# CRIMINAL CODE

## CHAPTER 118

## HOUSE BILL NO. 1046

(Legislative Council)
(Criminal Justice Committee)
(Representatives Kretschmar, R. Kelsch, Mahoney, Kliniske, Brown)
(Senator Nalewaja)

## PRESENTENCE RISK ASSESSMENTS

AN ACT to create and enact a new subsection to section 12.1-01-04 and a new subsection to section 50-06-05.1 of the North Dakota Century Code, relating to the definition of risk assessment and the authority of the department of human services to establish the method of risk assessment; to amend and reenact subsection 11 of section 12.1-32-02 of the North Dakota Century Code, relating to risk assessments in certain presentence investigations; and to provide an effective date.

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

**SECTION 1.** A new subsection to section 12.1-01-04 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

"Risk assessment" means an initial phase with a secondary process approved by the department of human services for the evaluation of the likelihood that a person who committed an offense will commit another similar offense. The initial phase is an assessment tool that is administered by a trained probation and parole officer. A predetermined score on the initial phase initiates the secondary process that includes a clinical interview, psychological testing, and verification through collateral information or psychophysiological testing, or both. The department of human services shall perform the secondary process of the risk assessment.

[1] **SECTION 2. AMENDMENT.** Subsection 11 of section 12.1-32-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. Before sentencing a defendant on a felony charge under section 12.1-20-03, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report. A presentence investigation for a charge under section 12.1-20-03 must include a risk assessment. A court may order

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[1] Section 12.1-32-02 was also amended by section 3 of Senate Bill No. 2153, chapter 124.

the inclusion of a risk assessment in any presentence investigation. In all felony or class A misdemeanor offenses, in which force, as defined in section 12.1-01-04, or threat of force is an element of the offense or in violation of section 12.1-22-02, or an attempt to commit the offenses, a court, unless a presentence investigation has been ordered, must receive a criminal record report before the sentencing of the defendant. Unless otherwise ordered by the court, the criminal record report must be conducted by the department of corrections and rehabilitation after consulting with the prosecuting attorney regarding the defendant's criminal record. The criminal record report must be in writing, filed with the court before sentencing, and made a part of the court's record of the sentencing proceeding.

**SECTION 3.** A new subsection to section 50-06-05.1 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

In consultation with the department of corrections and rehabilitation, to formulate standards before July 1, 1998, which must be satisfied for a risk assessment under section 12.1-32-02.

**SECTION 4. EFFECTIVE DATE.** Section 2 of this Act becomes effective on July 1, 1998.

Approved April 3, 1997
Filed April 3, 1997

# CHAPTER 119

## SENATE BILL NO. 2369

(Senator Heitkamp)
(Representative Gulleson)

## ILLEGAL TRANSPORTATION OF HAZARDOUS WASTE

AN ACT to amend and reenact subsections 1 and 2 of section 12.1-06.1-01, subsection 3 of section 12.1-06.1-02, section 12.1-06.1-04, subsections 1, 2, 4, 5, and 7 of section 12.1-06.1-05, subsection 1 of section 12.1-06.1-06, and subsections 1 and 2 of section 12.1-06.1-07 of the North Dakota Century Code, relating to the illegal transportation or disposal of radioactive waste material or hazardous waste; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsections 1 and 2 of section 12.1-06.1-01 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. For the purpose of section 12.1-06.1-02:

   a. "Combination" means persons who collaborate in carrying on or furthering the activities or purposes of a criminal association even though ~~such~~ those persons may not know each other's identity or membership in the combination may change from time to time or one or more members may stand in a wholesaler-retailer or other arm's-length relationship with others as to activities or dealings between or among themselves in an illicit operation.

   b. "Criminal association" means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct which violates any one or more provisions of any felony statute of this state or which is the willful and illegal transportation or disposal of radioactive waste material or hazardous waste.

2. For the purposes of sections ~~12.1-06.1-03~~ 12.1-06.1-02 through 12.1-06.1-07, unless the context otherwise requires:

   a. "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

   b. "Enterprise" means any corporation, limited liability company, association, labor union, or other legal entity or any group of persons associated in fact although not a legal entity.

   c. "Financial institution" means any bank, trust company, savings and loan association, credit union, or money lender under the jurisdiction of the state department of banking and financial institutions or its commissioner, or the state banking board, or the state credit union board.

d. "Illegal transportation or disposal of radioactive waste material or hazardous waste" means the transportation or disposal into a nonhazardous waste landfill or the intentional and unlawful dumping into or on any land or water of radioactive waste material in violation of section 23-20.2-09 or rules adopted pursuant to that section which were in effect on January 1, 1997, or hazardous waste in willful violation of chapter 23-20.3 or the rules adopted pursuant to that chapter which were in effect on January 1, 1997, except for the handling of conditionally exempt small quantities of hazardous waste as referenced in section 33-24-02-05 of the North Dakota Administrative Code.

e. "Pattern of racketeering activity" requires least two acts of racketeering activity, one of which occurred after July 8, 1987, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity.

~~e.~~ f. "Racketeering" means any act including any criminal attempt, facilitation, solicitation, or conspiracy, committed for financial gain, which is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable by imprisonment for more than one year, regardless of whether such act is charged or indicted, involving:

(1) Homicide.

(2) Robbery.

(3) Kidnapping.

(4) Forgery.

(5) Theft.

(6) Bribery.

(7) Gambling.

(8) Usury.

(9) Extortion.

(10) Unlawful delivery of controlled substances.

(11) Trafficking in explosives, weapons, or stolen property.

(12) Leading a criminal association.

(13) Obstructing or hindering criminal investigations or prosecutions.

(14) Asserting false claims including, but not limited to, false claims asserted through fraud or arson.

(15) Fraud.

(16) Sale of unregistered securities or real property securities and transactions involving such securities by unregistered dealers or salesmen.

(17) Obscenity.

(18) Child pornography.

(19) Prostitution.

~~f.~~ g. "Records" means any book, paper, writing, record, computer program, or other material.

**SECTION 2. AMENDMENT.** Subsection 3 of section 12.1-06.1-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Leading ~~organized~~ ~~crime~~ a criminal association is a class B felony.

**SECTION 3. AMENDMENT.** Section 12.1-06.1-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**12.1-06.1-04. Judicial powers over racketeering criminal cases.** During the pendency of any criminal case charging an offense included in the definition of racketeering if it is shown to the satisfaction of the court when ruling upon the application for the order that ~~such~~ the racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03, the court may, in addition to its other powers, issue an order pursuant to subsections 1 and 2 of section 12.1-06.1-05. Upon conviction of a person for an offense included in the definition of racketeering if it is shown to the satisfaction of the court when ruling upon the application for the order that ~~such~~ the racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03, the court may, in addition to its other powers, issue an order pursuant to section 12.1-06.1-05.

**SECTION 4. AMENDMENT.** Subsections 1, 2, 4, 5, and 7 of section 12.1-06.1-05 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A person who sustains injury to person, business, or property by a pattern of racketeering activity or by a violation of section 12.1-06.1-02 or 12.1-06.1-03 may file an action in district court for the recovery of treble damages and the costs of the suit, including reasonable attorney fees. The state may file an action in behalf of those persons injured or to prevent, restrain, or remedy a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03.

2. The district court has jurisdiction to prevent, restrain, and remedy a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03 after making provision for the rights of all innocent persons affected by ~~such~~ the violation and after hearing or trial, as appropriate, by issuing appropriate orders.

4. Following a determination of liability orders may include:

a. Ordering any person to divest himself of any interests, direct or indirect, in any enterprise.

b. Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the constitutions of the United States and this state permit.

c. Ordering dissolution or reorganization of any enterprise.

d. Ordering the payment of treble damages and appropriate restitution to those persons injured by a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03.

e. Ordering the payment of all costs and expenses and reasonable attorneys' fees concerned with the prosecution and investigation of any offense included in the definition of racketeering if upon ~~such~~ application for the order it is shown to the satisfaction of the court that ~~such~~ the racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03, civil and criminal, incurred by the state or county as appropriate to be paid to the general fund of the state or county ~~which~~ that brings the action.

f. Forfeiture, pursuant to chapter 32-14, to the state school fund of the state or county as appropriate under section 29-27-02.1, to the extent not already ordered to be paid in other damages:

(1) Any property or other interest acquired or maintained by a person in violation of section 12.1-06.1-02 or 12.1-06.1-03.

(2) Any interest in, security of, claims against, or property or contractual right of any kind affording a source of influence over any enterprise ~~which~~ that a person has established, operated, controlled, conducted, or participated in the conduct of in violation of section 12.1-06.1-02 or 12.1-06.1-03.

(3) All proceeds traceable to an offense included in the definition of racketeering and all moneys, negotiable instruments, securities, and other things of value used or intended to be used to facilitate commission of the offense if upon application for the order it is shown to the satisfaction of the court that ~~such~~ the racketeering offense has occurred as a part of a pattern of racketeering activity.

g. Payment to the state school fund of the state or county as appropriate under section 29-27-02.1 of an amount equal to the gain a person has acquired or maintained through an offense included in the definition of racketeering if upon application for the order it is shown to the satisfaction of the court that ~~such~~ the racketeering offense has occurred as a part of a pattern of racketeering activity.

5. In addition to or in lieu of an action under this section the state may file an action for forfeiture to the state school fund of the state or county as appropriate under section 29-27-02.1, to the extent not already ordered paid pursuant to this section, of:

   a. Any interest acquired or maintained by a person in violation of section 12.1-06.1-02 or 12.1-06.1-03.

   b. Any interest in, security of, claims against, or property or contractual right of any kind affording a source of influence over any enterprise ~~which~~ that a person has established, operated, controlled, conducted, or participated in the conduct of in violation of section 12.1-06.1-02 or 12.1-06.1-03.

   c. All proceeds traceable to an offense included in the definition of racketeering and all moneys, negotiable instruments, securities, and other things of value used or intended to be used to facilitate the commission of the offense if upon application for the order it is shown to the satisfaction of the court that such racketeering offense has occurred as a part of a pattern of racketeering activity.

7. Notwithstanding any law to the contrary, the initiation of civil proceedings related to violations of any offense included in the definition of racketeering or a violation of section 12.1-06.1-02 or 12.1-06.1-03 ~~shall~~ must be commenced within seven years of actual discovery of the violation.

**SECTION 5. AMENDMENT.** Subsection 1 of section 12.1-06.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The state, upon filing a civil action under section 12.1-06.1-05 or upon charging an offense included in the definition of racketeering if ~~such~~ the offense is committed as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03, may file a racketeering lien. A filing fee or other charge is not required for filing a racketeering lien.

**SECTION 6. AMENDMENT.** Subsections 1 and 2 of section 12.1-06.1-07 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A custodian of the records of a financial institution shall, at no expense to the financial institution, produce for inspection or copying the records in the custody of the financial institution when requested to be inspected by the attorney general or a state's attorney authorized by the attorney general, ~~provided~~ if the person requesting the information signs and submits a sworn statement to the custodian that the request is made ~~in order~~ to investigate a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03. Records may be removed from the premises of the financial institution only for the purpose of copying the records and must be returned within forty-eight hours. The attorney general or an authorized state's attorney or any peace officer designated by an authorized state's attorney or the attorney general ~~is prohibited from using~~ may not use or r~~eleasing such~~ release the information except in the proper discharge of official duties. The furnishing of records in

compliance with this section by a custodian of records is a bar to civil or criminal liability against the custodian or financial institution in any action brought alleging violation of the confidentiality of the records. The fact that records have been obtained may not be released in any way by the financial institution until ninety days after the release.

2. The attorney general or the authorized state's attorney may petition the district court for enforcement of this section ~~in the event of~~ upon noncompliance with the request for inspection. Enforcement ~~shall~~ must be granted if the request is reasonable and the attorney general or the authorized state's attorney has reasonable grounds to believe the records sought to be inspected are relevant to a civil or criminal investigation of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03.

Approved April 2, 1997
Filed April 3, 1997

# CHAPTER 120

## HOUSE BILL NO. 1373

(Representatives Mickelson, Carlisle, DeKrey)
(Senator B. Stenehjem)

## FLEEING PEACE OFFICER PENALTY

AN ACT to create and enact a new section to chapter 12.1-08 of the North Dakota Century Code, relating to the penalty for fleeing a peace officer.

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

**SECTION 1.** A new section to chapter 12.1-08 of the North Dakota Century Code is created and enacted as follows:

**Fleeing a peace officer.** Any person, other than the driver of a motor vehicle under section 39-10-71, who willfully fails or refuses to stop or who otherwise flees or attempts to elude, in any manner, a pursuing peace officer, when given a visual or audible signal to stop, is guilty of a class B misdemeanor for a first or second offense and a class A misdemeanor for a subsequent offense. A signal to stop complies with this section if the signal is perceptible to the person and:

1. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the vehicle is appropriately marked showing it to be an official law enforcement vehicle; or

2. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform and prominently displays the officer's badge of office.

Approved April 4, 1997
Filed April 4, 1997

# CHAPTER 121

## HOUSE BILL NO. 1178

(Representatives Jacobs, Carlisle, Henegar, C. Johnsen)
(Senators Krauter, Urlacher)

## ASSAULT OF EMERGENCY PERSONNEL

AN ACT to create and enact a new subsection to section 12.1-22-03 of the North Dakota Century Code, relating to criminal trespass; to amend and reenact subsection 2 of section 12.1-17-01 of the North Dakota Century Code, relating to assault of firefighters or emergency medical services personnel; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 12.1-17-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Simple assault is a class B misdemeanor except when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact, ~~or any~~ a person engaged in a judicial proceeding, or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties, in which case the offense is a class C felony.

**SECTION 2.** A new subsection to section 12.1-22-03 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

This section does not apply to a peace officer in the course of discharging the peace officer's official duties.

Approved March 19, 1997
Filed March 19, 1997

# CHAPTER 122

## SENATE BILL NO. 2364

(Senators Nalewaja, Mathern, Watne)
(Representatives Carlisle, R. Kelsch, Mahoney)

## GROSS SEXUAL IMPOSITION SENTENCING

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

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

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

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

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

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

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

**12.1-20-07. Sexual assault.**

1. A person who knowingly has sexual contact with another person, or who causes ~~such~~ ~~other~~ another person to have sexual contact with ~~him~~ that person, is guilty of an offense if:

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[2] Section 12.1-20-07 was also amended by section 2 of Senate Bill No. 2285, chapter 123.

a. ~~He~~ That person knows or has reasonable cause to believe that the contact is offensive to the other person;

b. ~~He~~ That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders ~~him or her~~ that other person incapable of understanding the nature of ~~his or her~~ that other person's conduct;

c. ~~He~~ That person or someone with ~~his~~ that person's knowledge has substantially impaired the other person's power to appraise or control ~~his or her~~ that other person's conduct, by administering or employing without ~~the other's~~ that other person's knowledge intoxicants or other means for the purpose of preventing resistance;

d. The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over ~~him or her~~ that other person;

e. The other person is a minor, fifteen years of age or older, and the actor is ~~his or her~~ the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or

f. The other person is a minor, fifteen years of age or older, and the actor is an adult.

2. The offense is a class ~~A misdemeanor~~ C felony if the actor's conduct violates subdivision b, c, or e of subsection 1, or subdivision f of subsection 1 if the adult is at least twenty-two years of age, ~~otherwise the offense is~~ a class A misdemeanor if the actor's conduct violates subdivision d of subsection 1 or subdivision f of subsection 1 if the adult is at least eighteen years of age and not twenty-two years of age or older, or a class B misdemeanor if the actor's conduct violates subdivision a of subsection 1.

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

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

Approved April 1, 1997
Filed April 2, 1997

# CHAPTER 123

## SENATE BILL NO. 2285

(Senators W. Stenehjem, Nalewaja, Watne)
(Representatives Kliniske, Poolman, Stenehjem)

## USE OF CONTROLLED SUBSTANCES IN SEX CRIME

AN ACT to amend and reenact subdivision b of subsection 1 of section 12.1-20-03, subdivision c of subsection 1 of section 12.1-20-07, subsection 6 of section 19-03.1-05, subsection 4 of section 19-03.1-07, and subsection 4 of section 19-03.1-11 of the North Dakota Century Code, relating to controlled substances in sex crimes and the categorizing of controlled substances.

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

**SECTION 1. AMENDMENT.** Subdivision b of subsection 1 of section 12.1-20-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

b. ~~He~~ That person or someone with ~~his~~ that person's knowledge has substantially impaired the victim's power to appraise or control ~~his or her~~ the victim's conduct by administering or employing without ~~his or her~~ the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance;

[3] **SECTION 2. AMENDMENT.** Subdivision c of subsection 1 of section 12.1-20-07 of the North Dakota Century Code is amended and reenacted as follows:

c. ~~He~~ That person or someone with ~~his~~ that person's knowledge has substantially impaired the ~~other~~ ~~person's~~ victim's power to appraise or control ~~his or her~~ the victim's conduct, by administering or employing without the ~~other's~~ victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means for the purpose of preventing resistance;

**SECTION 3. AMENDMENT.** Subsection 6 of section 19-03.1-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Depressants. Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

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[3] Section 12.1-20-07 was also amended by section 3 of Senate Bill No. 2364, chapter 122.

a. Flunitrazepam.

b. Mecloqualone.

~~b.~~ c. Methaqualone.

**SECTION 4. AMENDMENT.** Subsection 4 of section 19-03.1-07 of the North Dakota Century Code is amended and reenacted as follows:

4. Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan and levopropoxyphene excepted:

a. Alfentanil.

b. Alphaprodine.

c. Anileridine.

d. Bezitramide.

e. Bulk dextropropoxyphene (nondosage forms).

f. Carfentanil.

g. Dihydrocodeine.

h. Diphenoxylate.

i. Fentanyl.

j. Isomethadone.

k. Levomethorphan.

l. Levorphanol.

m. Metazocine.

n. Methadone.

o. Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.

p. Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.

q. Pethidine (also known as meperidine).

r. Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.

s. Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.

t. Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.

u. Phenazocine.

v. Priminodine.

w. Racemethorphan.

x. Racemorphan.

y. Remifentanil.

z. Sufentanil.

**SECTION 5. AMENDMENT.** Subsection 4 of section 19-03.1-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Alprazolam.

b. Barbital.

c. Bromazepam.

d. Camazepam.

e. Chloral betaine.

f. Chloral hydrate.

g. Chlordiazepoxide.

h. Clobazam.

i. Clonazepam.

j. Clorazepate.

k. Clotiazepam.

l. Cloxazolam.

m. Delorazepam.

n. Diazepam.

o. Estazolam.

p. Ethchlorvynol.

q. Ethinamate.

r. Ethyl loflazepate.

s. Fludiazepam.

t. ~~Flunitrazepam.~~

~~u.~~ Flurazepam.

~~v.~~ u. Halazepam.

~~w.~~ v. Haloxazolam.

~~x.~~ w. Ketazolam.

~~y.~~ x. Loprazolam.

~~z.~~ y. Lorazepam.

~~aa.~~ z. Lormetazepam.

~~bb.~~ aa. Mebutamate.

~~cc.~~ bb. Medazepam.

~~dd.~~ cc. Meprobamate.

~~ee.~~ dd. Methohexital.

~~ff.~~ ee. Methylphenobarbital (also known as mephobarbital).

~~gg.~~ ff. Midazolam.

~~hh.~~ gg. Nimetazepam.

~~ii.~~ hh. Nitrazepam.

~~jj.~~ ii. Nordiazepam.

~~kk.~~ jj. Oxazepam.

~~ll.~~ kk. Oxazolam.

~~mm.~~ ll. Paraldehyde.

~~nn.~~mm. Petrichloral.

~~oo.~~ nn. Phenobarbital.

~~pp.~~ oo. Pinazepam.

~~qq.~~ pp. Prazepam.

~~rr.~~ qq. Quazepam.

~~ss.~~ rr. ~~Temazapem~~ Temazepam.

~~tt.~~ ss. Tetrazepam.

~~uu.~~ tt. Triazolam.

~~vv.~~ uu. Zolpidem.

Approved April 2, 1997
Filed April 3, 1997

# CHAPTER 124

## SENATE BILL NO. 2153

(Senators Watne, Nalewaja)
(Representatives Huether, R. Kelsch, Mahoney)

## SEXUAL ABUSE OF MINORS

AN ACT to create and enact section 12.1-20-03.1 of the North Dakota Century Code, relating to sexual abuse of certain minors; to amend and reenact section 12-60-16.6, subsection 11 of section 12.1-32-02, subsection 3 of section 12.1-32-06.1, subsection 1 of section 12.1-32-15, subsection 6 of section 27-20-51, sections 31-04-04.1, and 31-13-03 of the North Dakota Century Code, relating to information, sentencing, and evidence; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 12-60-16.6 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**12-60-16.6. Criminal history record information - Dissemination to parties not described in section 12-60-16.5.** Only the bureau may disseminate criminal history record information to parties not described in section 12-60-16.5. The dissemination may be made only if all the following requirements are met:

1. The information has not been purged or sealed.

2. The information is of a conviction, including a conviction for violating section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-06.1, or 12.1-20-11 notwithstanding any disposition following a deferred imposition of sentence; or the information is of a reportable event occurring within one year preceding the request.

3. The request is written and contains:

   a. The name of the requester.

   b. The name of the record subject.

   c. At least two items of information used by the bureau to retrieve criminal history records, including:

      (1) The fingerprints of the record subject.

      (2) The state identification number assigned to the record subject by the bureau.

      (3) The social security number of the record subject.

      (4) The date of birth of the record subject.

      (5) A specific reportable event identified by date and either agency or court.

4. The identifying information supporting a request for a criminal history record does not match the record of more than one individual.

**SECTION 2.** Section 12.1-20-03.1 of the North Dakota Century Code is created and enacted as follows:

**12.1-20-03.1. Continuous sexual abuse of a child.**

1. An individual in adult court is guilty of a class A felony if the individual engages in any combination of three or more sexual acts or sexual contacts with a minor under the age of fifteen years during a period of three or more months. The court may not defer imposition of sentence, nor may the court suspend any part of the specified sentence, either at the time of or after the imposition of the sentence, unless the court first finds that the offense was the defendant's first violation of this chapter and that extenuating or mitigating circumstances exist which justify a suspension. The court shall announce the circumstances that justify a suspension in open court when sentence is imposed and recite these circumstances in the sentence or order suspending part of the sentence.

2. If more than three sexual acts or contacts are alleged, a jury must unanimously agree that any combination of three or more acts or contacts occurred. The jury does not need to unanimously agree which three acts or contacts occurred.

3. No other felony offense under this chapter involving the same victim may be charged in the same proceeding with a charge under this section unless the other charged offense occurred outside the time period charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section, but a separate count may be charged for each victim if more than one victim is involved.

[4] **SECTION 3. AMENDMENT.** Subsection 11 of section 12.1-32-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. Before sentencing a defendant on a felony charge under section 12.1-20-03, 12.1-20-03.1, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report. In all felony or class A misdemeanor offenses, in which force, as defined in section 12.1-01-04, or threat of force is an element of the offense or in violation of section 12.1-22-02, or an attempt to commit the offenses, a court, unless a presentence investigation has been ordered, must receive a criminal record report before the sentencing of the defendant. Unless otherwise ordered by the court, the criminal record report must be conducted by the department of corrections and rehabilitation after consulting with the prosecuting attorney regarding the defendant's criminal record. The criminal record

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[4] Section 12.1-32-02 was also amended by section 2 of House Bill No. 1046, chapter 118.

report must be in writing, filed with the court before sentencing, and made a part of the court's record of the sentencing proceeding.

**SECTION 4. AMENDMENT.** Subsection 3 of section 12.1-32-06.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. If the defendant has plead or been found guilty of a felony sexual offense against a minor in violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, or 12.1-20-11, the court may impose an additional period of probation not to exceed five years if the additional period of probation is in conjunction with a commitment to a sexual offender treatment or aftercare program. If the defendant has plead or been found guilty of a misdemeanor sexual offense against a minor in violation of section 12.1-20-05, 12.1-20-06, or 12.1-20-07, the court may impose an additional period of probation not to exceed two years if the additional period of probation is in conjunction with a commitment to a sexual offender treatment or aftercare program.

[5] **SECTION 5. AMENDMENT.** Subsection 1 of section 12.1-32-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. As used in this section:

   a. "A crime against a child" means a violation of chapter 12.1-16, 12.1-17, 12.1-18, or 12.1-29 in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.

   b. "Department" means the department of corrections and rehabilitation.

   c. "Sexual offender" means a person who has pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, chapter 12.1-27.2, or an attempt to commit these offenses.

[6] **SECTION 6. AMENDMENT.** Subsection 6 of section 27-20-51 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Notwithstanding that juvenile court records are closed to the public, nothing in this section may be construed to limit the release of general information upon request not identifying the identity of any juvenile, witness, or victim in any proceeding under this chapter. However, upon a third adjudication of delinquency involving an offense which if

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[5] Section 12.1-32-15 was also amended by section 1 of House Bill No. 1048, chapter 136; section 1 of House Bill No. 1044, chapter 137; and section 2 of House Bill No. 1357, chapter 128.

[6] Section 27-20-51 was also amended by section 2 of House Bill No. 1147, chapter 552, which was vetoed.

committed by an adult would constitute a felony and upon a second adjudication of delinquency involving an offense defined in ~~sections~~ section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, or 12.1-20-07, the name of the juvenile adjudicated delinquent may be disclosed.

**SECTION 7. AMENDMENT.** Section 31-04-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**31-04-04.1. Videotaped statement of child sexual offense victim - Criteria for admission as evidence.**

1. In any prosecution for a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, or 12.1-20-11 in which the victim is less than fifteen years of age, the oral statement of the child victim may be recorded before trial and, subject to subsection 2, is admissible as evidence in any court proceeding regarding the offense if the following conditions are satisfied:

   a. The court determines there is reasonable cause to believe that the child victim would experience serious emotional trauma as a result of in-court participation in the proceeding;

   b. The accused must be given reasonable written notice of the time and place for taking the videotaped statement;

   c. The accused must be afforded the opportunity to hear and view the testimony from outside the presence of the child by means of a two-way mirror or other similar method that will ensure that the child cannot hear or see the accused;

   d. The accused must have the opportunity to communicate orally with counsel by electronic means while the videotaped statement is being made; and

   e. All questioning must be done by the prosecutor or counsel for the defendant unless the defendant is an attorney pro se. An attorney pro se must conduct all questioning from outside the presence of the child. Upon request of any of the parties or upon the determination of the court that it would be appropriate, the court may appoint a person who is qualified as an expert and who has dealt with the child in a therapeutic setting to aid the court throughout proceedings conducted under this section and the court may appoint a guardian ad litem to protect the interests of the child.

2. A child victim's videotaped statement is admissible pursuant to subsection 1 if the court finds that the child is unavailable as a witness to testify at trial and, upon viewing the videotape recording before it is shown to the jury, determines that it is sufficiently reliable and trustworthy and that the interests of justice will best be served by admission of the statement into evidence. For purposes of this subsection, "unavailable" includes a determination, based on medical or psychological evidence or expert testimony, that the child would suffer serious emotional or psychological strain if required to testify at trial. The court, in making its findings and determinations under this subsection, shall consider at least the following:

a. The nature of the offense;

b. The significance of the child's testimony to the case;

c. The child's age;

d. The child's psychological maturity and understanding; and

e. The nature, degree, and duration of potential injury to the child from testifying.

**SECTION 8. AMENDMENT.** Section 31-13-03 of the North Dakota Century Code is amended and reenacted as follows:

**31-13-03. Persons to be tested - Costs.** The court shall order any person convicted on or after August 1, 1995, of any sexual offense or attempted sexual offense in violation of sections 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, subdivision e or f of subsection 1 of section 12.1-20-07, or section 12.1-20-11 or any other offense when the court finds at sentencing that the person engaged in a nonconsensual sexual act or sexual contact with another person during, in the course of, or as a result of, the offense and any person who is in the custody of the department on or after August 1, 1995, as a result of a conviction of one of these offenses to have a sample of blood and other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in law enforcement identification data bases. Notwithstanding any other provision of law, if the sentencing court has not previously ordered a sample of blood and other body fluids to be taken, the court retains jurisdiction and authority to enter an order that the convicted person provide a sample of blood and other body fluids as required by this section. Any person convicted on or after August 1, 1995, who is not sentenced to a term of confinement shall provide a sample of blood and other body fluids as a condition of the sentence or probation at a time and place specified by the sentencing court. The cost of the procedure must be assessed to the person being tested.

Approved April 10, 1997
Filed April 10, 1997

# CHAPTER 125

## SENATE BILL NO. 2168

(Senators W. Stenehjem, C. Nelson, Traynor)
(Representatives Kretschmar, Mahoney, Stenehjem)

## DIVORCE PROCEEDINGS TESTIMONY

AN ACT to create and enact a new subsection to section 12.1-20-09 of the North Dakota Century Code, relating to testimony in divorce proceedings.

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

**SECTION 1.** A new subsection to section 12.1-20-09 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

The court shall grant immunity from prosecution under this section to a person subject to prosecution under this section who, as part of a divorce, annulment, or separation proceeding, provides information regarding sexual acts with another person.

Approved March 19, 1997
Filed March 19, 1997

# CHAPTER 126

## HOUSE BILL NO. 1387

(Representatives Svedjan, Price)

## PUBLIC SEXUAL ACTS FACILITATION PROHIBITED

AN ACT to create and enact a new section to chapter 12.1-20 of the North Dakota Century Code, relating to prohibiting the facilitation of sexual acts in public; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 12.1-20 of the North Dakota Century Code is created and enacted as follows:

**Facilitation of sexual acts in public.**

1. As used in this section:

   a. "Adult entertainment center" means any commercial facility at which motion pictures or videos that include explicit representations of sexual conduct are offered for viewing at that facility, but does not include the guest rooms of a hotel or motel.

   b. "Sexual act" has the meaning prescribed in section 12.1-20-02.

   c. "Sexual conduct" has the meaning prescribed in section 12.1-27.1-01.

2. It is an infraction for a person to willfully own, rent, lease, manage, or exercise control of any portion of an adult entertainment center if that portion contains:

   a. Any partition between subdivisions of a room or area that has an opening that facilitates a sexual act between individuals on either side of the partition; or

   b. A room, booth, stall, or partitioned portion of a room offered to individuals for a fee as an incident to viewing a video, motion picture, or similar entertainment, unless the room, booth, stall, or partitioned portion of the room has:

      (1) At least one side open to an adjacent public space so that the area inside is visible to individuals in the adjacent public space; and

      (2) The viewing area is lighted in a manner that the persons in that area are visible from the adjacent public space.

3. This section does not apply to an enclosure that is a private office space used by the owner, manager, or employees of the adult entertainment center if that office space is not held out or available to the public for the

purpose of viewing a video, motion picture, or similar entertainment for a fee.

4. The department of health or the state's attorney having jurisdiction may bring an action to enjoin a pattern of violations of this section.

Approved April 8, 1997
Filed April 8, 1997

# CHAPTER 127

## HOUSE BILL NO. 1350

(Representatives Nichols, Mahoney, Maragos, Carlisle)
(Senators Nalewaja, Robinson)

## CRIMINAL MISCHIEF OFFENSE CLASSIFICATION

AN ACT to amend and reenact section 12.1-21-05 of the North Dakota Century Code, relating to classification of criminal mischief offenses; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 12.1-21-05 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-21-05. Criminal mischief.**

1. A person is guilty of an offense if ~~he~~ that person:

   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~~ B felony if the actor intentionally causes pecuniary loss in excess of ~~two~~ ten thousand dollars ~~or damages tangible property of another by means of an explosive or a destructive device~~.

   b. A class C felony if the actor intentionally causes pecuniary loss in excess of two thousand dollars but not in excess of ten thousand dollars or damages tangible property of another by means of an explosive or a destructive device.

   c. A class A misdemeanor if the actor recklessly causes pecuniary loss in excess of two thousand dollars or if the actor intentionally causes pecuniary loss of from one hundred dollars through two thousand dollars.

   Otherwise the offense is a class B misdemeanor.

Approved April 1, 1997
Filed April 2, 1997

# CHAPTER 128

## HOUSE BILL NO. 1357

(Representatives Fairfield, Delmore, Kliniske, Stenehjem)
(Senator Heitkamp)

## SURREPTITIOUS INTRUSION

AN ACT to prohibit surreptitious intrusion; to amend and reenact subdivision c of subsection 1 of section 12.1-32-15 of the North Dakota Century Code, relating to sexual offenders; and to provide a penalty.

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

**SECTION 1. Surreptitious intrusion.**

1. An individual, with the intent to arouse, appeal to, or gratify that individual's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that individual does any of the following:

   a. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously gazes, stares, or peeps in the window or any other aperture of a house or place of dwelling of another.

   b. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of a house or place of dwelling of another.

   c. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously gazes, stares, or peeps in the window or other aperture of a sleeping room in a hotel, a tanning booth, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts, or has removed the clothing covering the immediate area of the intimate parts.

   d. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or other aperture of a sleeping room in a hotel, a tanning booth, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts, or has removed the clothing covering the immediate area of the intimate parts.

2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1 or if the person violates subsection 1 after being required to register under section 12.1-32-15.

[7] **SECTION 2. AMENDMENT.** Subdivision c of subsection 1 of section 12.1-32-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

c. "Sexual offender" means a person who has pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, chapter 12.1-27.2, subsection 2 of section 1 of this Act, or an attempt to commit these offenses.

Approved April 10, 1997
Filed April 10, 1997

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[7] Section 12.1-32-15 was also amended by section 1 of House Bill No. 1048, chapter 136; section 1 of House Bill No. 1044, chapter 137; and section 5 of Senate Bill No. 2153, chapter 124.

# CHAPTER 129

## HOUSE BILL NO. 1079

(Representatives Carlisle, DeKrey, Klein, Martinson)
(Senators Robinson, Nalewaja)

## DISARMING LAW ENFORCEMENT OFFICER

AN ACT to create and enact a new section to chapter 12.1-23 of the North Dakota Century Code, relating to the penalty for unauthorized use of a law enforcement officer's firearm.

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

**SECTION 1.** A new section to chapter 12.1-23 of the North Dakota Century Code is created and enacted as follows:

**Disarming or attempting to disarm a law enforcement officer.** Notwithstanding subdivision d of subsection 2 of section 12.1-23-05, a person is guilty of a class C felony if, without the consent of the law enforcement officer, the person willfully takes or removes, or attempts to take or remove, a firearm from a law enforcement officer engaged in the performance of official duties.

Approved March 25, 1997
Filed March 26, 1997

# CHAPTER 130

## HOUSE BILL NO. 1112

(Representatives Brown, Martin, Wald)
(Senators Urlacher, Goetz)

## VULNERABLE ELDERLY ADULT EXPLOITATION

AN ACT to create and enact two new sections to chapter 12.1-31 of the North Dakota Century Code, relating to the exploitation of a disabled or vulnerable elderly adult; to amend and reenact section 12.1-31-07 of the North Dakota Century Code, relating to the definition of disabled or vulnerable elderly adult; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 12.1-31-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**12.1-31-07. Endangering a vulnerable ~~elderly~~ adult - Penalty.**

1. In this ~~section~~ chapter, unless the context otherwise requires:

   a. "Caregiver" means a person who is responsible for the care of a disabled adult or vulnerable elderly adult as a result of a familial or legal relationship, or a person who has assumed responsibility for the care of a disabled adult or vulnerable elderly adult. The term does not include a licensed health care provider who is acting within the provider's legal scope of practice in providing appropriate care or assistance to a disabled adult or vulnerable elderly adult who is the patient or client of the licensed health care provider.

   b. "Disabled adult" means a person eighteen years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability or organic brain damage or mental illness or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

   c. "Vulnerable elderly adult" means a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that the person is incapable of adequately providing for the person's own health or personal care.

2. Except as provided for by chapters 23-06.4, 23-06.5, and 30.1-30, a caregiver who knowingly performs an act that causes a disabled adult's or vulnerable elderly adult's life to be endangered, health to be injured, or preexisting physical or mental condition to deteriorate, or a caregiver who fails to perform acts that the caregiver knows are necessary to maintain or preserve the life or health of the disabled adult or vulnerable elderly adult and the failure causes the disabled adult's or vulnerable elderly adult's life to be endangered, health to be injured, or preexisting

physical or mental condition to deteriorate, is guilty of a class ~~C~~ B felony.

**SECTION 2.** Two new sections to chapter 12.1-31 of the North Dakota Century Code are created and enacted as follows:

**Exploitation of a vulnerable adult - Penalty.**

1. A person is guilty of exploitation of a disabled adult or vulnerable elderly adult if:

   a. The person stands in a position of trust and confidence or has a business relationship with the disabled adult or vulnerable elderly adult and knowingly, by deception or intimidation, obtains or uses, or attempts to obtain or use, the disabled adult's or vulnerable elderly adult's funds, assets, or property with the intent to temporarily or permanently deprive the disabled adult or vulnerable elderly adult of the use, benefit, or possession of the property, for the benefit of someone other than the disabled adult or vulnerable elderly adult; or

   b. The person knows that the disabled adult or vulnerable elderly adult lacks the capacity to consent, and obtains or uses, or attempts to obtain or use, or assists another in obtaining or using or attempting to obtain or use, the disabled adult's or vulnerable elderly adult's funds, assets, or property with the intent to temporarily or permanently deprive the disabled adult or vulnerable elderly adult of the use, benefit, or possession of the property for the benefit of someone other than the disabled adult or vulnerable elderly adult.

2. Exploitation of a disabled adult or vulnerable elderly adult is:

   a. A class A felony if the value of the exploited funds, assets, or property exceeds one hundred thousand dollars.

   b. A class B felony if the value of the exploited funds, assets, or property exceeds twenty thousand dollars but does not exceed one hundred thousand dollars.

   c. A class C felony if the value of the exploited funds, assets, or property is in excess of one thousand dollars but does not exceed twenty thousand dollars.

3. It is not a defense to a prosecution of a violation of this section that the accused did not know the age of the victim.

4. This section does not impose criminal liability on a person who has:

   a. Managed the disabled adult's or vulnerable elderly adult's funds, assets, or property in a manner that clearly gives primacy to the needs and welfare of that person or is consistent with any explicit written authorization; or

b. Made a good faith effort to assist in the management of the disabled adult's or vulnerable elderly adult's funds, assets, or property.

**Criminal proceeding involving a vulnerable adult - Speedy trial.** In a criminal proceeding in which a disabled adult or vulnerable elderly adult is a victim, the court and state's attorney shall take appropriate action to ensure a speedy trial to minimize the length of time the disabled adult or vulnerable elderly adult must endure the stress of involvement in the proceedings. In ruling on any motion or other request for a delay or a continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of the disabled adult or vulnerable elderly adult.

Approved April 10, 1997
Filed April 11, 1997

# CHAPTER 131

## HOUSE BILL NO. 1180

(Representatives Carlisle, R. Kelsch, Mahoney)
(Senators Nalewaja, W. Stenehjem, Tallackson)

## METHAMPHETAMINE POSSESSION PENALTY

AN ACT to amend and reenact sections 12.1-31.1-03, 12.1-31.1-04, and subdivision a of subsection 1 of section 19-03.1-23 of the North Dakota Century Code, relating to unlawful possession, manufacture, or delivery of drug paraphernalia and methamphetamine; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 12.1-31.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-31.1-03. Unlawful possession of drug paraphernalia.** It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class C felony if the drug paraphernalia is used, or possessed with intent to be used, to manufacture, compound, convert, produce, process, prepare, test, or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. Otherwise, a violation of this section is a class A misdemeanor.

**SECTION 2. AMENDMENT.** Section 12.1-31.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-31.1-04. Unlawful manufacture or delivery of drug paraphernalia.** It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class C felony if the drug paraphernalia will be used to manufacture, compound, convert, produce, process, prepare, test, or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. Otherwise, a violation of this section is a class A misdemeanor.

[8] **SECTION 3. AMENDMENT.** Subdivision a of subsection 1 of section 19-03.1-23 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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[8] Section 19-03.1-23 was also amended by section 1 of House Bill No. 1359, chapter 205.

a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class A felony and must be sentenced:

(1) For a first offense, to imprisonment for at least a year and a day.

(2) For a second offense, to imprisonment for at least five years.

(3) For a third or subsequent offense, to imprisonment for twenty years.

Approved March 19, 1997
Filed March 19, 1997

# CHAPTER 132

## HOUSE BILL NO. 1195

(Representatives Stenehjem, Wentz, Delmore)
(Senators Heitkamp, Thane, Watne)

## MISDEMEANOR MONETARY PENALTY AMOUNTS

AN ACT to amend and reenact subsections 5 and 6 of section 12.1-32-01, subsection 1 of section 27-09.1-07, sections 40-05-06, and 40-18-14 of the North Dakota Century Code, relating to misdemeanor monetary penalties.

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

**SECTION 1. AMENDMENT.** Subsections 5 and 6 of section 12.1-32-01 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of ~~one~~ two thousand dollars, or both, may be imposed.

6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of ~~five hundred~~ one thousand dollars, or both, may be imposed.

**SECTION 2. AMENDMENT.** Subsection 1 of section 27-09.1-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. From time to time and in a manner prescribed by the court, the clerk shall mail to the prospective juror a qualification form accompanied by instructions to fill out and return the form by mail to the clerk within ten days after its receipt. The juror qualification form must be approved by the state court administrator as to matters of form and must elicit the name, address of residence, and age of the prospective juror and whether the prospective juror:

   a. Is a citizen of the United States and a resident of the county;

   b. Is able with reasonable accommodation to communicate and understand the English language;

   c. Has any physical or mental disability that may require reasonable accommodation to render satisfactory jury service; and

   d. Has lost the right to vote because of imprisonment resulting from conviction of a felony (section 27-09.1-08).

   The juror qualification form must contain the prospective juror's declaration that the responses are true to the best of the prospective juror's knowledge and the prospective juror's acknowledgment that a willful misrepresentation of a material fact may be punished by a fine of not more than ~~five hundred~~ one thousand dollars or imprisonment in

the county jail for not more than thirty days, or both. Notarization of the juror qualification form is not required. If the prospective juror is unable to fill out the form, another person may do it for the prospective juror and shall indicate that fact and the reason therefor. If it appears there is an omission, ambiguity, or error in a returned form, the clerk shall again send the form with instructions to the prospective juror to make the necessary addition, clarification, or correction and to return the form to the clerk within ten days after its second receipt.

**SECTION 3. AMENDMENT.** Section 40-05-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**40-05-06. City fines and penalties limited.**

1. Except as provided in subsections 2 and 3, the fine or penalty for the violation of any ordinance, resolution, or regulation of a city may not exceed ~~five hundred~~ one thousand dollars, and the imprisonment may not exceed thirty days for one offense.

2. For every violation of a city ordinance regulating the operation or equipment of motor vehicles or regulating traffic, except those ordinances listed in section 39-06.1-05, a fee may be established, by ordinance, which ~~shall~~ may not exceed the limits, for equivalent categories of violations, set forth in section 39-06.1-06.

3. For every violation of a city ordinance enforcing the requirements of 40 CFR 403 relating to publicly owned treatment works, or prohibiting shoplifting, vandalism, criminal mischief, or malicious mischief, the penalty may not exceed a fine of one thousand dollars, imprisonment for thirty days, or both such fine and imprisonment.

This section does not prohibit the ~~utilization~~ use of the sentencing alternatives, other than a fine or imprisonment, provided by section 12.1-32-02 for the violation of a city ordinance, nor does this section limit the use of deferred or suspended sentences under subsections 3 and 4 of section 12.1-32-02.

**SECTION 4. AMENDMENT.** Section 40-18-14 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**40-18-14. Municipal judge may enforce orders and judgments and punish for contempt.** A municipal judge has the power to enforce due obedience to the court's orders and judgments. The judge may fine or imprison for contempt committed in the judge's presence while holding court, as well as for contempt of process issued, and of orders made by the judge. When an act or omission constituting a contempt in a municipal court is not committed in the presence of the municipal judge, an affidavit alleging the facts may be filed and a warrant of arrest thereupon may issue on which the person accused may be arrested and brought before the municipal judge immediately. The person must be given a reasonable opportunity to employ counsel and defend against the alleged contempt. After hearing the allegations and proofs, the municipal judge may discharge the person or adjudge the person guilty and may punish by fine or imprisonment or both. The fine in any case may not be more than ~~five hundred~~ one thousand dollars and the imprisonment may not be more than thirty days.

Approved March 25, 1997
Filed March 26, 1997

# CHAPTER 133

## SENATE BILL NO. 2220

(Senator W. Stenehjem)

## PROBATION SUPERVISION AND INDIGENT DEFENSE COSTS REIMBURSEMENT

AN ACT to amend and reenact sections 12.1-32-07 and 12.1-32-08 of the North Dakota Century Code, relating to supervision of probationers, restitution, and reimbursement of indigent defense costs from offenders.

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

**SECTION 1. AMENDMENT.** Section 12.1-32-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

1. When the court imposes probation upon conviction for a felony, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party ~~selected by the court~~. In all other cases, the court may place the defendant under the supervision and management of a ~~responsible party selected by the court~~ community corrections program other than the department of corrections and rehabilitation. If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.

2. The conditions of probation must 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 the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which the probation remains subject to revocation. The court shall order supervision costs and fees of not less than thirty dollars per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship.

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation.

   Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

   a. Community service;

   b. Day reporting;

   c. Curfew;

   d. Home confinement;

   e. House arrest;

   f. Electronic monitoring;

   g. Residential halfway house; or

   h. Intensive supervision program.

4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, 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 the defendant 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 the defendant's dependents and meet other family responsibilities.

   e. Make restitution or reparation to the victim of the defendant's 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 probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.

   f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05, except when imposition of sentence is deferred.

   g. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription.

h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.

i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.

j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.

k. Report to a probation officer at reasonable times as directed by the court or the probation officer.

l. Submit to a medical examination or other reasonable testing for the purpose of determining the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.

m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.

n. Submit the defendant's 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.

o. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.

p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 3 of section 12.1-32-08.

q. Provide community service for the number of hours designated by the court.

5. When the court imposes a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the defendant must be given a certificate explicitly setting forth the conditions on which the defendant is being released.

6. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the probation remains conditional. If the defendant violates a condition of probation at any time before the expiration or termination of the period, the court may continue the defendant on the existing probation, with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended execution of sentence, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.

7. The court may continue or modify probation conditions or revoke probation for a violation of probation conditions occurring before the expiration or termination of the period of probation notwithstanding that the order of the court is imposed after the expiration or termination has occurred. The petition for revocation must be issued within sixty days of the expiration or termination of probation.

8. Jurisdiction over a probationer may be transferred from the court that 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 may exercise all powers permissible under this chapter over the defendant.

[9] **SECTION 2. AMENDMENT.** Section 12.1-32-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of indigent defense costs and expenses - Conditions.**

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. The court, when sentencing a person adjudged guilty of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court, unless the court states on the record, based upon the criteria in this subsection, the reason it does not order restitution or orders only partial restitution. In determining whether to order restitution the court shall take into account:

   a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages must be limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2.

   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.

   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.

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[9] Section 12.1-32-08 was also amended by section 1 of House Bill No. 1109, chapter 134.

The court shall fix the amount of restitution or reparation, which may 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. The court may order restitution be paid to the division of parole and probation for any benefits it has paid or may pay under chapter 54-23.4. Any payments made pursuant to such order must 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 sentence or condition of probation ~~must~~ may, unless the court directs otherwise, 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.

3. a. Prior to imposing reimbursement of indigent defense costs and expenses as a condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney, the defendant, and the defendant's probation officer concerning the nature and amount of costs and expenses to be reimbursed. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of fifty dollars per hour for appointed counsel services plus reasonable expenses. The court may not impose reimbursement of indigent defense costs and expenses as a condition of probation unless the court finds the defendant is or may be able to pay them. In determining the amount and method of reimbursement, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.

b. A defendant who is required to reimburse indigent defense costs and expenses as a condition of probation and who is not willfully in default in that reimbursement may at any time petition the court that imposed the condition to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

c. If at any time the court finds that the defendant is able to reimburse costs and expenses and has willfully failed to do so, the court may continue, modify, or enlarge the conditions of probation or revoke probation as provided in subsection 5 or 6, as applicable, of section 12.1-32-07.

4. If the court finds that the defendant is unable to pay a fine, supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations, the court may order the defendant to perform reasonable assigned work in lieu of all or of part of a fine, a supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations. The defendant may not perform reasonable assigned work in lieu of restitution or reparations unless the person entitled to restitution or reparations has consented in writing or on the record.

Approved March 21, 1997
Filed March 21, 1997

# CHAPTER 134

## HOUSE BILL NO. 1109

(Judiciary Committee)
(At the request of the Supreme Court)

## INDIGENT DEFENSE COSTS REIMBURSEMENT

AN ACT to amend and reenact subsection 3 of section 12.1-32-08 and subsection 2 of section 29-07-01.1 of the North Dakota Century Code, relating to reimbursement of indigent defense costs and expenses.

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

[10] **SECTION 1. AMENDMENT.** Subsection 3 of section 12.1-32-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. a. ~~Prior to imposing reimbursement of~~ Under section 12.1-32-07, the court may order that the defendant reimburse indigent defense costs and expenses as a condition of probation~~, the~~. The court shall ~~hold a hearing on the matter with notice to the prosecuting attorney,~~ notify the defendant, ~~and~~ the defendant's probation officer ~~concerning the nature~~, and the prosecuting attorney of the amount of costs and expenses to be reimbursed and of the defendant's right to a hearing on the reimbursement amount. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of ~~fifty~~ seventy-five dollars per hour for appointed counsel services plus reasonable expenses. ~~The court may not impose reimbursement of indigent defense costs and expenses as a condition of probation unless the court finds the defendant is or may be able to pay them.~~ If the defendant requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the basis for the amount to be reimbursed must be demonstrated. In determining the amount and method of reimbursement, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.

b. A defendant who is required to reimburse indigent defense costs and expenses as a condition of probation and who is not willfully in default in that reimbursement may at any time petition the court that imposed the condition to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

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[10] Section 12.1-32-08 was also amended by section 2 of Senate Bill No. 2220, chapter 133.

c. If at any time the court finds that the defendant is able to reimburse costs and expenses and has willfully failed to do so, the court may continue, modify, or enlarge the conditions of probation or revoke probation as provided in subsection ~~5 or~~ 6 or 7, as applicable, of section 12.1-32-07.

**SECTION 2. AMENDMENT.** Subsection 2 of section 29-07-01.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A defendant with appointed counsel, subject to subdivisions a through c of this subsection, shall reimburse the state or city such sums as the state or city expends on the defendant's behalf.

a. At the time counsel is appointed for a defendant, the appointing court shall advise the defendant of the defendant's potential obligation to reimburse the appropriate governmental entity the amounts expended on behalf of the defendant.

b. Within ninety days after its judgment of conviction or after conclusion of an appeal of its initial judgment of conviction, the court that appointed counsel for the defendant shall notify the defendant and the prosecuting attorney of the amount of indigent defense costs and expenses the defendant is obligated to reimburse if able to do so and of the defendant's right to a hearing on the reimbursement amount. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of ~~fifty~~ seventy-five dollars per hour for appointed counsel services plus reasonable expenses. ~~Following~~ ~~receipt~~ ~~of~~ If the defendant requests a hearing within thirty days of receiving notice under this subdivision, the ~~defendant~~ ~~is~~ ~~entitled~~ ~~to~~ court shall schedule a hearing at which the basis for the amount to be reimbursed must be demonstrated. In determining the amount of reimbursement and method of payment, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.

c. A defendant who is required to reimburse indigent defense costs and expenses and who is not willfully in default in that reimbursement may at any time petition the court to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

Approved March 25, 1997
Filed March 26, 1997

# CHAPTER 135

## HOUSE BILL NO. 1089
(Representative Carlisle)

## VIOLENT OFFENDER SENTENCING

AN ACT to amend and reenact section 12.1-32-09.1 of the North Dakota Century Code, relating to sentencing of violent offenders.

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

**SECTION 1. AMENDMENT.** Section 12.1-32-09.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-09.1. Sentencing of violent offenders.** Any offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, 12.1-17-02, 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.

Approved March 27, 1997
Filed March 27, 1997

# CHAPTER 136

## HOUSE BILL NO. 1048

(Legislative Council)
(Criminal Justice Committee)
(Representatives Brown, Bernstein, Kliniske, Mahoney)
(Senators W. Stenehjem, Nalewaja)

## SEXUALLY VIOLENT PREDATOR REGISTRATION

AN ACT to create and enact a new subsection to section 50-06-05.1 of the North Dakota Century Code, relating to the powers and duties of the department of human services; and to amend and reenact section 12.1-32-15 of the North Dakota Century Code, relating to registration of sexually violent predators.

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

[11] **SECTION 1. AMENDMENT.** Section 12.1-32-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-15. Offenders against children and sexual offenders - Sexually violent predators - Registration requirement - Penalty.**

1. As used in this section:

   a. "A crime against a child" means a violation of chapter 12.1-16, 12.1-17, 12.1-18, or 12.1-29 in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.

   b. "Department" means the department of corrections and rehabilitation.

   c. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.

   d. "Predatory" means an act directed at a stranger, or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

   e. "Qualified board" means two or more experts in the field of behavior and treatment of sexual offenders as determined by the department of human services.

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[11] Section 12.1-32-15 was also amended by section 1 of House Bill No. 1044, chapter 137; section 5 of Senate Bill No. 2153, chapter 124; and section 2 of House Bill No. 1357, chapter 128.

f. "Sexual offender" means a person who has pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, chapter 12.1-27.2, or an attempt to commit these offenses.

g. "Sexually violent predator" means a sexual offender who suffers from a mental abnormality or personality disorder that makes that offender likely to engage in predatory sexually violent offenses.

2. After a person has pled guilty or been found guilty as a sexual offender, the court shall determine upon the motion of the state's attorney and after receiving a report from the qualified board if that person is a sexually violent predator. The court may order the defendant to undergo an evaluation to enable the qualified board to make an appropriate determination.

3. After a person has pled guilty to or been found guilty of a crime against a child or an attempted crime against a child, or after a person has pled guilty or been found guilty as a sexual offender, the court shall impose, in addition to any penalty provided by law, a requirement that the person register, within ten days of coming into a county in which the person resides or is temporarily domiciled, with the chief of police of the city or the sheriff of the county if the person resides in an area other than a city. The court shall require a person to register by stating this requirement on the court records. A person must also register if that person:

a. Is incarcerated or is on probation or parole on August 1, 1995, for a crime against a child or as a sexual offender;

b. Has pled guilty or nolo contendere to, or been found guilty of, an offense in a court of another state or the federal government equivalent to those offenses set forth in subdivisions a and c of subsection 1; or

c. Has pled guilty to or been found guilty of a crime against a child or as a sexual offender within ten years prior to August 1, 1995.

~~3.~~ 4. When a person is required to register under this section, the official in charge of a facility or institution where the person required to register is confined, or the department, shall, before the discharge, parole, or release of that person, inform the person of the duty to register pursuant to this section. The official or the department shall require the person to read and sign a form as required by the attorney general, stating that the duty of the person to register has been explained to that person. The official in charge of the place of confinement, or the department, shall obtain the address where the person expects to reside upon discharge, parole, or release and shall report the address to the attorney general. The official in charge of the place of confinement, or the department, shall give one copy of the form to the person and shall send four copies to the attorney general no later than forty-five days before the scheduled release of that person. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the person expects to reside upon discharge, parole, or release, one copy to the prosecutor who prosecuted the person, and one copy to the court in which the person was prosecuted. All forms must be transmitted and received by

the law enforcement agency, prosecutor, and court thirty days before the discharge, parole, or release of the person.

~~4.~~ 5. A person who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine must, before the release or discharge, be informed of that person's duty to register under this section by the court in which that person is convicted. The court shall require the person to read and sign a form as required by the attorney general, stating that the duty of the person to register under this section has been explained to that person. The court shall obtain the address where the person expects to reside upon release or discharge and shall report the address to the attorney general within three days. The court shall give one copy of the form to the person and shall send two copies to the attorney general. The attorney general shall forward one copy to the appropriate law enforcement agency having jurisdiction where the person expects to reside upon discharge, parole, or release.

~~5.~~ 6. Registration consists of a written statement signed by the person, giving the information required by the attorney general, and the fingerprints and photograph of the person. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general. If a person required to register pursuant to this section has a change in name or address, that person shall inform in writing, within ten days, the law enforcement agency with whom that person last registered of the person's new name or address. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence. Upon a change of address, the person required to register shall also register within ten days at the law enforcement agency having local jurisdiction of the new place of residence. A law enforcement agency that has previously registered an offender may omit the fingerprint portion of the registration if that agency has a set of fingerprints on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration.

~~6.~~ 7. A person required to register under this section shall comply with the registration requirement for ~~a~~ the longer of the following periods:

a. A period of ten years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later; or

b. Until a court determination is made that the person no longer is a sexually violent predator. The sexually violent predator may petition no more than once a year for a court determination on the status of being a sexually violent predator. The court must receive a report from the qualified board before making the determination.

~~7.~~ 8. A person required to register under this section who violates this section is guilty of a class A misdemeanor. A court may not relieve a person who willfully violates this section from serving a term of at least ninety days in jail and completing probation of one year. A person who

violates this section who previously has pled guilty or been found guilty of violating this section is guilty of a class C felony.

~~8.~~ 9. When a person is released on parole or probation and is required to register pursuant to this section, but fails to do so within the time prescribed, the court shall order the probation, or the parole board shall order the parole, of the person revoked. The statements, photographs, and fingerprints required by this section are open to inspection by the public.

~~9.~~ 10. If a person required to register pursuant to this section is temporarily sent outside the facility or institution where that person is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that person is being sent must be notified within a reasonable time period before that person is released from the facility or institution. This subsection does not apply to any person temporarily released under guard from the facility or institution in which that person is confined.

~~10.~~ 11. Relevant and necessary registration information ~~may~~ shall be disclosed to the public by a law enforcement agency if the agency determines that the individual registered under this section is a public risk and disclosure of the registration information is necessary for public protection. The department, in a timely manner, shall provide law enforcement agencies any information the department determines is relevant concerning individuals required to be registered under this section who are about to be released or placed into the community. A law enforcement agency, its officials, and its employees are not subject to civil or criminal liability for disclosing or for failing to disclose information as permitted by this section. Nonregistration information concerning an offender required to register under this section consisting of the name of the offender, the last known address of the offender, the offense or offenses as defined in subsection 1 to which the offender pled guilty or of which the offender was found guilty, the date of the judgment or order imposing a sentence or probation and the court entering the judgment or order, the sentence or probation imposed upon the offender, and any disposition, if known, of a sentence or probation may be disclosed to the public. The attorney general shall compile nonregistration information concerning offenders required to register under this section from criminal history record information maintained pursuant to chapter 12-60 or from an agency or department of another state or the federal government and shall provide the information upon request at no cost.

**SECTION 2.** A new subsection to section 50-06-05.1 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

To provide for the qualifications for and the membership of a qualified board as required by section 12.1-32-15.

Approved March 19, 1997
Filed March 19, 1997

# CHAPTER 137

## HOUSE BILL NO. 1044

(Legislative Council)
(Criminal Justice Committee)
(Representatives Kliniske, Bernstein, R. Kelsch, Mahoney)
(Senators W. Stenehjem, Nalewaja)

## REGISTRATION OF OFFENDERS

AN ACT to amend and reenact subsection 1 of section 12.1-32-15 of the North Dakota Century Code, relating to offender registration.

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

[12] **SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-32-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. As used in this section:

   a. "A crime against a child" means a violation of chapter 12.1-16, 12.1-17, 12.1-18, or 12.1-29, or an equivalent ordinance, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.

   b. "Department" means the department of corrections and rehabilitation.

   c. "Sexual offender" means a person who has pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, or chapter 12.1-27.2, or an equivalent ordinance, or an attempt to commit these offenses.

Approved March 25, 1997
Filed March 26, 1997

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[12] Section 12.1-32-15 was also amended by section 1 of House Bill No. 1048, chapter 136; section 5 of Senate Bill No. 2153, chapter 124; and section 2 of House Bill No. 1357, chapter 128.

# CHAPTER 138

## SENATE BILL NO. 2209

(Senators W. Stenehjem, Andrist, C. Nelson)
(Representatives Berg, Delmore, Kretschmar)

## CHILD INFORMATION RELEASE

AN ACT to amend and reenact subsections 7 and 8 of section 12.1-35-01, sections 12.1-35-03, 27-20-52, and 39-08-10.1 of the North Dakota Century Code, relating to the release of the identity of children and records regarding children and the release of the identity of persons seriously injured or deceased.

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

**SECTION 1. AMENDMENT.** Subsections 7 and 8 of section 12.1-35-01 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

7. "Victim" means a living child who has suffered direct or threatened physical, financial, or emotional harm as a result of the commission or attempted commission of a crime.

8. "Witness" means any living child who has been or is expected to be summoned to testify in a criminal case whether or not any action or proceeding has been commenced.

**SECTION 2. AMENDMENT.** Section 12.1-35-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**12.1-35-03. ~~Public~~ Information about child victims or witnesses of crimes generally may not appear in public record.**

1. In order to protect the child from possible trauma resulting from publicity, the name of the child victim or witness of a crime, except as specified in subsection 2, and identifying biographical information may not appear on the indictment or any other public record. Instead, a Jane Doe or Joe Doe designation must appear in all public records. Sealed confidential records containing the child's name and necessary biographical information must be kept in order to ensure that no defendant is charged twice.

2. Subsection 1 does not apply to the name and identifying biographical information of:

   a. A child victim or witness of a criminal offense under title 39 or equivalent ordinance; and

   b. A child victim of a fire.

[13] **SECTION 3. AMENDMENT.** Section 27-20-52 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**27-20-52. Law enforcement records.** Law enforcement records and files ~~concerning~~ of a child alleged or found to be delinquent, unruly, or deprived must be kept separate from the records and files of arrests of adults. Unless a charge of delinquency is transferred for criminal prosecution under section 27-20-34, the interest of national security requires, or the court otherwise orders in the interest of the child, ~~the~~ these records and files may not be open to public inspection; but inspection of ~~the~~ these records and files is permitted by:

1. A juvenile court having the child before it in any proceeding;

2. Counsel for a party to the proceeding;

3. The officers of public institutions or agencies to whom the child is committed;

4. Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties;

5. A court in which the child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which the child is committed, or by a parole or pardon board in considering the child's parole or discharge or in exercising supervision over the child; and

6. The professional staff of the uniform crime victims compensation program when necessary for the discharge of their duties pursuant to chapter 54-23.4.

Notwithstanding that law enforcement records ~~concerning~~ and files of a child alleged or found to be delinquent, unruly, or deprived are not open to public inspection, nothing in this section may be construed to limit the release of general information not identifying the identity of the child.

**SECTION 4. AMENDMENT.** Section 39-08-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-08-10.1. Investigating agency responsible to notify ~~next of kin~~ immediate family.**

1. In the event of serious injury to or death of any person, under circumstances leading to the notification of a law enforcement agency, the investigating law enforcement agency shall, upon positive identification of the person or persons involved, be responsible for immediately notifying the ~~next of kin~~ immediate family of the person or persons seriously injured or deceased, or ~~make~~ making arrangements to have ~~next of kin~~ the immediate family notified by clergy or other suitable person.

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[13] Section 27-20-52 was also amended by section 5 of Senate Bill No. 2045, chapter 115.

2. The investigating law enforcement agency may not release to the public the identity of the person or persons seriously injured or deceased until the first of the following events occurs:

   a. A member of the immediate family has been notified and given an opportunity to notify other immediate family members; or

   b. Twenty-four hours has elapsed from the time positive identification was made.

3. For purposes of this section, "immediate family" means spouse, parent, child, sibling, or any person who regularly resides in the household of the seriously injured or deceased person.

Approved April 2, 1997
Filed April 3, 1997

# CHAPTER 139

## HOUSE BILL NO. 1049

(Legislative Council)
(Criminal Justice Committee)
(Representatives Stenehjem, Mahoney, Kliniske, R. Kelsch, Bernstein)
(Senator Nalewaja)

## CHILD TESTIMONY LIMITATIONS

AN ACT to amend and reenact section 12.1-35-04 of the North Dakota Century Code, relating to limits on child testimony.

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

**SECTION 1. AMENDMENT.** Section 12.1-35-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**12.1-35-04. Limits on interviews and testimony.** The prosecuting attorney, the court, and appropriate law enforcement personnel ~~shall~~, to the extent possible, shall protect the victim or witness from the psychological damage of repeated or lengthy i~~nterrogation~~ interview, testimony, or discovery proceedings while preserving the rights of the public, the victim, and the person charged with the violation.

Approved March 13, 1997
Filed March 13, 1997

# CHAPTER 140

## SENATE BILL NO. 2221

(Senators Christmann, Andrist, Cook)
(Representatives Boehm, Brusegaard, Clark)

## PERPETRATOR INJURY CLAIMS BARRED

AN ACT to create and enact a new chapter to title 12.1 of the North Dakota Century Code, relating to barring perpetrators of certain crimes from recovering for injuries sustained during criminal conduct.

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

**SECTION 1.** A new chapter to title 12.1 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** As used in this section, unless the context otherwise requires:

1. "Convicted" includes a finding of guilt, whether or not the adjudication of guilt is stayed or executed, an unwithdrawn judicial admission of guilt or guilty plea, a no contest plea, a judgment of conviction, an adjudication as a delinquent child, or an admission to a juvenile delinquency petition.

2. "Course of criminal conduct" includes the acts or omissions of a victim in resisting criminal conduct.

3. "Crime" includes an offense named in section 12.1-16-01, 12.1-16-02, 12.1-16-03, 12.1-17-01, 12.1-17-01.1, 12.1-17-02, 12.1-17-03, 12.1-17-04, chapter 12.1-18, section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-07, chapter 12.1-21, section 12.1-22-01, 12.1-22-02, or 12.1-22-03, or an attempt to commit any of these offenses. The term includes a crime in other states which would have been within this definition if the crime had been committed in this state.

4. "Perpetrator" means a person who has engaged in criminal conduct and includes a person convicted of a crime.

5. "Victim" means a person who was the object of another's criminal conduct and includes a person at the scene of an emergency who gives reasonable assistance to another person who is exposed to or has suffered grave physical harm.

**Perpetrator's assumption of the risk.** A perpetrator assumes the risk of loss, injury, or death resulting from or arising out of a course of criminal conduct involving a crime, as defined in this Act, engaged in by the perpetrator or an accomplice, as defined in section 12.1-03-01, and the crime victim is immune from and not liable for any damages as a result of acts or omissions of the victim if the victim used reasonable force as authorized in section 12.1-05-03 or 12.1-05-04. However, the perpetrator's assumption of risk does not eliminate the crime victim's duty to protect against conditions upon the premises which the crime victim knows or has reason to know may create an unreasonable risk of harm or which may

cause a foreseeable trespass by minors, nor does the assumption of risk apply to perpetrators who are mentally incompetent or deficient.

**Evidence**. Notwithstanding other evidence that the victim may adduce relating to the perpetrator's conviction of the crime involving the parties to a claim for relief, a certified copy of a guilty plea, a court judgment of guilt, a court record of conviction, or an adjudication as a delinquent child is conclusive proof of the perpetrator's assumption of the risk.

**Attorney's fees to victim.** If the perpetrator does not prevail in a claim for relief that is subject to this chapter, the court may award reasonable expenses, including attorney's fees and disbursements, to the victim.

**Stay of claim for relief.** Except to the extent needed to preserve evidence, any claim for relief in which the defense set forth in this chapter is raised must be stayed by the court on the motion of the defendant during the pendency of any criminal action against the plaintiff based on the alleged crime.

Approved April 2, 1997
Filed April 3, 1997