the testimony of the person upon whom the abortion was performed unless her testimony is corroborated by other evidence.

SECTION 20.) Chapter 12.1-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-21-01. ARSON.) A person is guilty of arson, a class B felony, if he starts or maintains a fire or causes an explosion with intent to destroy an entire or any part of a building or inhabited structure of another or a vital public facility.

12.1-21-02. ENDANGERING BY FIRE OR EXPLOSION.) 1. A person is guilty of an offense if he intentionally starts or maintains a fire or causes an explosion and thereby recklessly:

- a. Places another person in danger of death or bodily injury;
- b. Places an entire or any part of a building or inhabited structure of another or a vital public facility in danger of destruction; or
- c. Causes damage to property of another constituting pecuniary loss in excess of five thousand dollars.

2. The offense is a class B felony if the actor places another person in danger of death under circumstances manifesting an extreme indifference to the value of human life. Otherwise it is a class C felony.

12.1-21-03. FAILURE TO CONTROL OR REPORT A DANGEROUS FIRE.) A person who knows that a fire which was started or maintained, albeit lawfully, by him or with his assent, is endangering life or a substantial amount of property of another is guilty of a class A misdemeanor if he willfully fails either to take reasonable measures to put out or control the fire when he can do so without substantial risk to himself, or to give a prompt fire alarm.

12.1-21-04. RELEASE OF DESTRUCTIVE FORCES.) 1. A person is guilty of a class B felony if he intentionally causes a catastrophe by any means, and is guilty of a class C felony if he does so willfully.

2. A person is guilty of a class C felony if he willfully creates a risk of catastrophe, although no fire, explosion, or other destruction results.

3. A person who knowingly does an act which causes or which he knows is likely to cause a catastrophe, or assents to the doing of such act, is guilty of a class C felony if he willfully fails to take reasonable measures to prevent the catastrophe.

4. Catastrophe means serious bodily injury to ten or more people or substantial damage to ten or more separate habitations or structures, or property loss in excess of five hundred thousand dollars.

12.1-21-05. CRIMINAL MISCHIEF.) 1. A person is guilty of an offense if he:

a. Willfully tampers with tangible property of another so as to endanger person or property; or

b. Willfully damages tangible property of another.

2. The offense is:

a. A class C felony if the actor intentionally causes pecuniary loss in excess of five thousand dollars or damages tangible property of another by means of an explosive or a destructive device; and

b. A class A misdemeanor if the actor recklessly causes pecuniary loss in excess of five thousand dollars or if the actor intentionally causes pecuniary loss in excess of five hundred dollars.

Otherwise the offense is a class B misdemeanor.

12.1-21-06. TAMPERING WITH OR DAMAGING A PUBLIC SERVICE.) 1. A person is guilty of an offense if he causes a substantial interruption or impairment of a public communication, transportation, supply of water, gas, power, or other public service by:

a. Tampering with or damaging the tangible property of another;

b. Incapacitating an operator of such service; or

- c. Negligently damaging the tangible property of another by fire, explosive, or other dangerous means.

2. The offense is a class C felony if the actor engages in the conduct intentionally, and a class A misdemeanor if the actor engages in the conduct knowingly or recklessly. Otherwise it is a class B misdemeanor.

12.1-21-07. CONSENT AS A DEFENSE.) Whenever in this chapter it is an element of the offense that the property is of another, it is a defense to a prosecution under those sections that the other has consented to the actor's conduct with respect to the property.

12.1-21-08. DEFINITIONS FOR CHAPTERS 12.1-21.) In this chapter:

1. "Inhabited structure" means a structure or vehicle:
  - a. Where any person lives or carries on business or other calling;
  - b. Where people assemble for purposes of business, government, education, religion, entertainment, or public transportation; or
  - c. Which is used for overnight accommodation of persons.

Any structure or vehicle is deemed to be "inhabited" regardless of whether a person is actually present. If a building or structure is divided into separately inhabited units, any unit which is property of another constitutes an inhabited structure of another.

2. Property is that "of another" if anyone other than the actor has a possessory or proprietary interest therein.

3. "Vital public facility" includes a facility maintained for use as a bridge (whether over land or water), dam, tunnel, wharf, communications installation, or power station.

SECTION 21.) Chapter 12.1-22 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-22-01. ROBBERY.) 1. A person is guilty of robbery if, in the course of committing a theft, he inflicts or attempts to inflict bodily injury upon another, or threatens or menaces another with imminent bodily injury.

2. Robbery is a class A felony if the actor fires a firearm or explodes or hurls a destructive device or directs the force of any other dangerous weapon against another. Robbery is a class B felony if the robber possesses or pretends to possess a firearm, destructive device, or other dangerous weapon, or menaces another with serious bodily injury, or inflicts bodily injury upon another, or is aided by an accomplice actually present. Otherwise robbery is a class C felony.



3. In this section:

- a. An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft, whether or not the theft is successfully completed, or in immediate flight from the commission of, or an unsuccessful effort to commit, the theft.
- b. "Dangerous weapon" means a weapon defined in subsection 6 of section 12.1-01-04 or a weapon the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury.

12.1-22-02. BURGLARY.) 1. A person is guilty of burglary if he willfully enters or surreptitiously remains in a building or occupied structure, or a separately secured or occupied portion thereof, when at the time the premises are not open to the public and the actor is not licensed, invited, or otherwise privileged to enter or remain as the case may be, with intent to commit a crime therein.

2. Burglary is a class B felony if:

- a. The offense is committed at night, and is knowingly perpetrated in the dwelling of another; or
- b. In effecting entry or while in the premises or in immediate flight therefrom, the actor inflicts or attempts to inflict bodily injury or physical restraint on another, or menaces another with imminent serious bodily injury, or is armed with a firearm, destructive device, or other weapon the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury.

Otherwise burglary is a class C felony.

12.1-22-03. CRIMINAL TRESPASS.) 1. A person is guilty of a class C felony if, knowing that he is not licensed or privileged to do so, he enters or remains in a dwelling or in highly secured premises.

2. A person is guilty of a class A misdemeanor if, knowing that he is not licensed or privileged to do so, he:

- a. Enters or remains in any building, occupied structure, or storage structure, or separately secured or occupied portion thereof; or
- b. Enters or remains in any place so enclosed as manifestly to exclude intruders.

3. A person is guilty of a class B misdemeanor if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by actual

communication to the actor by the person in charge of the premises or other authorized person or by posting in a manner reasonably likely to come to the attention of intruders.

12.1-22-04. BREAKING INTO OR CONCEALMENT WITHIN A VEHICLE.) 1. A person is guilty of an offense if, knowing that he is not licensed or privileged to do so, he breaks into a vehicle, vessel, or aircraft, or, with intent to commit a crime, conceals himself therein.

2. The offense is a class B felony if the actor is armed with a firearm, destructive device, or other weapon the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury. Otherwise it is a class C felony.

12.1-22-05. STOWING AWAY.) A person is guilty of a class A misdemeanor if, knowing that he is not licensed or privileged to do so, he surreptitiously remains aboard a vessel or aircraft with intent to obtain transportation.

12.1-22-06. DEFINITIONS FOR SECTIONS 12.1-22-02 TO 12.1-22-06.) In sections 12.1-22-02 to 12.1-22-06:

1. "Occupied structure" means a structure or vehicle:
  - a. Where any person lives or carries on business or other calling; or
  - b. Which is used for overnight accommodation of persons.Any such structure or vehicle is deemed to be "occupied" regardless of whether a person is actually present;
2. "Storage structure" means any structure, truck, railway car, or aircraft which is used primarily for the storage or transportation of property;
3. "Highly secured premises" means any place which is continuously guarded and where display of visible identification is required of persons while they are on the premises;
4. "Dwelling" has the meaning prescribed in subsection 4 of section 12.1-05-12; and
5. "Night" means the period between thirty minutes past sunset and thirty minutes before sunrise.

SECTION 22.) Chapter 12.1-23 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-23-01. CONSOLIDATION OF THEFT OFFENSES.) 1. Conduct denominated theft in sections 12.1-23-02 to 12.1-23-04 constitutes a single offense designed to include the separate offenses heretofore

known as larceny, stealing, purloining, embezzlement, obtaining money or property by false pretenses, extortion, blackmail, fraudulent conversion, receiving stolen property, misappropriation of public funds, swindling, and the like.

2. An indictment, information, or complaint charging theft under sections 12.1-23-02 to 12.1-23-04 which fairly apprises the defendant of the nature of the charges against him shall not be deemed insufficient because it fails to specify a particular category of theft. The defendant may be found guilty of theft under such an indictment, information, or complaint if his conduct falls under sections 12.1-23-02 to 12.1-23-04, so long as the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case he must meet.

12.1-23-02. THEFT OF PROPERTY.) A person is guilty of theft if he:

1. Knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;
2. Knowingly obtains the property of another by deception or by threat with intent to deprive the owner thereof, or intentionally deprives another of his property by deception or by threat; or
3. Knowingly receives, retains, or disposes of property of another which has been stolen, with intent to deprive the owner thereof.

12.1-23-03. THEFT OF SERVICES.) A person is guilty of theft if:

1. He intentionally obtains services, known by him to be available only for compensation, by deception, threat, false token, or other means to avoid payment for the services; or
2. Having control over the disposition of services of another to which he is not entitled, he knowingly diverts those services to his own benefit or to the benefit of another not entitled thereto.

Where compensation for services is ordinarily paid immediately upon their rendition, as in the case of hotels, restaurants, and comparable establishments, absconding without payment or making provision to pay is prima facie evidence that the services were obtained by deception.

12.1-23-04. THEFT OF PROPERTY LOST, MISLAID, OR DELIVERED BY MISTAKE.) A person is guilty of theft if he:

1. Retains or disposes of property of another when he knows it has been lost or mislaid; or
2. Retains or disposes of property of another when he knows it has been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property,

and with intent to deprive the owner of it, he fails to take readily available and reasonable measures to restore the property to a person entitled to have it.

12.1-23-05. GRADING OF THEFT OFFENSES.) 1. Theft under this chapter is a class B felony if the property or services stolen exceed ten thousand dollars in value or are acquired or retained by a threat to commit a class A or class B felony or to inflict serious bodily injury on the person threatened or on any other person.

2. Theft under this chapter is a class C felony if:
  - a. The property or services stolen exceed one hundred dollars in value;
  - b. The property or services stolen are acquired or retained by threat and are acquired or retained by a public servant by a threat to take or withhold official action, or exceed fifty dollars in value;
  - c. The property or services stolen exceed fifty dollars in value and are acquired or retained by a public servant in the course of his official duties;
  - d. The property stolen is a firearm, ammunition, explosive or destructive device, or an automobile, aircraft, or other motor-propelled vehicle;
  - e. The property consists of any government file, record, document, or other government paper stolen from any government office or from any public servant;
  - f. The defendant is in the business of buying or selling stolen property and he receives, retains, or disposes of the property in the course of that business;
  - g. The property stolen consists of any implement, paper, or other thing uniquely associated with the preparation of any money, stamp, bond, or other document, instrument, or obligation of this state;
  - h. The property stolen consists of livestock taken from the premises of the owner; or
  - i. The property stolen consists of a key or other implement uniquely suited to provide access to property the theft of which would be a felony and it was stolen to gain such access.

3. All other theft under this chapter is a class A misdemeanor, unless the requirements of subsection 4 are met.

4. Theft under this chapter of property or services of a value not exceeding fifty dollars shall be a class B misdemeanor if:

- a. The theft was not committed by threat;
- b. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft; and
- c. The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of his official duties.

The special classification provided in this subsection shall apply if the offense is classified under this subsection in the charge or if, at sentencing, the required factors are established by a preponderance of the evidence.

5. Notwithstanding the provisions of subsection 3 of section 12.1-06-01, an attempt to commit a theft under this chapter is punishable equally with the completed offense when the actor has completed all of the conduct which he believes necessary on his part to complete the theft except receipt of the property.

6. For purposes of grading, the amount involved in a theft under this chapter shall be the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that he was stealing, or which the actor could reasonably have anticipated to have been the property or services involved. Thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be charged as one offense and the amounts proved to have been stolen may be aggregated in determining the grade of the offense.

12.1-23-06. UNAUTHORIZED USE OF A VEHICLE.) 1. A person is guilty of an offense if, knowing that he does not have the consent of the owner, he takes, operates, or exercises control over an automobile, aircraft, motorcycle, motorboat, or other motor-propelled vehicle of another.

2. It is a defense to a prosecution under this section that the actor reasonably believed that the owner would have consented had he known of the conduct on which the prosecution was based.

3. The offense is a class C felony if the vehicle is an aircraft or if the value of the use of the vehicle and the cost of retrieval and restoration exceeds five hundred dollars. Otherwise the offense is a class A misdemeanor.

**12.1-23-07. MISAPPLICATION OF ENTRUSTED PROPERTY.)**

A person is guilty of a class A misdemeanor if he disposes of, uses, or transfers any interest in, property which has been entrusted to him as a fiduciary, or in his capacity as a public servant or an officer, director, agent, employee of, or a person controlling a financial institution, in a manner that he knows is not authorized and that he knows to involve a risk of loss or detriment to the owner of the property or to the government or other person for whose benefit the property was entrusted.

**12.1-23-08. DEFRAUDING SECURED CREDITORS.)** 1. A person is guilty of an offense if he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with intent to prevent collection of the debt represented by the security interest.

2. The offense is a class A misdemeanor if the property has a value exceeding five hundred dollars, and a class B misdemeanor in all other cases. Value is to be determined as provided in subsection 7 of section 12.1-23-05.

**12.1-23-09. DEFENSES AND PROOF AS TO THEFT AND RELATED OFFENSES.)** 1. It is a defense to a prosecution under this chapter that:

- a. The actor honestly believed that he had a claim to the property or services involved which he was entitled to assert in the manner which forms the basis for the charge against him; or
  - b. The victim is the actor's spouse, but only when the property involved constitutes household or personal effects or other property normally accessible to both spouses and the parties involved are living together. The term "spouse", as used in this section, includes persons living together as man and wife.
2. a. It shall be a prima facie case of theft under this chapter if it is shown that a public servant or an officer, director, agent, or employee of, or a person connected in any capacity with a financial institution has failed to pay or account upon lawful demand for money or property entrusted to him as part of his official duties or if an audit reveals a shortage or falsification of his accounts.
- b. It shall be prima facie evidence that the actor knows that property has been stolen if it is shown that, being a dealer, he acquired it for a consideration which he knew to be far below its reasonable value. "Dealer" means a person, whether licensed or not, who has repeatedly engaged in transactions in the type of property involved.

## 12.1-23-10. DEFINITIONS FOR THEFT AND RELATED OFFENSES.)

In this chapter:

1. "Deception" means: (i) creating or reinforcing a false impression, including false impressions as to fact, law, status, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not substantially perform the promise unless it is part of a continuing scheme to defraud; or (ii) preventing another from acquiring information which would affect his judgment of a transaction; or (iii) failing to correct a false impression which the actor previously created or reinforced, or which he knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or (iv) failing to correct an impression which the actor previously created or reinforced and which the actor knows to have become false due to subsequent events; or (v) failing to disclose a lien, adverse claim, or other impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained or in order to continue to deprive another of his property, whether such impediment is or is not valid, or is or is not a matter of official record; or (vi) using a credit card, charge plate, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer (A) where such instrument has been stolen, forged, revoked, or cancelled, or where for any other reason its use by the actor is unauthorized, and (B) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument; or (vii) any other scheme to defraud. The term "deception" does not, however, include falsifications as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares in communications addressed to the public or to a class or group.
2. "Deprive" means (i) to withhold property or to cause it to be withheld either permanently or under such circumstances that a major portion of its economic value, or its use and benefit, has, in fact, been appropriated; or (ii) to withhold property or to cause it to be withheld with the intent to restore it only upon the payment of a reward or other compensation; or (iii) to dispose of property or use it or transfer any interest in it under circumstances that make its restoration, in fact, unlikely.
3. "Fiduciary" means a trustee, guardian, executor, administrator, receiver, or any other person acting in a fiduciary capacity, or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

4. "Financial institution" means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.
5. "Obtain" means: (i) in relation to property, to bring about a transfer or purported transfer of an interest in the property, whether to the actor or another; or (ii) in relation to services, to secure performance thereof.
6. "Property" means any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed (including things growing on, affixed to, or found in land and documents although the rights represented thereby have no physical location), contract right, chose-in-action, interest in or claim to wealth, credit, or any other article or thing of value of any kind. "Property" also means real property the location of which cannot be moved if the offense involves transfer or attempted transfer of an interest in the property.
7. "Property of another" means property in which a person other than the actor or in which a government has an interest which the actor is not privileged to infringe without consent, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person or government might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement. "Owner" means any person or a government with an interest in property such that it is "property of another" as far as the actor is concerned.
8. "Receiving" means acquiring possession, control, or title, or lending on the security of the property.
9. "Services" means labor, professional service, transportation, telephone, mail or other public service, gas, electricity and other public utility services, accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other property.
10. "Stolen" means property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of section 12.1-23-06.
11. "Threat" means an expressed purpose, however communicated, to: (i) cause bodily injury in the future to the person threatened or to any other person; or (ii) cause damage to property; or (iii) subject the person threatened or any



other person to physical confinement or restraint; or (iv) engage in other conduct constituting a crime; or (v) accuse anyone of a crime; or (vi) expose a secret or publicize an asserted fact, whether true or false, tending to subject a person living or deceased, to hatred, contempt, or ridicule or to impair another's credit or business repute; or (vii) reveal any information sought to be concealed by the person threatened; or (viii) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or (ix) take or withhold official action as a public servant, or cause a public servant to take or withhold official action; or (x) bring about or continue a strike, boycott, or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent; or (xi) cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes; or (xii) do any other act which would not in itself substantially benefit the actor or a group he represents but which is calculated to harm another person in a substantial manner with respect to his health, safety, business, employment, calling, career, financial condition, reputation, or personal relationship. Upon a charge of theft, the receipt of property in consideration for taking or withholding official action shall be deemed to be theft by threat regardless of whether the owner voluntarily parted with his property or himself initiated the scheme.

SECTION 23.) Chapter 12.1-24 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-24-01. FORGERY OR COUNTERFEITING.) 1. A person is guilty of forgery or counterfeiting if, with intent to deceive or harm the government or another person, or with knowledge that he is facilitating such deception or harm by another person, he:

- a. Knowingly and falsely makes, completes, or alters any writing; or
  - b. Knowingly utters or possesses a forged or counterfeited writing.
2. Forgery or counterfeiting is:
- a. A class B felony if:
    - (1) The actor forges or counterfeits an obligation or other security of the government; or
    - (2) The offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of ten thousand dollars.

b. A class C felony if:

- (1) The actor is a public servant or an officer or employee of a financial institution and the offense is committed under color of office or is made possible by his office;
- (2) The actor forges or counterfeits foreign money or other legal tender, or utters or possesses any forged or counterfeited obligation or security of the government or foreign money or legal tender;
- (3) The actor forges or counterfeits any writing from plates, dies, molds, photographs, or other similar instruments designed for multiple reproduction;
- (4) The actor forges or counterfeits a writing which purports to have been made by the government; or
- (5) The offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of one hundred dollars.

c. A class A misdemeanor in all other cases.

12.1-24-02. FACILITATION OF COUNTERFEITING.) 1. A person is guilty of an offense if, except as authorized by statute or by regulation, he knowingly makes, executes, sells, buys, imports, possesses, or otherwise has within his control any plate, stone, paper, tool, die, mold, or other implement or thing uniquely associated with or fitted for the preparation of any forged or counterfeited security or tax stamp or any writing which purports to be made by this government or any foreign government.

2. A person is guilty of an offense if, except as authorized by statute or by regulation, he:

a. Knowingly photographs or otherwise makes a copy of:

- (1) Money or other obligation or security of this government or of any foreign government, or any part thereof;
- (2) Any plate, stone, tool, die, mold, or other implement or thing uniquely associated with or fitted for the preparation of any writing described in subsection 1; or

b. Knowingly sells, buys, imports, possesses, or otherwise has within his control any photograph or copy the making of which is prohibited by subdivision a of subsection 2.

3. In a prosecution under this section, authorization by statute or by regulation is a defense.

4. An offense defined in this section is a class B felony if the implement or the impression relates to the forging or counterfeiting

of an obligation or security of the government. Otherwise it is a class C felony.

12.1-24-03. DECEPTIVE WRITINGS.) 1. A person is guilty of an offense if, with intent to deceive or harm the government or another person, or with knowledge that he is facilitating such a deception or harm by another person, he knowingly issues a writing without authority to issue it or knowingly utters or possesses a deceptive writing.

2. The offense is a class B felony if it is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of ten thousand dollars. The offense is a class C felony if:

- a. The actor is a public servant or an officer or employee of a financial institution and the offense is committed under color of office or is made possible by his office; or
- b. The offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of one hundred dollars.

Otherwise it is a class A misdemeanor.

12.1-24-04. DEFINITIONS FOR CHAPTER 12.1-24.) In this chapter:

1. The definitions prescribed in section 12.1-23-10 apply.
2. "Writing" means:
  - (a) Any paper, document, or other instrument containing written or printed matter or its equivalent, including money, a money order, bond, public record, affidavit, certificate, contract, security, or obligation; and
  - (b) Any coin or any gold or silver bar coined or stamped at a mint or assay office or any signature, certification, credit card, token, stamp, seal, badge, decoration, medal, trademark, or other symbol or evidence of value, right, privilege, or identification which is capable of being used to the advantage or disadvantage of the government or any person.
3. "Without authority" includes conduct that, on the specific occasion called into question, is beyond any general authority given by statute, regulation, or agreement.
4. "Falsely makes" means to make a writing which purports to be made by the government or another person, or a copy thereof, but which is not because the apparent maker is fictitious or because the writing was made without authority.

5. "Falsely completes" means to make an addition to or an insertion in a writing, without authority, such that the writing appears to have been made by, or fully authorized by, its apparent maker.
6. "Falsely alters" means to make a change in a writing, without authority, such that the writing appears to have been made by, or fully authorized by, its apparent maker.
7. To "forge" or to "counterfeit" a writing means to falsely make, complete, or alter the writing, and a "forged" or "counterfeited" writing is a writing which has been falsely made, completed, or altered. The terms "forgery" and "counterfeiting" and their variants are intended to be synonymous in legal effect.
8. "Utter" means to issue, authenticate, transfer, publish, sell, transmit, present, use, or otherwise give currency.
9. "Possess" means to receive, conceal, or otherwise exercise control over.
10. The term "obligation or other security of this state" means a bond, certificate of indebtedness, coupon, fractional note, certificate of deposit, a stamp, or other representative of value of whatever denomination, issued pursuant to a statute.
11. "Security" other than as provided in subsection 10 includes any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of interest in tangible or intangible property, instrument or document or writing evidencing ownership of goods, wares, and merchandise, or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise, uncanceled stamp issued by a foreign government (whether or not demonetized); or, in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant or right to subscribe to or purchase any of the foregoing.
12. "Tax stamp" includes any tax stamp, tax token, tax meter imprint, or any other form of evidence of an obligation running to a state, or evidence of the discharge thereof.
13. A "deceptive writing" is a writing which has been:
  - a. Procured by deception; or

b. Issued without authority.

12.1-24-05. MAKING OR UTTERING SLUGS.) 1. A person is guilty of an offense if he makes or utters a slug with intent to deprive a supplier of property or service sold or offered by means of a coin machine or with knowledge that he is facilitating such a deprivation by another person.

2. The offense is a class A misdemeanor if it involves slugs which exceed fifty dollars in value. Otherwise it is a class B misdemeanor.

3. In this section:

- a. "Slug" means a metal, paper, or other object which by virtue of its size, shape, or any other quality is capable of being inserted, deposited, or otherwise used in a coin machine as an improper but effective substitute for a genuine coin, bill, or token;
- b. "Coin machine" means a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed:
  - (1) To receive a coin or bill of a certain denomination or a token made for the purpose; and
  - (2) In return for the insertion or deposit thereof, automatically to offer, provide, assist in providing, or permit the acquisition of property or a public or private service.
- c. "Value" of the slugs means the value of the coins, bills, or tokens for which they are capable of being substituted.

SECTION 24.) Chapter 12.1-25 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-25-01. INCITING RIOT.) 1. A person is guilty of an offense if he:

- a. Incites or urges five or more persons to create or engage in a riot; or
  - b. Gives commands, instructions, or directions to five or more persons in furtherance of a riot.
2. "Riot" means a public disturbance involving an assemblage of five or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function.
3. A person shall be convicted under sections 12.1-06-01, 12.1-06-03, or 12.1-06-04 of attempt, solicitation, or conspiracy to commit an offense under this section only if he engages in the prohibited

conduct under circumstances in which there is a substantial likelihood that his conduct will imminently produce a violation of this section.

4. The offense is a class C felony if it is under subdivision b of subsection 1 and the riot involves one hundred or more persons. Otherwise it is a class A misdemeanor.

12.1-25-02. ARMING RIOTERS.) 1. A person is guilty of a class C felony if he:

- a. Knowingly supplies a firearm or destructive device for use in a riot;
- b. Teaches another to prepare or use a firearm or destructive device with intent that any such thing be used in a riot; or
- c. While engaging in a riot, is knowingly armed with a firearm or destructive device.

2. "Riot" has the meaning prescribed in section 12.1-25-01.

12.1-25-03. ENGAGING IN A RIOT.) 1. A person is guilty of a class B misdemeanor if he engages in a riot, as defined in section 12.1-25-01.

2. The provisions of subsection 3 of section 12.1-25-01 are applicable to attempt, solicitation, and conspiracy to commit an offense under this section. Mere presence at a riot is not an offense under this section.

12.1-25-04. DISOBEDIENCE OF PUBLIC SAFETY ORDERS UNDER RIOT CONDITIONS.) A person is guilty of a class B misdemeanor if, during a riot as defined in section 12.1-25-01, or when one is immediately impending, he disobeys a reasonable public safety order to move, disperse, or refrain from specified activities in the immediate vicinity of the riot. A public safety order is an order designed to prevent or control disorder, or promote the safety of persons or property, issued by the senior law enforcement official on the scene.

SECTION 25.) Chapter 12.1-26 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-26-01. SUPPLYING FIREARMS, AMMUNITION, DESTRUCTIVE DEVICES, OR EXPLOSIVES FOR CRIMINAL ACTIVITY.) 1. A person is guilty of a class C felony if he:

- a. Knowingly supplies a firearm, ammunition therefor, destructive device, or explosive to a person who intends to commit a crime of violence or intimidation with the aid thereof or while armed therewith; or
- b. Procures or receives the same with like intent.

2. In this section, "crime of violence or intimidation" means such a crime defined in chapters 12.1-16 through 12.1-25 of this title when the offense is a felony.

12.1-26-02. ILLEGAL FIREARMS, AMMUNITION, OR EXPLOSIVE MATERIALS BUSINESS.) 1. A person is guilty of an offense if he knowingly supplies a firearm, ammunition, or explosive material to, or procures or receives a firearm, ammunition, or explosive material for, a person prohibited by the regulatory law from receiving it.

2. In this section:

- a. "Firearms" includes the weapons described in sections 62-01-01 and 62-02-01; and
  - b. "Regulatory law" means chapters 62-01, 62-02, and 62-03.
3. The offense is a class C felony if the actor:
- a. Was not licensed or otherwise authorized by law to handle, transfer, or engage in transactions with respect to the firearm, destructive device, or explosive material; or
  - b. Engaged in the forbidden transaction under circumstances manifesting his readiness to supply or procure on other occasions in disregard of lawful restrictions.

Otherwise the offense is a class A misdemeanor.

12.1-26-03. TRAFFICKING IN AND RECEIVING LIMITED-USE FIREARMS.) 1. A person is guilty of a class C felony if he:

- a. Traffics in limited-use firearms in violation of the regulatory law; or
- b. Receives a limited-use firearm with knowledge that it is being transferred to him in violation of the regulatory law.

2. In this section:

- a. "Traffics" means:
  - (1) Transfers to another person;
  - (2) Possesses with intent to transfer to another person;
  - (3) Makes or manufactures; or
  - (4) Imports or exports;
- b. "Limited-use firearm" has the meaning prescribed in section 62-02-01; and

c. "Regulatory law" means chapter 62-02.

12.1-26-04. POSSESSION OF EXPLOSIVES AND DESTRUCTIVE DEVICES IN GOVERNMENT BUILDINGS.) A person is guilty of a class A misdemeanor if he possesses an explosive or destructive device in a government building without the written consent of the government agency or person responsible for the management of such buildings. "Government building" means a building which is owned, possessed, or used by or leased to the state of North Dakota, or any of its political subdivisions.

SECTION 26.) Chapter 12.1-27 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-27-01. OBSCENITY - DEFINITIONS - DISSEMINATION - CLASSIFICATION OF OFFENSES.) 1. A person is guilty of a class A misdemeanor if, knowing of its character, he disseminates obscene material, or if he produces, transports, or sends obscene material with intent that it be disseminated.

2. A person is guilty of a class A misdemeanor if he presents or directs an obscene performance for pecuniary gain, or participates in any portion of a performance which contributes to the obscenity of the performance as a whole.

3. As used in this section, the terms "obscene material" and "obscene performance" mean material or a performance which, considered as a whole:

- a. Predominantly appeal to a prurient or morbid interest in nudity, sex, excretion, sadism, or masochism;
- b. Goes substantially beyond customary limits of candor in describing or representing such matters; and
- c. Is utterly without redeeming social value.

That material or a performance predominantly appeals to a prurient or morbid interest shall be judged with reference to ordinary adults, unless it appears from the character of the material or the circumstances of its dissemination to be designed for minors or other specially susceptible audience, in which case, the material or performance shall be judged with reference to that type of audience.

4. As used in this section, the term "disseminate" means to sell, lease, advertise, broadcast, exhibit, or distribute for pecuniary gain.

5. As used in this section, the term "material" means any physical object used as a means of presenting or communicating information, knowledge, sensation, image, or emotion to or through a human being's receptive senses.



6. As used in this section, the term "performance" means any play, motion picture, dance, or other exhibition presented before an audience.

12.1-27-02. PROMOTING OBSCENITY TO MINORS - DEFINITIONS.)  
As used in section 12.1-27-03:

1. "Promote" means to produce, direct, manufacture, issue, sell, lend, mail, publish, distribute, exhibit, or advertise.
2. "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when such description or representation:
  - a. Predominantly appeals to the prurient, shameful, or morbid interest of minors;
  - b. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
  - c. Is utterly without redeeming social importance for minors.
3. "Material" and "performance" shall be defined as in section 12.1-27-01, subsections 5 and 6, respectively.

12.1-27-03. PROMOTING OBSCENITY TO MINORS - MINOR PERFORMING IN OBSCENE PERFORMANCE - CLASSIFICATION OF OFFENSES.)

1. It shall be a class C felony for a person to knowingly promote to a minor any material or performance which, taken as a whole, is harmful to minors, or to admit a minor to premises where a performance harmful to minors is exhibited or takes place.

2. It shall be a class C felony to permit a minor to participate in a performance which, taken as a whole, is harmful to minors.

12.1-27-04. INDECENT EXPOSURE.) A person is guilty of a class A misdemeanor if, with intent to arouse or gratify the sexual desire of any person, including the actor, he exposes his genitals or performs any other lewd act under circumstances in which, in fact, his conduct is likely to be observed by a person who would be offended or alarmed.

SECTION 27.) Chapter 12.1-28 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-28-01. GAMBLING - DEFINITIONS.) As used in this chapter:

1. "Gambling" means risking any money, credit, deposit, or other thing of value for gain, contingent, wholly or partially, upon lot, chance, the operation of gambling apparatus,

or the happening or outcome of an event, including an election or sporting event, over which the person taking the risk has no control. Gambling does not include:  
(a) lawful contests of skill, speed, strength, or endurance in which awards are made only to entrants or to the owners of entries; or (b) lawful business transactions, or other acts or transactions now or hereafter expressly authorized by law.

2. "Lottery" means any plan for the distribution of a thing of value, whether tangible or intangible, or a person or persons selected by chance from among participants, some or all of whom have given a consideration for the chance of being selected.
3. "Gambling apparatus" means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons, or gambling by a person involving the playing of a machine. Gambling apparatus does not include an amusement game or device as defined in section 53-03-01.
4. "Gambling house" means any location or structure, stationary or movable, wherein gambling is permitted or promoted, or where a lottery is conducted or managed. In the application of this definition, any place where gambling apparatus is found is presumed to be a gambling house, provided that this presumption shall not apply where cards, dice, or other games are found in a private residence.

#### 12.1-28-02. GAMBLING - RELATED OFFENSES - CLASSIFICATION OF OFFENSES.)

1. It shall be a class B misdemeanor to engage in gambling.
2. It shall be a class A misdemeanor to:
  - a. Sell, purchase, receive, or transfer a chance to participate in a lottery; or
  - b. Disseminate information about a lottery with intent to encourage participation in it.
3. Subsection 2 shall apply to a lottery drawn or to be drawn outside of this state, whether or not such lottery is lawful in such other state or country.
4. A person is guilty of a class C felony if he engages or participates in the business of gambling. Without limitation, a person shall be deemed to be engaged in the business of gambling if he:
  - a. Conducts a wagering pool or lottery;

- b. Receives wagers for or on behalf of another person;
  - c. Alone or with others, owns, controls, manages, or finances a gambling business;
  - d. Knowingly leases or otherwise permits a place to be regularly used to carry on a gambling business or maintain a gambling house;
  - e. Maintains for use on any place or premises occupied by him a coin-operated gaming device; or
  - f. Is a public servant who shares in the proceeds of a gambling business whether by way of a bribe or otherwise.
5. a. As used in subsection 4, the term "coin-operated gaming device" means any machine which is:
- (1) A so-called "slot" machine which operates by means of the insertion of a coin, token, or similar object and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens; or
  - (2) A machine which is similar to machines described in paragraph (1) and is operated without the insertion of a coin, token, or similar object.
- b. The term "coin-operated gaming device" does not include a bona fide vending or amusement machine in which gambling features are not incorporated as defined in section 53-04-01.

SECTION 28.) Chapter 12.1-29 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-29-01. PROMOTING PROSTITUTION.) 1. A person is guilty of an offense if he:

- a. Operates a prostitution business or a house of prostitution;
- b. Induces or otherwise intentionally causes another to become engaged in sexual activity as a business; or
- c. Knowingly procures a prostitute for a prostitution business or a house of prostitution

2. The offense is a class C felony if it is under subdivisions b or c of subsection 1, or if it is under subdivision a and the actor owns, controls, manages, or otherwise supervises the prostitution business or house of prostitution. Otherwise the offense is a class A misdemeanor.

12.1-29-02. FACILITATING PROSTITUTION.) 1. A person is guilty of an offense if he:

- a. Knowingly solicits a person to patronize a prostitute;
- b. Knowingly procures a prostitute for a patron;
- c. Knowingly leases or otherwise permits a place controlled by the actor, alone or in association with others, to be regularly used for prostitution, promoting prostitution, or facilitating prostitution, or fails to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or taking other legally available means; and
- d. Knowingly induces or otherwise intentionally causes another to remain a prostitute. A person who is supported in whole or substantial part by the proceeds of prostitution, other than the prostitute or the prostitute's minor child or a person whom the prostitute is required by law to support, is presumed to be knowingly inducing or intentionally causing another to remain a prostitute.

2. The offense is a class C felony if the actor intentionally causes another to remain a prostitute by force or threat, or the prostitute is the actor's wife, child, or ward, or a person for whose care, protection, or support he is responsible, or the prostitute is, in fact, less than sixteen years old. Otherwise it is a class A misdemeanor.

12.1-29-03. PROSTITUTION.) A person is guilty of prostitution, a class B misdemeanor, if he:

1. Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business; or
2. Solicits another person with the intention of being hired to engage in sexual activity.

12.1-29-04. TESTIMONY OF SPOUSE IN PROSTITUTION OFFENSES.) Testimony of a person against his or her spouse shall be admissible to prove offenses under this chapter involving that spouse's prostitution.

12.1-29-05. DEFINITIONS FOR CHAPTER 12.1-29.) In this chapter:

- \* 1. "Sexual activity" means sexual intercourse, deviate sexual intercourse, or sexual contact as defined in section 12.1-20-02.
2. A "prostitution business" is any business which derives funds from prostitution regularly carried on by a person under the control, management, or supervision of another.

\*NOTE: Subsection 1 of section 12.1-29-05 was further amended by section 3 of Senate Bill No. 2049, chapter 117.

3. A "house of prostitution" is any place where prostitution is regularly carried on by a person under the control, management, or supervision of another.
4. A "prostitute" is a person who engages in sexual activity for hire.
5. An "inmate" is a prostitute who acts as such in or through the agency of a house of prostitution.

SECTION 29.) Chapter 12.1-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-30-01. BUSINESS OR LABOR ON SUNDAY - EXEMPTIONS - CLASSIFICATION OF OFFENSES.) 1. Except as otherwise provided in sections 12.1-30-02 and 12.1-30-03, it shall be a class B misdemeanor for any person on Sunday to engage in or conduct business or labor for profit in the usual manner and location, or to operate a place of business open to the public, or to authorize or direct his employees or agents to take such action. This subsection shall not apply to any person who in good faith observes a day other than Sunday as the Sabbath, if he refrains from engaging in or conducting business or labor for profit and closes his place of business to the public on that day.

2. The attorney general, a state's attorney, a mayor, a city manager, or a city attorney may petition a district court, for the district where a violation is occurring, to enjoin a violation of this section.

12.1-30-02. PERSONAL PROPERTY SALES ALLOWABLE ON SUNDAY.) The sale of any of the following items of personal property shall be allowed during any and all hours on Sundays:

1. Drugs, medical and surgical supplies, or any object purchased on the written prescription of a licensed medical or dental practitioner for the treatment of a patient.
2. Food prepared for consumption on or off the premises where sold.
3. Newspapers, magazines, and books.
4. Gasoline, fuel additives, lubricants, and antifreeze.
5. Tires.
6. Repair or replacement parts and equipment necessary to, and safety devices intended for, safe and efficient operation of land vehicles, boats, and aircraft.
7. Emergency plumbing, heating, cooling, and electrical repair and replacement parts and equipment.

8. Cooking, heating, and lighting fuel.
9. Infant supplies.
10. Camera and school supplies, stationery, and cosmetics.
11. Beer and alcoholic beverages but only until one o'clock a.m.

12.1-30-03. BUSINESSES ALLOWED TO OPERATE ON SUNDAY.)

The operation of any of the following businesses shall be allowed on Sundays:

1. Restaurants, cafeterias, or other prepared food service organizations.
2. Hotels, motels, and other lodging facilities.
3. Hospitals and nursing homes.
4. Dispensaries of drugs and medicines.
5. Ambulance and burial services.
6. Generation and distribution of electric power.
7. Distribution of gas, oil, and other fuels.
8. Telephone, telegraph, and messenger services.
9. Heating, refrigeration, and cooling services.
10. Railroad, bus, trolley, subway, taxi, and limousine services.
11. Water, air, and land transportation services and attendant facilities.
12. Cold storage warehouse.
13. Ice manufacturing and distribution.
14. Minimal maintenance of equipment and machinery.
15. Plant and industrial protection services.
16. Industries where continuous processing or manufacturing is required by the very nature of the process involved.
17. Newspaper publication and distribution.
18. Radio and television broadcasting.
19. Motion picture, theatrical, and musical performances.
20. Automobile service stations.

21. Athletic and sporting events.
22. Parks, beaches, and recreational facilities.
23. Scenic, historic, and tourist attractions.
24. Amusement centers, fairs, zoos, and museums.
25. Libraries.
26. Educational lectures, forums, and exhibits.
27. Service organizations (USO, YMCA, etc.).
28. Grocery stores operated by the owner-manager who regularly employs not more than three employees for the operation of said store.
29. Premises licensed to dispense beer and alcoholic beverages within the limits prescribed in section 5-02-05.

SECTION 30.) Chapter 12.1-31 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-31-01. DISORDERLY CONDUCT.) A person is guilty of a class B misdemeanor if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another person is harassed, annoyed, or alarmed by his behavior, he:

1. Engages in fighting, or in violent, tumultuous or threatening behavior;
2. Makes unreasonable noise;
3. In a public place, uses abusive or obscene language, or makes an obscene gesture;
4. Obstructs vehicular or pedestrian traffic, or the use of a public facility;
5. Persistently follows a person in or about a public place or places;
6. While loitering in a public place for the purpose of soliciting sexual contact, he solicits such contact; or
7. Creates a hazardous, physically offensive, or seriously alarming condition by any act which serves no legitimate purpose.

12.1-31-02. ENGAGING IN OR FINANCING CRIMINAL USURY BUSINESS.) 1. A person is guilty of a class C felony if he knowingly engages in, or directly or indirectly provides financing for, the

business of making extensions of credit at such a rate of interest that repayment or performance of any promise given in consideration thereof is unenforceable through civil judicial process in this state.

2. Knowledge of unenforceability shall be presumed, in the case of a person engaging in the business, if any of the following exist, and in the case of a person directly or indirectly providing financing, if he knew any of the following:

- a. It is an offense to charge, take, or receive interest at the rate involved;
- b. The rate of interest charged, taken, or received is fifty or more percentum greater than the maximum enforceable rate of interest; or
- c. The rate of interest involved exceeds forty-five percentum per annum or the equivalent rate for a longer or shorter period.

3. Unless otherwise provided by law, the rate of interest is to be calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which a payment is applied first to the accumulated interest and the balance is applied to the unpaid principal.

4. It is a defense to a prosecution under this section that the defendant was licensed or otherwise authorized by the United States or by any state government to engage in the business of making extensions of credit.

5. In this section:

- a. An "extension of credit" means any loan, or any agreement, tacit or express, whereby the repayments or satisfaction of any debt, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.
- b. "Debtor" means any person to whom an extension of credit is made, or who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same.
- c. The repayment of any extension of credit includes the repayment, satisfaction, or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

SECTION 31.) Chapter 12.1-32 of the North Dakota Century Code is hereby created and enacted to read as follows:



12.1-32-01.) Offenses are divided into five classes, which are denominated and subject to maximum penalties, as follows:

1. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
2. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
3. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of five thousand dollars, or both, may be imposed.
4. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of one thousand dollars, or both, may be imposed.
5. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of five hundred dollars, or both, may be imposed.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

12.1-32-02.) 1. Every person convicted of an offense shall be sentenced by the court to one or a combination of the following alternatives:

- a. Deferred imposition of sentence.
- b. Probation.
- c. A term of imprisonment, including intermittent imprisonment.
- d. A fine.
- e. Restitution for damages resulting from the commission of the offense.
- f. Restoration of damaged property, or other appropriate work detail.
- g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.

Sentences imposed under this subsection shall not exceed in duration the maximum sentences provided by section 12.1-32-01, section 12.1-32-08, or as provided specifically in a statute defining an offense. This subsection shall not be construed as not permitting the unconditional discharge of an offender following conviction. Sentences under subdivisions e or f shall be imposed in the manner provided in section 12.1-32-07.

2. Credit against any sentence to a term of imprisonment shall be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed, or as a result of the conduct on which such charge was based. "Time spent in custody" shall include time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.

3. A court may, at any time prior to the time custody of a convicted offender is transferred to a penal institution or institution for treatment, suspend all or a portion of any sentence imposed pursuant to this section.

4. A court may, prior to imposition of sentence, order the convicted offender committed to an appropriate licensed public or private institution for diagnostic testing for such period of time as may be necessary, but not to exceed thirty days. The court may, by subsequent order, extend the period of commitment for not to exceed thirty additional days. The court may also order such diagnostic testing without ordering commitment to an institution. Validity of a sentence shall not be challenged on the ground that diagnostic testing was not performed pursuant to this subsection.

5. All sentences imposed shall be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement shall become part of the record of the case.

6. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing.

12.1-32-03. SPECIAL SANCTION FOR ORGANIZATIONS.) When an organization is convicted of an offense, the court may, in addition to any other sentence which may be imposed, require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense, by mail or by advertising in designated areas or by designated media or otherwise.

12.1-32-04. FACTORS TO BE CONSIDERED IN SENTENCING DECISION.) The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations regarding the desirability of sentencing an offender to imprisonment:

1. The defendant's criminal conduct neither caused nor threatened serious harm to another person or his property.
2. The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property.
3. The defendant acted under strong provocation.

4. There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct.
5. The victim of the defendant's conduct induced or facilitated its commission.
6. The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which was sustained.
7. The defendant has no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period of time before the commission of the present offense.
8. The defendant's conduct was the result of circumstances unlikely to recur.
9. The character, history, and attitudes of the defendant indicate that he is unlikely to commit another crime.
10. The defendant is particularly likely to respond affirmatively to probationary treatment.
11. The imprisonment of the defendant would entail undue hardship to himself or his dependents.
12. The defendant is elderly or in poor health.
13. The defendant did not abuse a public position of responsibility or trust.
14. The defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise cooperated.

Nothing herein shall be deemed to require explicit reference to these factors in a presentence report or by the court at sentencing.

12.1-32-05. IMPOSITION OF FINE - RESPONSE TO NON-PAYMENT.) 1. The court, in making a determination of the propriety of imposing a sentence to pay a fine, shall consider the following factors:

- a. The ability of the defendant to pay without undue hardship.
- b. Whether the defendant, other than a defendant organization, gained money or property as a result of commission.
- c. Whether the sentence to pay a fine will interfere with the defendant's capacity to make restitution.
- d. Whether a sentence to pay a fine will serve a valid rehabilitative purpose.

2. The court may allow the defendant to pay any fine imposed in installments. When a defendant is sentenced to pay a fine, the court shall not impose at the same time an alternative sentence to be served in the event that the fine is not paid.

3. If the defendant does not pay the fine, or make any required partial payment, the court, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant should not be imprisoned for nonpayment. Unless the defendant shows that his default is excusable, the court may sentence him to the following periods of imprisonment for failure to pay a fine:

- a. If the defendant was convicted of a misdemeanor, to a period not to exceed thirty days.
- b. If the defendant was convicted of a felony, to a period not to exceed six months.

12.1-32-06. INCIDENTS OF PROBATIONS.) 1. Unless terminated as provided in subsection 2, the periods during which a sentence to probation shall remain conditional and be subject to revocation are:

- a. For a felony, five years; and
- b. For a misdemeanor, two years.

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

3. Notwithstanding the fact that a sentence to probation can subsequently be modified or revoked, a judgment which includes such a sentence shall constitute a final judgment for all other purposes.

12.1-32-07. CONDITIONS OF PROBATION; REVOCATION.)

1. The conditions of probation shall be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation that the defendant not commit another offense during the period for which the sentence remains subject to revocation.

2. When imposing a sentence to probation, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:

- a. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment;

- b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose;
- c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;
- d. Support his dependents and meet other family responsibilities;
- e. Make restitution or reparation to the victim of his conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of the sentence, the court shall proceed as provided in section 12.1-32-08;
- f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05;
- g. Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the court or probation officer;
- h. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription;
- i. Permit the probation officer to visit him at reasonable times at his home or elsewhere;
- j. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer;
- k. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment;
- l. Report to a probation officer at reasonable times as directed by the court or the probation officer;
- m. Submit to a medical examination or other reasonable testing for the purpose of determining his use of narcotics, marijuana, or other controlled substance whenever required by a probation officer;
- n. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances; and
- o. Submit his person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.

3. When a defendant is sentenced to probation, he shall be given a certificate explicitly setting forth the conditions on which he is being released.

4. The court may, upon notice to the probationer, modify or enlarge the conditions of a sentence to probation at any time prior to the expiration or termination of the period for which the sentence remains conditional. If the defendant violates a condition at any time prior to the expiration or termination of the period, the court may continue him on the existing sentence, with or without modifying or enlarging the conditions, or, if such continuation, modification, or enlargement is not appropriate, may impose any other sentence that was available under section 12.1-32-02 or section 12.1-32-09 at the time of initial sentencing.

5. Jurisdiction over a probationer may be transferred from the court which imposed the sentence to another court of this state, with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection shall be authorized to exercise all powers permissible under this chapter over the defendant.

12.1-32-08.) 1. Prior to imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount thereof. At or following the hearing, the court shall make determinations as to:

- a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages shall be limited to fruits of the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action;
- b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property; and
- c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which shall not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. Any payments made pursuant to such order shall be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a condition of probation may, if the court so directs, be filed, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner as civil judgments rendered by the courts of this state may be enforced.

2. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.

12.1-32-09.) 1. A court may sentence a convicted offender to an extended sentence as a dangerous special offender in accordance with the provisions of this section upon a finding of any one or more of the following:

- a. The convicted offender is a dangerous, mentally abnormal person. The court shall not make such a finding unless the presentence report, including a psychiatric examination, concludes that the offender's conduct has been characterized by persistent aggressive behavior, and that such behavior makes him a serious danger to other persons.
- b. The convicted offender is a professional criminal. The court shall not make such a finding unless the offender is an adult and the presentence report shows that the offender has substantial income or resources derived from criminal activity.
- c. The convicted offender is a persistent offender. The court shall not make such a finding unless the offender is an adult and has previously been convicted of two felonies of class B or above, or of one class B felony or above plus two offenses classified below class B felony, committed at different times when the offender was an adult.
- d. The offender was convicted of an offense which seriously endangered the life of another person, and the offender had previously been convicted of a similar offense.
- e. The offender is especially dangerous because he used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the offender has been pardoned on the ground of innocence shall be disregarded for purposes of subdivision c. In support of findings under subdivision b, it may be shown that the offender has had in his own name or under his control income or property not explained as derived from a source other than criminal activity. For purposes of subdivision b, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the offender's declared adjusted gross income under chapter 57-38.

2. The extended sentence may be imposed in the following manner:

- a. If the offense for which the offender is convicted is a class

A felony, the court may impose a sentence up to a maximum of life imprisonment.

- b. If the offense for which the offender is convicted is a class B felony, the court may impose a sentence up to a maximum of imprisonment for twenty years.
- c. If the offense for which the offender is convicted is a class C felony, the court may impose a sentence up to a maximum of imprisonment for ten years.

3. Whenever an attorney charged with the prosecution of a defendant in a court of this state for an alleged felony committed when the defendant was over the age of eighteen years has reason to believe that the defendant is a dangerous special offender, such attorney, at a reasonable time before trial or acceptance by the court of a plea of guilty, may sign and file with the court, and may amend, a notice specifying that the defendant is a dangerous special offender who upon conviction for such felony is subject to the imposition of a sentence under subsection 2, and setting out with particularity the reasons why such attorney believes the defendant to be a dangerous special offender. In no case shall the fact that the prosecuting attorney is seeking sentencing of the defendant as a dangerous special offender be disclosed to the jury, or be disclosed, before any plea of guilty or verdict or finding of guilt, to the presiding judge without the consent of the parties. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, it may order the notice sealed and the notice shall not be subject to subpoena or public inspection during the pendency of such criminal matter, except on order of the court, but shall be subject to inspection by the defendant alleged to be a dangerous special offender and his counsel.

4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a hearing shall be held, before sentence is imposed, by the court sitting without a jury. Except in the most extraordinary cases, the court shall obtain a presentence report and may receive a diagnostic testing report under subsection 4 of section 12.1-32-02 before holding a hearing under this subsection. The court shall fix a time for the hearing, and notice thereof shall be given to the defendant and the prosecution at least five days prior thereto. The court shall permit the prosecution and counsel for the defendant, or the defendant if he is not represented by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection



with the hearing, the defendant shall be entitled to compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment shall be prima facie evidence of such former judgment or commitment. If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special offender, the court shall sentence the defendant to imprisonment for an appropriate term within the limits specified in subsection 2. The court shall place in the record its findings including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

12.1-32-10.) If an offender is sentenced to a term of imprisonment for a class A, class B, or class C felony, or a class A misdemeanor, he shall be subject to the following mandatory parole components:

1. For a sentence to a term of years in a range from fifteen years to life imprisonment, the parole component shall be five years.
2. For a sentence to a term of years in a range from three years to fifteen years less one day, the parole component shall be three years.
3. For a sentence to a term in a range from one year to one day less than three years, the parole component shall be one year.

The mandatory parole components set forth in this section shall not be served unless the convicted offender shall serve the whole of the term of imprisonment to which he was sentenced. A mandatory parole component may be terminated by the state parole board or by the board of pardons. Nothing in this section shall prohibit the parole of the offender in accordance with other provisions of law.

12.1-32-11.) 1. Separate sentences of commitment imposed on a defendant for two or more offenses constituting a single criminal episode shall run concurrently. Sentences for two or more offenses not constituting a single criminal episode shall run concurrently unless the court specifically orders otherwise.

2. Unless the court otherwise orders, when a person serving a term of commitment imposed by a court of this state is committed for another offense or offenses, the shorter term or the shorter remaining term shall be merged in the other term. When a person on probation or parole for an offense committed in this state is sentenced for another offense or offenses, the period still to be served on probation or parole shall be merged in any new sentence of commitment or probation. A court merging sentences under this subsection shall forthwith furnish each of the other courts previously involved and the penal facility in which the defendant is confined under sentence with authenticated

copies of its sentence, which shall cite the sentences being merged. A court which imposed a sentence which is merged pursuant to this subsection shall modify such sentence in accordance with the effect of the merger.

3. If sentences for multiple offenses are imposed to run consecutively, the aggregate total term of imprisonment resulting from such consecutive sentences shall not exceed the maximum term allowable under section 12.1-32-08 for the highest classification of offense for which the defendant is being sentenced.

4. When sentenced only for misdemeanors, a defendant may not be consecutively sentenced to more than one year, except that a defendant being sentenced for two or more class A misdemeanors may be subject to an aggregate maximum not exceeding that authorized by section 12.1-32-01 for a class C felony if each class A misdemeanor was committed as part of a different course of conduct or each involved a substantially different criminal objective.

12.1-32-12.) Where an offense is defined by a statute outside of this title without specification of its classification pursuant to section 12.1-32-01, the offense shall be punishable as provided in the statute defining it, or:

1. If the offense is declared to be a felony, without further specification of punishment, it shall be punishable as if it were a class C felony.
2. If the offense is declared to be a misdemeanor, without further specification of punishment, it shall be punishable as if it were a class A misdemeanor.

The sentencing alternatives available under section 12.1-32-02 shall be available to a court sentencing an offender for commission of an offense defined by a statute outside this title. The mandatory parole component provided by section 12.1-32-10 shall apply to sentences imposed for offenses defined by statutes outside this title.

12.1-32-13.) Whenever a minor is convicted of a felony, the sentencing court may, in its discretion, sentence the person so convicted to a county jail or commit the person so convicted to the state industrial school as provided in this title.

SECTION 32.) Chapter 12.1-33 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-33-01. RIGHTS LOST.) 1. A person sentenced for a felony to a term of imprisonment, from the time of his sentence until his final discharge, may not:

- a. Vote in an election, but if he is paroled after commitment to imprisonment, he may vote during the period of the parole; or

b. Become a candidate for or hold public office.

2. A public office, other than an office held by one subject to impeachment, held at the time of sentence is forfeited as of the date of the sentence if the sentence is in this state, or, if the sentence is in another state or in a federal court, as of the date a certification of the sentence from the sentencing court is filed in the office of the secretary of state who shall receive and file it as a public document. An appeal or other proceeding taken to set aside or otherwise nullify the conviction or sentence does not affect the application of this section, but if the conviction is reversed, the defendant shall be restored to any public office forfeited under this section from the time of the reversal and shall be entitled to the emoluments thereof from the time of the forfeiture.

12.1-33-02. RIGHTS RETAINED BY CONVICTED PERSON.)

Except as otherwise provided by law, a person convicted of a crime does not suffer civil death or corruption of blood or sustain loss of civil rights or forfeiture of estate or property, but retains all of his rights, political, personal, civil, and otherwise, including the right to hold public office or employment; to vote; to hold, receive, and transfer property; to enter into contracts; to sue and be sued; and to hold offices of private trust in accordance with law.

12.1-33-03. CERTIFICATE OF DISCHARGE.)

1. If the sentence were in this state, the order, certificate, or other instrument of discharge, given to a person sentenced for a felony upon his discharge after completion of service of his sentence or after service under probation or parole, shall state that the defendant's rights to vote and to hold any future public office are thereby restored and that he suffers no other disability by virtue of his conviction and sentence except as otherwise provided by law. The parole board, or its designated agent, shall issue the certificate of discharge upon completion of the sentence. A copy of the order or other instrument of discharge shall be filed with the clerk of the court of conviction.

2. If the sentence were in another state or in a federal court and the convicted person has similarly been discharged by the appropriate authorities, the parole board of this state, upon application and proof of the discharge in such form as the parole board may require, shall issue a certificate stating that such rights have been restored to him under the laws of this state.

3. If another state having a similar statute issues its certificate of discharge to a convicted person stating that the defendant's rights have been restored, the rights of which he was deprived in this state, under section 12.1-33-01, are restored to him in this state.

12.1-33-04. SAVINGS PROVISIONS.) This chapter does not:

1. Affect the power of a court, otherwise given by law to impose sentence or to suspend imposition or execution of sentence on any conditions, or to impose conditions of

probation, or the power of the parole board to impose conditions of parole.

2. Deprive or restrict the authority and powers of officials of a penal institution or other penal facility, otherwise provided by law, for the administration of the institution or facility or for the control of the conduct and conditions of confinement of a convicted person in their custody.
3. Affect the qualifications or disqualifications otherwise required or imposed by law for a designated office, public or private, or to serve as a juror or to vote or for any designated profession, trust, or position, or for any designated license or privilege conferred by public authority.
4. Affect the rights of others arising out of the conviction or out of the conduct on which the conviction is based and not dependent upon the doctrines of civil death, the loss of civil rights, the forfeiture of estate, or corruption of blood.
5. Affect laws governing rights of inheritance of a murderer from his victim.

SECTION 33.) Section 16-12-16 of the North Dakota Century Code is hereby created and enacted to read as follows:

16-12-16. VOTING FRAUDS.) It shall be a class A misdemeanor for any person to knowingly:

1. Vote or offer to vote more than once in any election.
2. Vote when he is not qualified to do so.
3. Vote at the wrong precinct.

SECTION 34.) Section 29-03-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

29-03-01.1. WHEN PERSONS LIABLE TO PROSECUTION IN THIS STATE.) Any person who commits one or more of the following acts and is thereafter found in this state is liable to prosecution under the laws of this state:

1. Commission of a robbery or theft outside this state and bringing the stolen property into this state.
2. Soliciting, while outside this state, criminal action within this state.
3. Commission of kidnapping or felonious restraint when the victim is brought into this state.

SECTION 35.) Section 29-03-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

29-03-21. WHEN MAILING OF LETTER IS CRIMINAL - VENUE.) In those cases in which the sending of a letter is made an offense, the offense is deemed completed when the letter is deposited in any post office or postal receptacle, or delivered to any person with intent that it be forwarded. The person sending the letter may be tried in any county in which the letter is so deposited or delivered, or in the county in which it is received by the addressee.

SECTION 36. AMENDMENT.) Section 12-53-14 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-53-14. DEFENDANT PLACED UNDER CONTROL OF PAROLE BOARD - SPONSOR OF DEFENDANT.) In the event the court shall suspend the imposition of sentence of a defendant, the court shall place the defendant on probation during the period of suspension. During the period of probation the defendant shall be under the control and management of the parole board, subject to the same rules and regulations as apply to persons sentenced to probation or placed on probation under suspended sentence as provided in this chapter. The parole board shall assume and undertake the supervision of said probationer, promulgating rules and regulations for the conduct of such person during the period of his probation, except that if the defendant was found guilty of a misdemeanor, the court by order may waive the supervision of the defendant by the parole board, and direct that the defendant shall make his monthly reports to the state's attorney of the county in which the action is pending. The court may designate the clerk of district court, the sheriff, the state's attorney, or any other person to act as sponsor for the defendant. It shall be the duty of the sponsor to assist the probationer in making his monthly reports to the parole board or to the state's attorney, to report any violations, and to counsel and direct said probationer whenever possible.

SECTION 37. AMENDMENT.) Subsection 1 of section 12-55-07 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. To have supervision over and to look after the welfare of persons who have been paroled from the penitentiary and of persons who have received sentences to probation or suspended sentences and have been placed upon probation;

SECTION 38. AMENDMENT.) Section 12-59-17 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-59-17. CAUSING PAROLEE OR PROBATIONER TO VIOLATE PAROLE OR PROBATION - PENALTY.) Any person knowing that another person is on parole, or on probation, who willfully causes

such parolee or probationer to violate the terms or conditions of his parole or probation is guilty of a class A misdemeanor.

SECTION 39. AMENDMENT.) Section 16-12-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16-12-14. CHALLENGING RIGHT OF PERSON TO VOTE - AFFIDAVIT REQUIRED - PENALTY FOR FALSE SWEARING - OPTIONAL POLL CHECKERS.) One challenger appointed and designated from each of the political party organizations shall be entitled to be in attendance at each polling place. If any person offering to vote shall be challenged by one of such challengers or by any member of the board of elections, such person, unless such challenge is withdrawn, shall stand aside and shall not vote unless he makes an affidavit, acknowledged before the inspector of elections or any notary public, that he is a legally qualified elector of the precinct. Any person who falsely swears in order to cast his vote shall be guilty of perjury and shall be punished as prescribed in section 12.1-11-01. In addition, not more than two poll checkers appointed by the district chairman of each political party may be in attendance at each polling place, provided such poll checkers do not interfere with the election process or with the members of the election board in the performance of their duties.

SECTION 40. AMENDMENT.) Section 29-03-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-03-01. CRIME COMMENCED WITHOUT THIS STATE AND CONSUMMATED WITHIN STATE.) When the commission of a public offense, commenced without this state, is consummated within its boundaries, and the defendant is liable to prosecution as provided in section 29-03-01.1, the venue is in the county in which the offense is consummated, or in which the offenders are apprehended.

SECTION 41. REPEALS.) Chapters 12-01 through 12-06, chapters 12-08 through 12-21.1, chapters 12-23 through 12-29, chapters 12-31 through 12-43, chapter 12-50, chapter 12-54, and sections 12-07-01, 12-07-02, 12-07-03, 12-07-04, 12-07-05, 12-07-06, 12-22-01, 12-22-14, 12-22-15, 12-22-19, 12-22-20, 12-22-21, 12-22-22, 12-22-23, 12-22-24, 12-22-25, 12-22-26, 12-22-27, 12-22-28, 12-22-29, 29-11-42, chapter 29-20, and sections 29-26-20, and 31-01-08 of the North Dakota Century Code; and sections 12-22-17, 12-22-30, 12-55-21, 12-59-11, 12-59-13, and 12-59-13.1 of the 1971 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 42. EFFECTIVE DATE.) The provisions of this Act shall become effective on July 1, 1975.

Approved March 15, 1973

## CHAPTER 117

SENATE BILL NO. 2049

(Freed, Page)

(From Legislative Council Study)

## SEXUAL OFFENSES

AN ACT to create and enact chapter 12.1-20 of the North Dakota Century Code, providing definitions of criminal sexual offenses and providing penalties; to amend and reenact subsection 3 of section 12.1-16-01 of the North Dakota Century Code, as created by section 16 of Senate Bill No. 2045, as approved by the forty-third legislative assembly, and subsection 1 of section 12.1-29-05 of the North Dakota Century Code, as created by section 28 of Senate Bill No. 2045, as approved by the forty-third legislative assembly, relating to the felony-murder rule and to a definition of "sexual activity"; to repeal chapter 12-30, and sections 12-22-02, 12-22-03, 12-22-04, 12-22-05, 12-22-06, 12-22-07, 12-22-08, 12-22-09, 12-22-10, 12-22-11, and 12-22-12 of the North Dakota Century Code, defining rape and other sexual offenses; and providing an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1.) Chapter 12.1-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

SECTION 12.1-20-01. GENERAL PROVISIONS.) 1. In sections 12.1-20-03 through 12.1-20-08: (a) when the criminality of conduct depends on a child's being below the age of fifteen, it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than fourteen; (b) when criminality depends on the victim being a minor, it is an affirmative defense that the actor reasonably believed the victim to be an adult.

2. In sections 12.1-20-03 through 12.1-20-09, an offense excludes conduct with an actor's spouse. The exclusion shall be inoperative as respects spouses living apart under a decree of judicial separation. Where an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse as an accomplice in an offense which he causes another person to perform.

3. No prosecution may be instituted or maintained under sections 12.1-20-03 through 12.1-20-08 or section 12.1-20-12

unless the alleged offense was brought to the notice of public authority within three months of its occurrence or, where the alleged victim was a minor or otherwise incompetent to make complaint, within three months after a parent, guardian, or other competent person specifically interested in the victim, other than the alleged offender, learned of the offense.

SECTION 12.1-20-02. DEFINITIONS.) In sections 12.1-20-03 through 12.1-20-12:

1. "Sexual act" means sexual contact between human beings who are not husband and wife 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. For the purposes of this subsection, sexual contact between the penis and the vulva, or between the penis and the anus, occurs upon penetration, however slight. Emission is not required.
2. "Sexual contact" means any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire.
3. "Deviate sexual act" means any form of sexual contact with an animal, bird, or dead person.

SECTION 12.1-20-03. GROSS SEXUAL IMPOSITION.) 1. A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:

- a. He 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;
- b. He or someone with his knowledge has substantially impaired the victim's power to appraise or control his or her conduct by administering or employing without his or her knowledge intoxicants or other means with intent to prevent resistance;
- c. He knows that the victim is unaware that a sexual act is being committed upon him or her;
- d. The victim is less than fifteen years old; or
- e. He knows 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. The offense is a class A felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, or if his conduct violates subdivision d of subsection 1, or if the victim is not a voluntary companion of the actor and has not previously permitted him sexual liberties. Otherwise the offense is a class B felony.



SECTION 12.1-20-04. SEXUAL IMPOSITION.) A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of a class C felony if he compels the other person to submit by any threat that would render a person of reasonable firmness incapable of resisting.

SECTION 12.1-20-05. CORRUPTION OF MINORS.) 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.

SECTION 12.1-20-06. SEXUAL ABUSE OF WARDS.) A person who engages in a sexual act with another person or any person who causes another to engage in a sexual act is guilty of a class A misdemeanor if 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 the other person.

SECTION 12.1-20-07. SEXUAL ASSAULT.) A person who knowingly has sexual contact with another, or who causes such other person to have sexual contact with him, is guilty of a class B misdemeanor if:

1. He knows that the contact is offensive to the other person;
2. He knows 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;
3. The other person is less than fifteen years old;
4. He or someone with his knowledge has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge intoxicants or other means for the purpose of preventing resistance;
5. 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;
6. The other person is less than eighteen years old and the actor is his or her parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or
7. The other person is a minor and the actor is an adult.

SECTION 12.1-20-08. FORNICATION.) A person is guilty of a class A misdemeanor if he engages in a sexual act in a

public place. A minor engaging in a sexual act is guilty of a class B misdemeanor.

SECTION 12.1-20-09. ADULTERY.) 1. A married person is guilty of a class A misdemeanor if he or she engages in a sexual act with another person.

2. No prosecution shall be instituted under this section except on the complaint of the spouse of the alleged offender, and the prosecution shall not be commenced later than one year from commission of the offense.

SECTION 12.1-20-10. UNLAWFUL COHABITATION.) A person is guilty of a class B misdemeanor if he or she lives openly and notoriously with a person of the opposite sex as a married couple without being married to the other person.

SECTION 12.1-20-11. INCEST.) A person who intermarries, cohabits, or has sexual intercourse with another person related to him within a degree of consanguinity within which marriages are declared incestuous and void by section 14-03-03, knowing such other person to be within said degree of relationship, is guilty of a class C felony.

SECTION 12.1-20-12. DEVIATE SEXUAL ACT.) A person who performs a deviate sexual act with the intent to arouse or gratify his sexual desire is guilty of a class A misdemeanor.

SECTION 12.1-20-13. BIGAMY.) 1. A person who marries another person, while married to another person, is guilty of a class C felony.

2. Subsection 1 of this section does not extend to:

- a. A person whose spouse has been absent for five successive years and is believed by him or her to be dead;
- b. A person whose spouse has voluntarily absented himself and has continually remained without the United States for the space of five successive years; or
- c. A person whose former marriage has been pronounced void, null, or dissolved by the judgment of a competent court.

SECTION 2. AMENDMENT.) Subsection 3 of section 12.1-16-01 of the North Dakota Century Code, as contained in section 16 of Senate Bill No. 2045, as approved by the forty-third legislative assembly, is hereby amended and reenacted to read as follows:

3. Acting either alone or with one or more other persons, commits or attempts to commit treason, robbery, burglary, kidnapping, felonious restraint,

arson, gross sexual imposition, or escape and, in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of a person other than one of the participants; except that in any prosecution under this subsection in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

- a. Did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid the commission thereof;
- b. Was not armed with a firearm, destructive device, dangerous weapon, or other weapon which under the circumstances indicated a readiness to inflict serious bodily injury;
- c. Reasonably believed that no other participant was armed with such a weapon; and
- d. Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

SECTION 3. AMENDMENT.) Subsection 1 of section 12.1-29-05 of the North Dakota Century Code, as contained in section 28 of Senate Bill No. 2045, as approved by the forty-third legislative assembly, is hereby amended and reenacted to read as follows:

1. "Sexual activity" means sexual act, deviate sexual act, or sexual contact as defined in section 12.1-20-02;

SECTION 4. REPEAL.) Chapter 12-30, and sections 12-22-02, 12-22-03, 12-22-04, 12-22-05, 12-22-06, 12-22-07, 12-22-08, 12-22-09, 12-22-10, 12-22-11, and 12-22-12 of the North Dakota Century Code are hereby repealed.

SECTION 5. EFFECTIVE DATE.) The provisions of this Act shall become effective on July 1, 1975.

Approved March 28, 1973

## CHAPTER 118

SENATE BILL NO. 2044

(Freed, Page)

(From Legislative Council Study)

## TOBACCO SALES TO MINORS

AN ACT to create and enact section 12.1-31-03 of the North Dakota Century Code, relating to sale of tobacco to minors and use of tobacco by minors; providing a penalty; and providing an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1.) Section 12.1-31-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-31-03. SALE OF TOBACCO TO MINORS AND USE BY MINORS PROHIBITED.) 1. It is a class B misdemeanor for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. As used in this subsection, "sell" includes dispensing from a vending machine under the control of the actor.

2. It is a class B misdemeanor for a minor to smoke or use cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing.

SECTION 2. EFFECTIVE DATE.) This Act shall take effect on July 1, 1975.

Approved March 10, 1973