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Sixty-second
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1450

Introduced by

Representatives Ruby, Karls, Kasper

Senators Larsen, Nodland, Sitte

A BILL for an Act to create and enact a new section to chapter 12.1-17 of the North Dakota Century Code, relating to the application of sections in chapter 12.1-17 to certain medical procedures; and to amend and reenact sections 12.1-01-04 and 12.1-16-06 of the North Dakota Century Code, relating to the definition of human being and the application of sections in chapter 12.1-16 to certain medical procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-01-04. General definitions.

As used in this title, unless a different meaning plainly is required:

1. "Act" or "action" means a bodily movement, whether voluntary or involuntary.
2. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act".
3. "Actor" includes, where relevant, a person guilty of an omission.
4. "Bodily injury" means any impairment of physical condition, including physical pain.
5. "Court" means any of the following courts: the supreme court, a district court, and where relevant, a municipal court.
6. "Dangerous weapon" means, but is not limited to, any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon which will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO_2 gun; and any

projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.

7. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade, mine, rocket, missile, or similar device.

8. "Explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material, or any part thereof may cause an explosion.

9. Repealed by S.L. 1975, ch. 116, § 33.

10. "Firearm" means any weapon which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such weapon, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.

11. "Force" means physical action.

12. "Government" means:

    a. The government of this state or any political subdivision of this state;

    b. Any agency, subdivision, or department of the foregoing, including the executive, legislative, and judicial branches;

    c. Any corporation or other entity established by law to carry on any governmental function; and

    d. Any commission, corporation, or agency established by statute, compact, or contract between or among governments for the execution of intergovernmental programs.

13. "Governmental function" includes any activity which one or more public servants are legally authorized to undertake on behalf of government.

14. "Harm" means loss, disadvantage, or injury to the person affected, and includes loss, disadvantage, or injury to any other person in whose welfare the person affected is interested.

15. "Human being" means an individual member of the species homo sapiens at every stage of development.

16. "Included offense" means an offense:

a. Which is established by proof of the same or less than all the facts required to establish commission of the offense charged;

b. Which consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or

c. Which differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission.

~~16.~~17. "Includes" should be read as if the phrase "but is not limited to" were also set forth.

~~17.~~18. "Law enforcement officer" or "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.

~~18.~~19. "Local" means of or pertaining to any political subdivision of the state.

~~19.~~20. Repealed by S.L. 1975, ch. 116, § 33.

~~20.~~21. "Offense" means conduct for which a term of imprisonment or a fine is authorized by statute after conviction.

~~21.~~22. "Official action" includes a decision, opinion, recommendation, vote, or other exercise of discretion by any government agency.

~~22.~~23. "Official proceeding" means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.

~~23.~~24. "Omission" means a failure to act.

~~24.~~25. As used in this title and in sections outside this title which define offenses, "person" includes, where relevant, a corporation, limited liability company, partnership, unincorporated association, or other legal entity. When used to designate a party whose property may be the subject of action constituting an offense, the word "person" includes a government which may lawfully own property in this state. Person includes all human beings.

~~25.~~26. "Political subdivision" as used in this title and in any statute outside this title which defines an offense means a county, city, school district, township, and any other local governmental entity created by law.

~~26.~~27. "Property" includes both real and personal property.

~~27.~~28. "Public servant" as used in this title and in any statute outside this title which defines an offense means any officer or employee of government, including law enforcement officers, whether elected or appointed, and any person participating in the performance of a governmental function, but the term does not include witnesses.

~~28.~~29. "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.

~~29.~~30. "Serious bodily injury" means bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of the function of any bodily member or organ, a bone fracture, or impediment of air flow or blood flow to the brain or lungs.

~~30.~~31. "Signature" includes any name, mark, or sign written or affixed with intent to authenticate any instrument or writing.

~~31.~~32. "Substantial bodily injury" means a substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ.

~~32.~~33. "Thing of value" or "thing of pecuniary value" means a thing of value in the form of money, tangible or intangible property, commercial interests, or anything else the primary significance of which is economic gain to the recipient.

~~33.~~34. "Writing" includes printing, typewriting, and copying.

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

SECTION 2. AMENDMENT. Section 12.1-16-06 of the North Dakota Century Code is amended and reenacted as follows:

12.1-16-06. Construction.

1. Sections 12.1-16-04 through 12.1-16-06 do not preclude the use of medications or procedures necessary to relieve a person's pain or discomfort if the use of the medications or procedures is not intentionally or knowingly prescribed or administered to cause the death of ~~that~~a person. In addition, sections 12.1-16-04 through 12.1-16-06 do not preclude the withholding or withdrawal of life-prolonging treatment pursuant to state or federal law.
2. Sections 12.1-16-01 through 12.1-16-03 do not apply to:
   a. Medical treatment for life-threatening conditions provided to a person by a physician licensed to practice medicine under chapter 43-17 which results in the accidental or unintentional injury or death of another person.
   b. Legitimate medical treatment for life-threatening conditions not intended to harm a person but which has the foreseeable effect of ending a person's life.
   c. The creation of a new human being through in vitro fertilization, but in no case does this section excuse or justify causing the death of a human being.
   d. Contraception administered before a clinically diagnosable pregnancy of a woman.
3. Sections 12.1-16-01 through 12.1-16-03 apply only to the principal actor, other than the pregnant woman, with respect to criminal conduct upon a person who has not yet been born.

SECTION 3. A new section to chapter 12.1-17 of the North Dakota Century Code is created and enacted as follows:

Construction.

1. Sections 12.1-17-01 through 12.1-17-03 do not apply to:
   a. Medical treatment for life-threatening conditions provided to a person by a physician licensed to practice medicine under chapter 43-17 which results in the accidental or unintentional injury or death of another person.
   b. Legitimate medical treatment for life-threatening conditions not intended to harm a person but which has the foreseeable effect of ending a person's life.

c. The creation of a new human being through in vitro fertilization, but in no case does this section excuse or justify causing injury to a human being.

d. Contraception administered before a clinically diagnosable pregnancy of a woman.

2. Sections 12.1-17-01 through 12.1-17-03 apply only to the principal actor, other than the pregnant woman, with respect to criminal conduct upon a person who has not yet been born.