

CRIMINAL CODE

CHAPTER 122

SENATE BILL NO. 2150

(Senators Myrdal, Boehm, Luick)
(Representatives Porter, Rohr, M. Ruby)

AN ACT to create and enact a new chapter to title 12.1 of the North Dakota Century Code, relating to abortions; to amend and reenact sections 14-02.1-01, 14-02.1-02, 14-02.1-02.1, 14-02.1-02.2, 14-02.1-03, 14-02.1-03.1, 14-02.1-04, and 14-02.1-07, and subsection 1 of section 43-17-31 of the North Dakota Century Code, relating to abortion and grounds for disciplinary action imposed against a physician; to repeal sections 12.1-31-12, 14-02.1-04.1, 14-02.1-04.2, 14-02.1-05.1, 14-02.1-05.2, and 14-02.1-05.3 of the North Dakota Century Code, relating to abortions, sex-selective abortions, genetic abnormality abortions, human dismemberment abortions, and abortions after a detectable heartbeat; to provide a penalty; and to declare an emergency.

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 chapter:

1. "Abortion" means the act of using, selling, or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge the termination by those means will with reasonable likelihood cause the death of the unborn child. The use, sale, prescription, or means is not an abortion if done with the intent to:
 - a. Remove a dead unborn child caused by spontaneous abortion;
 - b. Treat a woman for an ectopic pregnancy; or
 - c. Treat a woman for a molar pregnancy.
2. "Physician" means an individual licensed to practice medicine or osteopathy under chapter 43-17 or a physician who practices in the armed services of the United States or in the employ of the United States.
3. "Probable gestational age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the gestational age of the unborn child.

4. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
5. "Serious health risk" means a condition that, in reasonable medical judgment, complicates the medical condition of the pregnant woman so that it necessitates an abortion to prevent substantial physical impairment of a major bodily function, not including any psychological or emotional condition. The term may not be based on a claim or diagnosis that the woman will engage in conduct that will result in her death or in substantial physical impairment of a major bodily function.

Abortion prohibited - Penalty.

It is a class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion.

Exceptions.

This chapter does not apply to:

1. An abortion deemed necessary based on reasonable medical judgment which was intended to prevent the death or a serious health risk to the pregnant female.
2. An abortion to terminate a pregnancy that based on reasonable medical judgment resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20, if the probable gestational age of the unborn child is six weeks or less.
3. An individual assisting in performing an abortion if the individual was acting within the scope of that individual's regulated profession, was under the direction of or at the direction of a physician, and did not know the physician was performing an abortion in violation of this chapter.

SECTION 2. AMENDMENT. Section 14-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-01. Purpose.

The purpose of this chapter is to protect unborn and promote human life and maternal health within present constitutional limits when the performance of an abortion is not otherwise prohibited by law. #This chapter reaffirms the tradition of the state of North Dakota to protect every human life whether unborn or aged, healthy or sick.

SECTION 3. AMENDMENT. Section 14-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-02. Definitions.

As used in this chapter:

1. "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable ~~intrauterine~~ pregnancy of a woman, including the

elimination of one or more unborn children in a multifetal pregnancy, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

- a. ~~Save the life or preserve the health of the unborn child;~~
- b. Remove a dead unborn child caused by spontaneous abortion; or

~~e-b.~~ Treat a woman for an ectopic pregnancy; or

c. Treat a woman for a molar pregnancy.

2. "Abortion facility" means a clinic, ambulatory surgical center, physician's office, or any other place or facility in which abortions are performed or prescribed, other than a hospital.

3. "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or dispensed with the intent of causing an abortion.

4. ~~"Down syndrome" refers to a chromosome disorder associated with an extra chromosome twenty one, in whole or in part, or an effective trisomy for chromosome twenty-one.~~

5. "Drug label" means the pamphlet accompanying an abortion-inducing drug which outlines the protocol tested and authorized by the federal food and drug administration and agreed upon by the drug company applying for the federal food and drug administration authorization of that drug. Also known as "final printing labeling instructions", drug label is the federal food and drug administration document that delineates how a drug is to be used according to the federal food and drug administration approval.

~~6-5.~~ "Fertilization" means the fusion of a human spermatozoon with a human ovum.

7. ~~"Genetic abnormality" means any defect, disease, or disorder that is inherited genetically. The term includes any physical disfigurement, scoliosis, dwarfism, Down syndrome, albinism, amelia, or any other type of physical or mental disability, abnormality, or disease.~~

~~8-6.~~ "Hospital" means an institution licensed by the department of health and human services under chapter 23-16 and any hospital operated by the United States or this state.

~~9-7.~~ "Human being" means an individual living member of the species of homo sapiens, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation.

~~10-8.~~ "Infant born alive" means a born child which exhibits either heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles or pulsation of the umbilical cord if still attached to the child.

~~14-9.~~ "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed or induced provided:

- a. The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by the physician's agent, at least twenty-four hours before the abortion:
 - (1) The name of the physician who will perform the abortion;
 - (2) The abortion will terminate the life of a whole, separate, unique, living human being;
 - (3) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies, and infertility;
 - (4) The probable gestational age of the unborn child at the time the abortion is to be performed; and
 - (5) The medical risks associated with carrying her child to term.
- b. The woman is informed, by the physician or the physician's agent, at least twenty-four hours before the abortion:
 - (1) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care and that more detailed information on the availability of that assistance is contained in the printed materials given to her as described in section 14-02.1-02.1;
 - (2) That the printed materials given to her and described in section 14-02.1-02.1 describe the unborn child and list agencies that offer alternatives to abortion;
 - (3) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion; and
 - (4) That she is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled; and
 - (5) ~~That it may be possible to reverse the effects of an abortion-inducing drug if she changes her mind, but time is of the essence, and information and assistance with reversing the effects of an abortion-inducing drug are available in the printed materials given to her as described in section 14-02.1-02.1.~~
- c. The woman certifies in writing, ~~prior to~~before the abortion, that the information described in subdivisions a and b has been furnished to her.
- d. Before the performance of the abortion, the physician who is to perform or induce the abortion or the physician's agent receives a copy of the written certification prescribed by subdivision c.
- e. The physician has not received or obtained payment for a service provided to a patient who has inquired about an abortion or has scheduled an abortion before the twenty-four-hour period required by this section.

- ~~42-10. "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates an immediate abortion of her pregnancy without first determining postfertilization age to avertprevent her death or for which the delay necessary to determine postfertilization age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditionsa serious health risk. A condition may not be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct that she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.~~
- 43-11. "Physician" means an individual who is licensed to practice medicine or osteopathy under chapter 43-17 or a physician who practices in the armed services of the United States or in the employ of the United States.
- ~~44-12. "Postfertilization age" means the age of the unborn child as calculated from fertilization.~~
45. "Probable gestational age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.
- ~~46. "Probable postfertilization age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time the abortion is planned to be performed or induced.~~
- 47-13. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
- ~~48-14. "Serious health risk" means a condition that, in reasonable medical judgment, complicates the medical condition of the pregnant woman so that it necessitates an abortion to prevent substantial physical impairment of a major bodily function, not including any psychological or emotional condition. The term may not be based on a claim or diagnosis that the woman will engage in conduct that will result in her death or in substantial physical impairment of a major bodily function.~~
15. "Unborn child" means the offspring of human beings from conception until birth.
- 49-16. "Viable" means the ability of an unborn child to live outside the mother's womb, albeit with artificial aid.

SECTION 4. AMENDMENT. Section 14-02.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-02.1. Printed information - Referral service.

1. The department of health and human services shall publish in English, and in every other language that the department determines is the primary language of a significant number of state residents, the following easily comprehensible printed materials:

- a. Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies. The materials must include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers, in which they might be contacted, or, at the option of the department, printed materials, including a toll-free, twenty-four-hour-a-day telephone number that may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer. The materials must state that it is unlawful for any individual to coerce a woman to undergo an abortion and that if a minor is denied financial support by the minor's parent, guardian, or custodian due to the minor's refusal to have an abortion performed, the minor is deemed to be emancipated for the purposes of eligibility for public assistance benefits, except that those benefits may not be used to obtain an abortion. The materials also must state that any physician who performs an abortion upon a woman without her informed consent may be liable to her for damages in a civil action and that the law permits adoptive parents to pay costs of prenatal care, childbirth, and neonatal care. The materials must include the following statement: There are many public and private agencies willing and able to help you to carry your child to term and to assist you and your child after your child is born, whether you choose to keep your child or to place your child for adoption. The state of North Dakota strongly urges you to contact one or more of these agencies before making a final decision about abortion. The law requires that your physician or your physician's agent give you the opportunity to call agencies like these before you undergo an abortion.
- b. Materials, published in a booklet format, designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the survival of the unborn child and color photographs of the development of an unborn child at two-week gestational increments. The descriptions must include information about brain and heart function, the presence of external members and internal organs during the applicable states of development, and any relevant information on the possibility of the unborn child's survival. The materials must be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The materials required under this subsection must be reviewed, updated, and reprinted as needed.
- c. Materials that include information on the support obligations of the father of a child who is born alive, including the father's legal duty to support his child, which may include child support payments and health insurance, and the fact that paternity may be established by the father's signature on an acknowledgment of paternity or by court action. The printed material must also state that more information concerning paternity establishment and child support services and enforcement may be obtained by calling state public assistance agencies or human service zones.
- d. Materials that contain objective information describing the various surgical and drug-induced methods of abortion as well as the immediate and long-

term medical risks commonly associated with each abortion method, including the risks of infection, hemorrhage, cervical or uterine perforation or rupture, danger to subsequent pregnancies, the possible increased risk of breast cancer, the possible adverse psychological effects associated with an abortion, and the medical risks associated with carrying a child to term.

e. Materials including information it may be possible to reverse the effects of an abortion-inducing drug but time is of the essence. The materials must include information directing the patient where to obtain further information and assistance in locating a medical professional who can aid in the reversal of abortion-inducing drugs, ~~such as mifepristone and misoprostol.~~

f. Materials including a notice that the performance of certain abortions is prohibited by law.

2. The materials required under subsection 1 must be available at no cost from the department of health and human services upon request and in appropriate number to any person, facility, or hospital, and, except for copyrighted material, must be available on the department's internet website. The department may make the copyrighted material available on its internet website if the department pays the copyright royalties.

SECTION 5. AMENDMENT. Section 14-02.1-02.2 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-02.2. Abortion report form.

The department of health and human services shall prepare an abortion compliance report form and an abortion data report form to be used by the physician for each abortion performed, as required by section 14-02.1-07. The abortion compliance report form must include a checklist designed to confirm compliance with all provisions of this chapter, chapter 14-02.3, chapter 14-02.6, and section 23-16-14. The abortion data report form must include the:

1. The data called for in the United States standard report of induced termination of pregnancy as recommended by the national center for health statistics; and
2. Whether the abortion was:
 - a. Necessary in reasonable medical judgment and was intended to prevent the death of the pregnant female;
 - b. To terminate a pregnancy that resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20; or
 - c. Necessary to prevent a serious health risk.

SECTION 6. AMENDMENT. Section 14-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-03. Consent to abortion - Notification requirements.

1. ~~No~~A physician shall ~~may not~~ perform an abortion unless ~~prior to~~before such performance the physician certified in writing that the woman gave her

informed consent as defined and provided in section 14-02.1-02 and shall certify in writing the pregnant woman's marital status and age based upon proof of age offered by her. Before the period of pregnancy when the unborn child may reasonably be expected to have reached viability, an abortion may not be performed upon an unemancipated minor unless the attending physician certifies in writing that each of the parents of the minor requesting the abortion has been provided by the physician in person with the information provided for in section 14-02.1-02 at least twenty-four hours before the minor's consent to the performance of abortion or unless the attending physician certifies in writing that the physician has caused materials of section 14-02.1-02 to be posted by certified mail to each of the parents of the minor separately to the last-known addresses at least forty-eight hours ~~prior to~~before the minor's consent to the performance of abortion. If a parent of the minor has died or rights and interests of that parent have been legally terminated, this subsection applies to the sole remaining parent. When both parents have died or the rights and interests of both parents have been legally terminated, this subsection applies to the guardian or other person standing in loco parentis. Notification by the attending physician is not required if the minor elects not to allow the notification of one or both parents or her guardian and the abortion is authorized by the juvenile court in accordance with section 14-02.1-03.1. None of the requirements of this subsection apply in the case of a medical emergency, except that when a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to ~~avert~~prevent her death or ~~for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss of major bodily function~~prevent a serious health risk, and shall certify those indications in writing.

2. Subsequent to the period of pregnancy when the unborn child may reasonably be expected to have reached viability, ~~no~~an abortion, other than an abortion necessary to preserve her life, or ~~because the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health to prevent a serious health risk~~, may not be performed upon any woman in the absence of:
 - a. ~~The written consent of her husband unless her husband is voluntarily separated from her; or~~
 - b. ~~The~~ the written consent of a parent, if living, or the custodian or legal guardian of the woman, if the woman is unmarried and under eighteen years of age.
3. No executive officer, administrative agency, or public employee of the state of North Dakota or any local governmental body has power to issue any order requiring an abortion, nor shall any such officer or entity coerce any woman to have an abortion, nor shall any other person coerce any woman to have an abortion.

SECTION 7. AMENDMENT. Section 14-02.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-03.1. Parental consent or judicial authorization for abortion of unmarried minor - Statement of intent.

The legislative assembly intends to encourage unmarried pregnant minors to seek the advice and counsel of their parents when faced with the difficult decision of whether or not to bear a child, to foster parental involvement in the making of that decision when parental involvement is in the best interests of the minor and to do so in a manner that does not unduly burden the right to seek an abortion.

1. ~~No~~ person may not knowingly perform an abortion upon a pregnant woman under the age of eighteen years unless:
 - a. The attending physician has secured the written consent of the minor woman and both parents, if living, or the surviving parent if one parent is deceased, or the custodial parent if the parents are separated or divorced, or the legal guardian or guardians if the minor is subject to guardianship;
 - b. The minor woman is married and the attending physician has secured her informed written consent; or
 - c. The abortion has been authorized by the juvenile court in accordance with the provisions of this section.
2. Any pregnant woman under the age of eighteen or next friend is entitled to apply to the juvenile court for authorization to obtain an abortion without parental consent. All proceedings on such application must be conducted in the juvenile court of the county of the minor's residence before a juvenile judge or referee, if authorized by the juvenile court judge in accordance with the provisions of chapter 27-05, except that the parental notification requirements of rules 3, 4, and 5 of the North Dakota Rules of Juvenile Procedure are not applicable to proceedings under this section. A court may change the venue of proceedings under this section to another county only upon finding that a transfer is required in the best interests of the minor. All applications in accordance with this section must be heard by a juvenile judge or referee within forty-eight hours, excluding Saturdays and Sundays, of receipt of the application. The juvenile judge or referee shall find by clear and convincing evidence:
 - a. Whether or not the minor is sufficiently mature and well informed with regard to the nature, effects, and possible consequences of both having an abortion and bearing her child to be able to choose intelligently among the alternatives.
 - b. If the minor is not sufficiently mature and well informed to choose intelligently among the alternatives without the advice and counsel of her parents or guardian, whether or not it would be in the best interests of the minor to notify her parents or guardian of the proceedings and call in the parents or guardian to advise and counsel the minor and aid the court in making its determination and to assist the minor in making her decision.
 - c. If the minor is not sufficiently mature and well informed to choose intelligently among the alternatives and it is found not to be in the best interests of the minor to notify and call in her parents or guardian for advice and counsel, whether an abortion or some other alternative would be in the best interests of the minor.
3. All proceedings in connection with this section must be kept confidential and the identity of the minor must be protected in accordance with provisions relating to all juvenile court proceedings. This section does not limit the

release, upon request, of statistical information regarding applications made under this section and their disposition.

4. The court shall keep a stenographic or mechanically recorded record of the proceedings which must be maintained on record for forty-eight hours following the proceedings. If no appeal is taken from an order of the court pursuant to the proceedings, the record of the proceedings must be sealed as soon as practicable following such forty-eight-hour period.
5. Following the hearing and the court's inquiry of the minor, the court shall issue one of the following orders:
 - a. If the minor is sufficiently mature and well informed concerning the alternatives and without the need for further information, advice, or counseling, the court shall issue an order authorizing a competent physician to perform the abortion procedure on the minor.
 - b. If the minor is not sufficiently mature and well informed, the court may:
 - (1) Issue an order to provide the minor with any necessary information to assist her in her decision if the minor is mature enough to make the decision but not well informed enough to do so.
 - (2) Issue an order to notify the minor's parents or guardian of the pendency of the proceedings and calling for their attendance at a reconvening of the hearing in order to advise and counsel the minor and assist the court in making its determination if the court finds that to do so would be in the best interests of the minor and the pregnancy resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20.
 - (3) Issue an order authorizing an abortion by a competent physician if the court has determined that it would not be in the best interests of the minor to call in her parents or guardian but has found that it would be in the minor's best interests to authorize the abortion.
6. The minor or next friend may appeal the determination of the juvenile court directly to the state supreme court. In the event of such an appeal, any and all orders of the juvenile court must be automatically stayed pending determination of the issues on appeal. Any appeal taken pursuant to this section by anyone other than the minor or next friend must be taken within forty-eight hours of the determination of the juvenile court by the filing of written notice with the juvenile court and a written application in the supreme court. Failure to file notice and application within the prescribed time results in a forfeiture of the right to appeal and render the juvenile court order or orders effective for all intents and purposes.
7. Upon receipt of written notice of appeal, the juvenile court shall immediately cause to be transmitted to the supreme court the record of proceedings had in the juvenile court.
8. An application for appeal pursuant to this section must be treated as an expedited appeal by the supreme court and must be set down for hearing within four days of receipt of the application, excluding Saturdays and Sundays.

9. The hearing, inquiry, and determination of the supreme court must be limited to a determination of the sufficiency of the inquiry and information considered by the juvenile court and whether or not the order or orders of the juvenile court accord with the information considered with respect to the maturity and information available to the minor and the best interests of the minor as determined by the juvenile court. The determination of the juvenile court may not be overturned unless found to be clearly erroneous.
10. After hearing the matter the supreme court shall issue its decision within twenty-four hours.
11. Within forty-eight hours of the hearing by the supreme court, the record of the juvenile court must be returned to the juvenile court and the juvenile court shall seal it at the earliest practicable time.
12. Nothing in this section may be construed to prevent the immediate performance of an abortion on an unmarried minor woman in ~~an~~ a ~~medical emergency where such action is necessary to preserve her life and no physician may be prevented from acting in good faith in such circumstances or made to suffer any sanction thereby other than those applicable in the normal course of events to the general review of emergency and nonemergency medical procedures.~~
13. Nothing in this section may be construed to alter the effects of any other section of this chapter or to expand the rights of any minor to obtain an abortion beyond the limits to such rights recognized under the Constitution of the United States or under other provisions of this code.

SECTION 8. AMENDMENT. Section 14-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-04. Limitations on the performance of abortions - Penalty.

1. An abortion may not be performed by any person other than a physician who is using applicable medical standards and who is licensed to practice in this state. All physicians performing abortion procedures must have admitting privileges at a hospital located within thirty miles [42.28 kilometers] of the abortion facility and staff privileges to replace hospital on-staff physicians at that hospital. These privileges must include the abortion procedures the physician will be performing at abortion facilities. An abortion facility must have a staff member trained in cardiopulmonary resuscitation present at all times when the abortion facility is open and abortions are scheduled to be performed.
2. After the first twelve weeks of pregnancy but ~~prior to~~ before the time at which the unborn child may reasonably be expected to have reached viability, ~~no~~ an abortion may not be performed in any facility other than a licensed hospital.
3. ~~After the point in pregnancy when the unborn child may reasonably be expected to have reached viability, no abortion may be performed except in a hospital, and then only if in the medical judgment of the physician the abortion is necessary to preserve the life of the woman or if in the physician's medical judgment the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health.~~

~~An abortion under this subsection may only be performed if the~~

~~above-mentioned medical judgment of the physician who is to perform the abortion is first certified by the physician in writing, setting forth in detail the facts upon which the physician relies in making this judgment and if this judgment has been concurred in by two other licensed physicians who have examined the patient. The foregoing certification and concurrence is not required in the case of an emergency when the abortion is necessary to preserve the life of the patient.~~

4. An abortion facility may not perform an abortion on a woman without first offering the woman an opportunity to receive and view at the abortion facility or another facility an active ultrasound of her unborn child. The offer and opportunity to receive and view an ultrasound must occur at least twenty-four hours before the abortion is scheduled to be performed. The active ultrasound image must be of a quality consistent with standard medical practice in the community, contain the dimensions of the unborn child, and accurately portray the presence of external members and internal organs, including the heartbeat, if present or viewable, of the unborn child. The auscultation of the fetal heart tone must be of a quality consistent with standard medical practice in the community. The abortion facility shall document the woman's response to the offer, including the date and time of the offer and the woman's signature attesting to her informed decision.
- ~~5.4.~~ Any physician who performs an abortion without complying with the provisions of this section is guilty of a class A misdemeanor.
- ~~6.5.~~ It is a class B felony for any person, other than a physician licensed under chapter 43-17, to perform an abortion in this state.

SECTION 9. AMENDMENT. Section 14-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-07. Records required - Reporting of practice of abortion.

1. Records:

- a. All abortion facilities and hospitals in which abortions are performed shall keep records, including admission and discharge notes, histories, results of tests and examinations, nurses' worksheets, social service records, and progress notes, and shall further keep a copy of all written certifications provided for in this chapter as well as a copy of the constructive notice forms, consent forms, court orders, abortion data reports, adverse event reports, abortion compliance reports, and complication reports. All abortion facilities shall keep the following records:

- (1) The number of women who availed themselves of the opportunity to receive and view an ultrasound image of their unborn children pursuant to section 14-02.1-04, and the number who did not; and of each of those numbers, the number who, to the best of the reporting abortion facility's information and belief, went on to obtain the abortion.

(2) Postfertilization age:

- (a) ~~If a determination of probable postfertilization age was not made,~~ the basis of the determination that a medical emergency existed record of the probable gestational age of the unborn child at the time of the abortion. If a probable gestational age of the unborn

child was not made because of a medical emergency, the record must include the basis of the determination that a medical emergency existed.

~~(b) If the probable postfertilization age was determined to be twenty or more weeks and an abortion was performed, the basis of the determination that a medical emergency existed.~~

- b. The medical records of abortion facilities and hospitals in which abortions are performed and all information contained therein must remain confidential and may be used by the department of health and human services only for gathering statistical data and ensuring compliance with the provisions of this chapter.
- c. Records must be maintained in the permanent files of the hospital or abortion facility for a period of not less than seven years.

2. Reporting:

- a. An individual abortion compliance report and an individual abortion data report for each abortion performed upon a woman must be completed by her attending physician. The abortion data report must be confidential and may not contain the name of the woman. The abortion data report must include the data called for in the United States standard report of induced termination of pregnancy as recommended by the national center for health statistics and whether:

(1) The abortion was performed to prevent the death of the pregnant female;

(2) The pregnancy resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20; or

(3) Necessary due to a medical emergency.

- b. All abortion compliance reports must be signed by the attending physician within twenty-four hours and submitted to the department of health and human services within ten business days from the date of the abortion. All abortion data and complication reports must be signed by the attending physician and submitted to the department of health and human services within thirty days from the date of the abortion. If a physician provides an abortion-inducing drug to another for the purpose of inducing an abortion and the physician knows that the individual experiences during or after the use an adverse event, the physician shall provide a written report of the adverse event within thirty days of the event to the department of health and human services and the federal food and drug administration via the medwatch reporting system. For purposes of this section, "adverse event" is defined based upon the federal food and drug administration criteria given in the medwatch reporting system. If a determination of probable postfertilization gestational age of the unborn child was not made, the abortion compliance report must state the basis of the determination that a medical emergency existed. If the probable postfertilization age was determined to be twenty or more weeks and an abortion was performed,

~~the abortion compliance report must state the basis of the determination that a medical emergency existed.~~

- c. A copy of the abortion report, any complication report, and any adverse event report must be made a part of the medical record of the patient at the facility or hospital in which the abortion was performed. In cases when post-abortion complications are discovered, diagnosed, or treated by physicians not associated with the facility or hospital where the abortion was performed, the department of health and human services shall forward a copy of the report to that facility or hospital to be made a part of the patient's permanent record.
- d. The department of health and human services is responsible for collecting all abortion compliance reports, abortion data reports, complication reports, and adverse event reports and collating and evaluating all data gathered from these reports and shall annually publish a statistical report based on data from abortions performed in the previous calendar year. All abortion compliance reports received by the department of health and human services are public records. Except for disclosure to a law enforcement officer or state agency, the department may not disclose an abortion compliance report without first removing any individually identifiable health information and any other demographic information, including race, marital status, number of previous live births, and education regarding the woman upon whom the abortion was performed.
- e. The department of health and human services shall report to the attorney general any apparent violation of this chapter.

⁸¹ **SECTION 10. AMENDMENT.** Subsection 1 of section 43-17-31 of the North Dakota Century Code is amended and reenacted as follows:

1. Disciplinary action may be imposed against a physician upon any of the following grounds:
 - a. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.
 - b. The making of false or misleading statements about the physician's skill or the efficacy of any medicine, treatment, or remedy.
 - c. The conviction of any misdemeanor determined by the board to have a direct bearing upon a person's ability to serve the public as a practitioner of medicine or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.
 - d. Habitual use of alcohol or drugs.
 - e. Physical or mental disability materially affecting the ability to perform the duties of a physician in a competent manner.
 - f. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.

⁸¹ Section 43-17-31 was also amended by section 21 of Senate Bill No. 2115, chapter 382.

- g. Obtaining any fee by fraud, deceit, or misrepresentation.
- h. Aiding or abetting the practice of medicine by an unlicensed, incompetent, or impaired person.
- i. The violation of any provision of a medical practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board or its investigative panels.
- j. The practice of medicine under a false or assumed name.
- k. The advertising for the practice of medicine in an untrue or deceptive manner.
- l. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
- m. The willful or negligent violation of the confidentiality between physician and patient, except as required by law.
- n. The failure of a doctor of osteopathy to designate that person's school of practice in the professional use of that person's name by such terms as "osteopathic physician and surgeon", "doctor of osteopathy", "D.O.", or similar terms.
- o. Gross negligence in the practice of medicine.
- p. Sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine.
- q. The prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes.
- r. The payment or receipt, directly or indirectly, of any fee, commission, rebate, or other compensation for medical services not actually or personally rendered, or for patient referrals; this prohibition does not affect the lawful distributions of professional partnerships, corporations, limited liability companies, or associations.
- s. The failure to comply with the reporting requirements of section 43-17.1-05.1.
- t. The failure to transfer medical records to another physician or to supply copies of those records to the patient or to the patient's representative when requested to do so by the patient or the patient's designated representative, except if the disclosure is otherwise limited or prohibited by law. A reasonable charge for record copies may be assessed.
- u. A continued pattern of inappropriate care as a physician, including unnecessary surgery.
- v. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.

- w. The prescribing, selling, administering, distributing, or giving to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.
- x. The violation of any state or federal statute or regulation relating to controlled substances.
- y. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice medicine based upon acts or conduct by the physician that would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.
- z. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
- aa. The failure to properly monitor a fluoroscopy technologist or an emergency medical technician.
- bb. The failure to furnish the board or the investigative panel, their investigators, or representatives information legally requested by the board or the investigative panel.
- cc. ~~The performance of an abortion on a pregnant woman prior to determining if the unborn child the pregnant woman is carrying has a detectable heartbeat, as provided in subsection 1 of section 14-02.1-05.1.~~
- dd. Noncompliance with the physician health program established under chapter 43-17.3.

SECTION 11. REPEAL. Sections 12.1-31-12, 14-02.1-04.1, 14-02.1-04.2, 14-02.1-05.1, 14-02.1-05.2, and 14-02.1-05.3 of the North Dakota Century Code are repealed.

SECTION 12. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 24, 2023

Filed April 24, 2023

CHAPTER 123

HOUSE BILL NO. 1350

(Representatives Koppelman, Christensen, Kasper, Rios, Roers Jones, Vetter)
(Senators Luick, Paulson)

AN ACT to amend and reenact sections 12.1-01-04, 12.1-32-02.1, and 62.1-01-01, and subsection 1 of section 62.1-02-01 of the North Dakota Century Code, relating to criminal code definitions, weapons definitions, mandatory prison terms for armed offenders, and persons who are not to possess firearms; and to provide a penalty.

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" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that 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 CO₂ 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. "Firearm" means any weapon that 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.
10. "Force" means physical action.
11. "Government" means:
 - a. The government of this state or any political subdivision of this state;
 - b. Any agency, subdivision, or department of the state or any political subdivision of the state, 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.
12. "Governmental function" includes any activity that one or more public servants are legally authorized to undertake on behalf of government.
13. "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.
14. "Included offense" means an offense:
 - a. That is established by proof of the same or less than all the facts required to establish commission of the offense charged;
 - b. That consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or
 - c. That 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.
15. "Includes" should be read as if the phrase "but is not limited to" were also set forth.
16. "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.
17. "Local" means of or pertaining to any political subdivision of the state.

18. "Manifest injustice" means a specific finding by the court that the imposition of sentence is unreasonably harsh or shocking to the conscience of a reasonable individual, with due consideration of the totality of circumstances.
19. "Offense" means conduct for which a term of imprisonment or a fine is authorized by statute after conviction.
20. "Official action" includes a decision, opinion, recommendation, vote, or other exercise of discretion by any government agency.
21. "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.
22. "Omission" means a failure to act.
23. 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 that may lawfully own property in this state.
24. "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.
25. "Possesses" means an individual has:
 - a. Direct physical control of something on or around the individual's person;
or
 - b. The power and intention to exercise control over something accessible to but not on or around the individual's person.
- ~~26-27.~~ "Risk assessment" means an initial phase with a secondary process approved by the department of health and human services for the evaluation of the likelihood a person that 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 health and human services shall perform the secondary process of the risk assessment.
- ~~27-28.~~ "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.

28-29. "Signature" includes any name, mark, or sign written or affixed with intent to authenticate any instrument or writing.

29-30. "Substantial bodily injury" means a substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ.

30-31. "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.

34-32. "Tier 1 mental health professional" has the same meaning as provided under section 25-01-01.

SECTION 2. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:
 - a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm; or
 - b. ~~The~~An offender ~~prohibited from possessing a firearm under section 62.1-02-01~~ possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.
2. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:
 - a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
 - b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.
3. This section applies even when being armed is an element of the offense for which the offender is convicted.
4. This section applies even if the offender is prosecuted for a violation of section 62.1-02-01 for the same conduct.

5. An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence.

SECTION 3. AMENDMENT. Section 62.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

62.1-01-01. General definitions.

As used in this title, unless the context otherwise requires:

1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon that 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 CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance. "Dangerous weapon" does not include a spray or aerosol containing CS, also known as ortho-chlorobenzamalonitrile; CN, also known as alpha-chloroacetophenone; or other irritating agent intended for use in the defense of an individual, nor does the term include a device that uses voltage for the defense of an individual, unless the device uses a projectile and voltage or the device uses a projectile and may be used to apply multiple applications of voltage during a single incident, then the term includes the device for an individual who is prohibited from possessing a firearm under this title.
2. "Direct supervision of an adult" means that an adult is present in such close proximity so as to be capable of observing and directing the actions of the individual supervised.
3. "Firearm" or "weapon" means any device that expels or is readily capable of expelling a projectile by the action of an explosive and includes any such device, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.
4. "Gaming site" means any room or premises licensed by the attorney general or by a city or county governing body to conduct legal gaming operations.
5. "Government building" means a building which is owned, possessed, or used by or leased to the state of North Dakota, or any of its political subdivisions.
6. "Handgun" means any firearm that is not designed to be fired from the shoulder, which has a barrel less than sixteen inches [40.64 centimeters] long, and which is capable of firing, by the energy of an explosive in a fixed metallic cartridge, an exposed projectile through a rifled bore. The term includes all firearms that are designed to be readily modified between rifle and pistol forms, if in compliance with the National Firearms Act [26 U.S.C. 5801-5872].
7. "Law enforcement officer" means:

-
- a. 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; or
 - b. A retired public servant in good standing who:
 - (1) Was authorized by law or by a government agency or branch for at least ten years to enforce the law and to conduct or engage in investigations or prosecutions for violations of law or who was separated from service due to a service-related physical disability;
 - (2) Maintains the same level of firearms proficiency as is required by the peace officers standards and training board for law enforcement officers, maintains the standards for qualifications in firearms training for active law enforcement officers as determined by the former agency of the individual in the state in which the individual resides, or maintains the standards used by a certified firearms instructor qualified to conduct a firearms qualification test for active duty officers in the state in which the individual resides;
 - (3) Has a photo identification card issued by a local law enforcement agency which identifies the individual as having been employed by a government agency or branch as a law enforcement officer and indicates the individual has passed the firearms proficiency test within twelve months from the date of issue; and
 - (4) Has not been found by a qualified medical professional to be unqualified for reasons relating to mental health or entered an agreement with a government agency or branch in which the public servant acknowledges a lack of qualifications for reasons relating to the mental health of the public servant.
 8. "Machine gun, submachine gun, or fully automatic rifle" means a firearm, mechanism, or instrument not requiring that the trigger be pressed for each shot, and having a reservoir, belt, or other means of storing and carrying ammunition which can be loaded into the firearm, mechanism, or instrument and fired therefrom at a rate of five or more shots to the second. The term does not include a binary trigger that fires one round upon the pull of the trigger and one round upon release of the trigger.
 9. "Mentally deficient individual" means any individual, minor or adult other than a mentally ill individual, who is so mentally defective as to be incapable of managing that individual's affairs and to require supervision, control, and care for that individual's own or the public welfare.
 10. "Plain view" means the handgun is placed in such a location or carried in such a position as to be easily discernible by the ordinary observation of a passerby. In a motor vehicle, this includes being placed on the seat, dashboard, or in a gunrack as long as the handgun is not covered or is in any other way concealed from view.
 11. "Possession" means an individual has:
 - a. Direct physical control of something on or around the individual's person;
or

- b. The power and intention to exercise control over something accessible to but not on or around the individual's person.
12. "Rifle" means any firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each pull of the trigger.
- 42-13. "Secured" means the firearm is closed into the trunk or nonpassenger part of the vehicle; placed into a closed and secure carrying device; rendered inoperative by the use of a trigger, hammer, cylinder, slide, or barrel-locking device that renders the firearm incapable of firing until the device is unlocked and removed; or so disassembled or disabled as to be rendered incapable of firing.
- 43-14. "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches [40.64 centimeters] in length and any firearm made from a rifle, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].
- 44-15. "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches [45.72 centimeters] in length and any firearm made from a shotgun, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].
- 45-16. "Shotgun" means a firearm designed or redesigned, made or remade, and intended to be fired with one hand below or behind and one hand in front of the breach, which uses the energy of the explosive in a fixed shotgun shell to fire through a smooth or a rifled bore either a number of ball shot or a single projectile for each single pull of the trigger.
- 46-17. "Silencer" means any device for or attached to any firearm which will silence or deaden the sound or natural report of the firearm when it is discharged.
- 47-18. "Unloaded" means the chamber of the firearm does not contain a loaded shell. If the firearm is a revolver, then none of the chambers in the cylinder may contain a loaded shell.

SECTION 4. AMENDMENT. Subsection 1 of section 62.1-02-01 of the North Dakota Century Code is amended and reenacted as follows:

1. a. A person who has been convicted anywhere of a felony offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent felony offense of another state or the federal government is prohibited from owning a firearm or having one in possession ~~or under control~~ from the date of conviction and continuing for ~~a period of~~ ten years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.
- b. A person who has been convicted anywhere of a felony offense of this or another state or the federal government not provided for in subdivision a or who has been convicted of a class A misdemeanor offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another state or the federal government and the offense was committed while using or possessing a firearm, a dangerous

weapon, or, as defined in section 12.1-01-04, a destructive device or an explosive, is prohibited from owning a firearm or having one in possession ~~or under control~~ from the date of conviction and continuing for a ~~period of~~ five years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.

- c. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in this state or elsewhere by a court of competent jurisdiction, other than a person who has had the petition that provided the basis for the diagnosis, confinement, or commitment dismissed under section 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or as a mentally deficient individual, is prohibited from purchasing a firearm or having one in possession ~~or under control~~. This limitation does not apply to a person who has not suffered from the disability for the previous three years or who has successfully petitioned for relief under section 62.1-02-01.2.
- d. A person under the age of eighteen years may not possess a handgun except that such a person, while under the direct supervision of an adult, may possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

A person who violates subdivision a or b is guilty of a class C felony, and a person who violates subdivision c or d is guilty of a class A misdemeanor.

Approved April 11, 2023

Filed April 12, 2023

CHAPTER 124

SENATE BILL NO. 2046

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

AN ACT to amend and reenact section 12.1-04-08 of the North Dakota Century Code, relating to fitness to proceed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-04-08 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04-08. Suspension or dismissal of proceedings - Referral for services.

1. If the court determines based upon a preponderance of the evidence that the defendant currently lacks fitness to proceed and the defendant is charged with a class B misdemeanor, except a class B misdemeanor under chapter 12.1-17, the proceedings must be dismissed.
2. If the court determines based upon a preponderance of the evidence that the defendant currently lacks fitness to proceed, the defendant is charged with a felony or a class A misdemeanor, and the report as required under section 12.1-04-07 indicates a likelihood the defendant will attain fitness within a specified period of time from the date of the finding upon completion of a course of therapeutically appropriate treatment, the proceedings against the defendant must be suspended. ~~For a defendant charged with a felony, the proceedings must be suspended~~ for a period of up to one hundred eighty days. The court may extend the suspension for an additional three hundred sixty-five days if there is medical evidence to believe the defendant's fitness to proceed will be restored during the extended period. For a defendant charged with a class B misdemeanor under chapter 12.1-17, the proceedings must be suspended for a period no longer than the maximum term of imprisonment for the most serious offense charged. When the court determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding must be resumed. If prosecution of the defendant has not resumed or it is determined by the court, after a hearing if a hearing is requested, that the defendant will not regain fitness to proceed within the allotted time, the charges against the defendant must be dismissed.
- 2-3. If the court determines based upon a preponderance of the evidence that the defendant currently lacks fitness to proceed and that the defendant will not attain fitness to proceed, the proceedings must be dismissed. The court may at any time make a referral for other appropriate services. Other appropriate services include:
 - a. Determination of incapacity, by a district court with appropriate jurisdiction following petition by the state's attorney, for the appointment of a guardian or conservator pursuant to chapter 30.1-28 or 30.1-29; or
 - b. Civil commitment of the person pursuant to chapter 25-03.1; or

c. Any other services the court deems appropriate.

- ~~3-4.~~ If the court determines the defendant currently lacks fitness to proceed and the defendant may attain fitness to proceed under subsection 1, the court may enter an order for a course of treatment considering the least restrictive form of treatment therapeutically appropriate.
- a. Unless excused by the court, in a proceeding to determine therapy in an attempt to attain fitness, the defendant shall be represented by trial counsel.
 - b. If the court finds the individual is not able to retain the services of a tier 1a mental health professional and that those services are not otherwise available, the court shall authorize reasonable expenditures from public funds to examine the individual.
 - c. In a motion hearing to resume prosecution, the state or prosecuting authority must show by a preponderance of the evidence the defendant has attained fitness to proceed.
- ~~4-5.~~ If the court orders the defendant committed to a treatment facility in an attempt to attain fitness to proceed under subsection 1, the court shall provide the special custody and commitment terms in the order. The special terms of commitment must include an order for the defendant to accept all nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility, including the use of involuntary treatment with prescribed medication without the need for a separate commitment under chapter 25-03.1.
- a. If the order does not indicate the terms of commitment, the director or superintendent of the treatment facility may determine the nature of the constraints necessary within the treatment facility to carry out the order of the court.
 - b. If the court orders an individual committed for therapeutic treatment to attain fitness to proceed, the court shall set a date consistent with the timeline established in this section for a review of the defendant's fitness to proceed. At least sixty days before the date specified for review, the director or director's designee or the superintendent of the treatment facility shall inquire as to whether the individual is represented by counsel and file a written report of the facts ascertained with the court.
- ~~5-6.~~ If the parties to the action have reason to modify the special terms of the commitment order under this section, the parties shall make a motion to the court and the court shall determine by a preponderance of the evidence if the modification of the special terms is necessary and the least restrictive therapeutic alternative therapy in an attempt to attain fitness to proceed.
- ~~6-7.~~ The custodian, guardian, or other person charged with the control of the defendant may take an appeal from the court's order in the manner provided by law.

Approved April 12, 2023

Filed April 13, 2023

CHAPTER 125

HOUSE BILL NO. 1171

(Representatives Steiner, K. Anderson, Headland, Karls, Kasper, Lefor, Rohr, D.
Ruby, Schatz, VanWinkle)
(Senators Myrdal, Rummel)

AN ACT to create and enact a new section to chapter 12.1-17 of the North Dakota Century Code, relating to prohibiting a forced or coerced abortion; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-17 of the North Dakota Century Code is created and enacted as follows:

Forced or coerced abortion - Penalty.

1. As used in this section:

a. "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable intrauterine pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge the termination will with reasonable likelihood cause the death of the unborn child. The use, prescription, or means is not an abortion if done with the intent to:

(1) Save the life or preserve the health of the unborn child;

(2) Remove a dead unborn child caused by spontaneous abortion; or

(3) Treat a woman for an ectopic pregnancy.

b. "Force or coerce" means committing, attempting to commit, or threatening to commit physical harm to a woman, the unborn child, or another individual intended to compel the woman to have an abortion performed against her will.

c. "Threat" means at least one statement, or a course of conduct by the individual, which places a woman in reasonable apprehension that the individual will follow through with the statement or act as implied by the individual's course of conduct. The term does not include constitutionally protected speech or any generalized statement regarding a lawful pregnancy option.

2. It is a class C felony to force or coerce a woman to have an abortion against her will.

3. Upon the request of the victim, a law enforcement agency investigating a violation of this section shall notify the victim not less than twenty-four hours

before initially contacting the individual alleged to have committed a violation of this section.

Approved April 11, 2023

Filed April 12, 2023

CHAPTER 126

HOUSE BILL NO. 1269

(Representatives Ista, Cory, Hanson, Heinert, Klemin, M. Ruby, Schneider)
(Senators Braunberger, Larson, Lee, Sickler)

AN ACT to amend and reenact section 12.1-17-13 of the North Dakota Century Code, relating to a mandated intervention program for domestic violence offenders; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-17-13 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-13. Mandated ~~treatment~~ ~~of~~ intervention program for domestic violence offenders.

1. As used in this section, "intimate partner" means an offender's spouse, former spouse, current dating partner, recent former dating partner, or another individual with whom the offender has a child in common regardless of whether the offender and the individual are or have been married to each other, are or have been in a dating relationship with each other, or resided together at any time.
2. The sentence for an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-02, 12.1-17-03, 12.1-17-04, ~~or~~ 12.1-17-05, 12.1-17-07, 12.1-17-07.1, 12.1-18-02, 12.1-18-03, 12.1-21-05, 12.1-21-06.1, 12.1-31.2-01, 12.1-31.2-02, or 14-07.1-06 against an actor's family or household member, as defined in subsection 4 of section 14-07.1-04 intimate partner, must include an order to complete a domestic violence offender ~~evaluation~~ assessment and ~~treatment~~ intervention program as determined by the court. A court may not order the offender to attend anger management classes or individual counseling unless a domestic violence offender ~~treatment~~ intervention program is not reasonably available to the defendant and the court makes findings for the record explaining why an order to complete a domestic violence offender ~~treatment~~ intervention program would be inappropriate.
3. If an offender who is ordered to complete a domestic violence offender assessment and intervention program is assessed and determined to be ~~inappropriate for the program by the program provider, a court may find the order to complete a domestic violence offender assessment and intervention program to be satisfied or may order the offender to complete other appropriate programming.~~

Approved April 18, 2023

Filed April 19, 2023

CHAPTER 127

HOUSE BILL NO. 1334

(Representatives Christensen, Cory, Henderson, Klemin, S. Olson, Vetter)
(Senators Luick, Myrdal, Paulson)

AN ACT to create and enact section 12.1-17-04.1 of the North Dakota Century Code, relating to domestic terrorism; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 12.1-17-04.1 of the North Dakota Century Code is created and enacted as follows:

12.1-17-04.1. Domestic terrorism - Definitions - Penalty.

1. As used in this section:

a. "Domestic terrorism" means an activity conducted within the geographical boundaries of the state which:

(1) Is done in cooperation with any federally designated terrorist organization that threatens or appears to threaten the sovereignty of the state or the United States of America;

(2) Is a violation of criminal law; and

(3) Either:

(a) Involves violent acts or threats specifically intended to physically harm human life and:

[1] Intimidate, coerce, influence, or disrupt other lawful activity within the state; or

[2] Influence the policy of the state or any political subdivision of the state; or

(b) Involves the use of weapons of mass destruction.

b. "Material support or resources" means currency or other financial securities, financial services, lodging, safe houses, training, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets. The term does not include medical or religious material.

2. A person is guilty of a class C felony if the person willfully:

a. Assembles with one or more persons for the purpose of training or instructing in the use of, or practicing with, any technique or means capable of causing property damage, or bodily injury or death, with the

- intent to employ such training, instruction, or practice in the commission of domestic terrorism;
- b. Commits an act of domestic terrorism;
 - c. Conspires with one or more persons to commit an act of domestic terrorism; or
 - d. Provides material support or resources, or conceals or disguises the nature, location, source, or ownership of material support or resources, with the knowledge and intention that the support or resources are to be used in domestic terrorism.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 12, 2023

Filed April 13, 2023

CHAPTER 128

HOUSE BILL NO. 1140

(Representatives Satrom, S. Olson, Schauer, Strinden)
(Senators Clemens, Conley, Lee)

AN ACT to create and enact a new section to chapter 12.1-20 of the North Dakota Century Code, relating to sexual reproductive imposition; 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:

Sexual reproductive imposition.

1. As used in this section:
 - a. "Donor" means an individual who donates reproductive material, regardless of whether for personal use or compensation.
 - b. "Egg" means the unfertilized female reproductive cell.
 - c. "Health care provider" means an individual licensed or certified by the state to deliver health care. The term includes an individual licensed to practice medicine or osteopathy under chapter 43-17.
 - d. "Pre-embryo" means the product of fertilization of an egg by a sperm until the appearance of the embryonic axis.
 - e. "Recipient" means an individual who receives reproductive material from a donor.
 - f. "Reproductive material" includes any human egg, pre-embryo, or sperm.
 - g. "Sperm" means the male reproductive cell.
2. A health care provider may not intentionally penetrate the vagina of a recipient with the reproductive material of a donor or any object containing the reproductive material of a donor knowing the recipient has not consented to the use of the reproductive material from that donor.
3. A violation of this section is a class C felony.
4. Notwithstanding section 29-04-02, the applicable period of limitation for prosecution of a violation under this section does not begin to run until the date on which the violation is discovered and reported to law enforcement authorities.

Approved April 4, 2023

Filed April 5, 2023

CHAPTER 129

HOUSE BILL NO. 1378

(Representatives Schauer, Beltz, Christy, Grueneich, Heinert, Strinden, Wagner)
(Senators Dever, Lee, Sorvaag, Wanzek)

AN ACT to create and enact a new subdivision to subsection 3 of section 12.1-23-05 of the North Dakota Century Code, relating to grading of theft offenses; to amend and reenact section 12.1-21-05 of the North Dakota Century Code, relating to criminal mischief; 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 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 B felony if the actor intentionally causes pecuniary loss in excess of ten thousand dollars.
 - 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 C felony if the actor commits the offense while engaged in a riot, as defined in section 12.1-25-01.
 - d. 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.

SECTION 2. A new subdivision to subsection 3 of section 12.1-23-05 of the North Dakota Century Code is created and enacted as follows:

The property is stolen while engaging in a riot as defined in section 12.1-25-01 or while with an organized group of five or more individuals.

Approved March 15, 2023

Filed March 16, 2023

CHAPTER 130

HOUSE BILL NO. 1333

(Representatives Prichard, Frellich, Klemin, Koppelman, Marschall, Motschenbacher,
D. Ruby, Tveit, VanWinkle)
(Senator Estenson)

AN ACT to create and enact a new section to chapter 12.1-27.1 of the North Dakota Century Code, relating to restrictions on adult-oriented performances; to amend and reenact section 12.1-27.1-12 of the North Dakota Century Code, relating to state pre-emption of local laws regulating obscenity; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-27.1 of the North Dakota Century Code is created and enacted as follows:

Restrictions on adult-oriented performances - Penalty.

1. As used in this section:

a. "Adult-oriented performance" means a performance that, regardless of whether or not performed for consideration, is intended to appeal to a prurient interest and features:

(1) The purposeful exposure, whether complete or partial, of:

(a) A human genital, the pubic region, the human buttocks, or a female breast, if the breast is exposed below a point immediately above the top of the areola; or

(b) Prosthetic genitalia, breasts, or buttocks; or

(2) Sexual conduct.

b. "Public property" means real property in which a state agency or a political subdivision has an ownership interest.

2. A person is guilty of a class A misdemeanor for a first offense and a class C felony for a second or subsequent offense if the person organizes an adult-oriented performance:

a. On public property; or

b. At a business establishment frequented by minors, or where minors are or may be invited as a part of the general public.

SECTION 2. AMENDMENT. Section 12.1-27.1-12 of the North Dakota Century Code is amended and reenacted as follows:

12.1-27.1-12. State pre-emption of local laws regulating obscenity.

This chapter ~~shall be~~ applicable and ~~uniform~~ throughout the state, and ~~no~~ political subdivision ~~shall~~may not enact new, or enforce existing, ordinances or resolutions regulating or prohibiting the dissemination of obscene materials, or controlling obscene or adult-oriented performances, except ordinances authorized by section 5-02-09, section 58-03-11, chapter 11-33, or chapter 40-47.

Approved April 21, 2023

Filed April 24, 2023

CHAPTER 131

HOUSE BILL NO. 1205

(Representatives Lefor, Steiner)

AN ACT to create and enact a new section to chapter 12.1-27.1 of the North Dakota Century Code, relating to prohibiting public libraries from maintaining explicit sexual material; to provide for a legislative management report; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-27.1 of the North Dakota Century Code is created and enacted as follows:

Public libraries prohibited from maintaining explicit sexual material - Report.

1. As used in this section:
 - a. "Explicit sexual material" means any material which:
 - (1) Taken as a whole, appeals to the prurient interest of minors;
 - (2) Is patently offensive to prevailing standards in the adult community in North Dakota as a whole with respect to what is suitable material for minors; and
 - (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.
 - b. "Public library" means a library established under chapter 40-38.
2. A public library may not maintain in its children's collection inventory books that contain explicit sexual material.
3. By January 1, 2024, each public library shall develop a policy and process for reviewing library collections to ensure conformance with the requirements of this section. The policy must include a procedure:
 - a. For the removal or relocation of explicit sexual material in the public library;
 - b. For the development of a book collection that is appropriate for the age and maturity levels of the individuals who may access the materials, and which is suitable for, and consistent with, the purpose of the library;
 - c. For the public library to receive, evaluate, and respond to a request from an individual regarding the removal or relocation of one or more of the books or other materials in the library collection containing explicit sexual material; and

-
- d. To periodically review the library collection to ensure the library collection does not contain explicit sexual material in the children's collection.
4. Each public library shall provide a compliance report to the legislative management before May 1, 2024, on the implementation of collection development and relocation of materials policies as required by this section and to ensure sufficient compliance with this section.

SECTION 2. APPLICATION. This Act applies to any children's book inventory maintained by a public library after March 31, 2024.

Approved April 25, 2023

Filed April 26, 2023

CHAPTER 132

HOUSE BILL NO. 1138

(Representatives Satrom, Karls, Klemin, Schauer, Vigesaa)
(Senator Conley)

AN ACT to amend and reenact subsection 1 of section 12.1-32-02 and sections 19-03.1-23 and 39-08-01.5 of the North Dakota Century Code, relating to a mental health court program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
 - a. Payment of the reasonable costs of the person's prosecution.
 - b. Probation.
 - c. A term of imprisonment, including intermittent imprisonment:
 - (1) In a state correctional facility in accordance with section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a class A misdemeanor.
 - (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
 - (3) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based or faith-based programs.
 - (4) In the case of persons convicted of an offense who are under eighteen years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the department of corrections and rehabilitation.
 - d. A fine.
 - e. Restitution for damages resulting from the commission of the offense.
 - f. Restoration of damaged property or other appropriate work detail.
 - g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.
 - h. Commitment to a sexual offender treatment program.

- i. Drug court program. A drug court is a district court supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and substance use disorder treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug court programs.
- j. Veterans treatment docket. A veterans treatment docket is a district court supervised docket approved by the supreme court which combines judicial supervision with licensed treatment programs to treat substance use disorders, mental health conditions, behavioral health conditions, traumatic brain injuries, military sexual trauma, and co-occurring disorders. The supreme court may adopt rules, including rules of procedure, for veterans treatment dockets.
- k. Completion of a restorative justice program. For purposes of this section, "restorative justice program" means a system of justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large.
- l. Mental health court program. A mental health court is a district court supervised treatment program approved by the supreme court which combines judicial supervision with mental health services and treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for mental health court programs.

Except as provided by section 12.1-32-06.1, sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection does not permit the unconditional discharge of an offender following conviction. A sentence under subdivision e or f must be imposed in the manner provided in section 12.1-32-08. If the person is sentenced to a term of imprisonment, the court may prohibit the person from contacting the victim during the term of imprisonment. For purposes of this subsection, "victim" means victim as defined in section 12.1-34-01.

SECTION 2. AMENDMENT. Section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts - Penalties.

1. Except as authorized by this chapter, it is unlawful for a person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but a person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. A person who violates this subsection with respect to:
 - a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class B felony.
 - b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog, except marijuana or tetrahydrocannabinol is guilty of a class B felony.

- c. Marijuana, tetrahydrocannabinol, or a substance classified in schedule IV, is guilty of a class C felony.
 - d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. A prior misdemeanor conviction under subsection 7 or a prior conviction under subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under subsection 1.
3. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit substance by means of the internet or any other means, or possess with intent to deliver, a counterfeit substance by means of the internet or any other means, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
 - a. A counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - c. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
4. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.
5. Except for a prior conviction equivalent to a misdemeanor violation of subsection 7 or a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this title or a law of another state or the federal government which is equivalent to an offense with respect to the manufacture, delivery, or intent to deliver a controlled substance under this title committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsection 1. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.
6. It is unlawful for a person to willfully, as defined in section 12.1-02-02:
 - a. Serve as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by this chapter; or
 - b. Offer to fill or refill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire.

A person who violates this subsection is guilty of a class C felony.

7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.
- b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class A misdemeanor for the first offense under this subsection and a class C felony for a second or subsequent offense under this subsection.
- c. If, at the time of the offense the person is in or on the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves marijuana or tetrahydrocannabinol.
- d. A person who violates this subsection by possessing:
 - (1) Marijuana:
 - (a) In an amount of less than one-half ounce [14.175 grams] is guilty of an infraction.
 - (b) At least one-half ounce [14.175 grams] but not more than 500 grams of marijuana is guilty of a class B misdemeanor.
 - (c) More than 500 grams of marijuana is guilty of a class A misdemeanor.
 - (2) Tetrahydrocannabinol:
 - (a) In an amount less than two grams is guilty of an infraction.
 - (b) At least two grams but not more than six grams of tetrahydrocannabinol is guilty of a class B misdemeanor.
 - (c) More than six grams of tetrahydrocannabinol is guilty of a class A misdemeanor.
- e. If an individual is sentenced to the legal and physical custody of the department of corrections and rehabilitation under this subsection, the department may place the individual in a drug and alcohol treatment program designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the individual from imprisonment to begin any court-ordered period of probation.
- f. If the individual is not subject to any court-ordered probation, the court shall order the individual to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court.

- g. Probation under this subsection may include placement in another facility, treatment program, drug court, mental health court, or veterans treatment docket. If an individual is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.
 - h. An individual incarcerated under this subsection as a result of a second probation revocation is not eligible for release from imprisonment upon the successful completion of treatment.
 - i. A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or controlled substance analog is guilty of a class A misdemeanor.
8. Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. If ordered, the evaluation must be submitted to the court before imposing punishment for a felony violation or a misdemeanor violation.
 9. If a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana or two grams or less of tetrahydrocannabinol and a judgment of guilt is entered, a court, upon motion, shall seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this chapter. Once sealed, the court record may not be opened even by order of the court.
 10. Upon successful completion of a drug court program, mental health court program, or veterans treatment docket, a person who has been convicted of a felony under this section and sentenced to drug court, mental health court, or veterans treatment docket is deemed to have been convicted of a misdemeanor.
 11. If a person convicted of a misdemeanor under this section is sentenced to drug court, mental health court, or veterans treatment docket and successfully completes a drug court program, mental health court, or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2.
 12. If an individual under the age of twenty-one pleads guilty or is found guilty of a first offense regarding possession of one-half ounce [14.175 grams] or less of marijuana, the court also may sentence the individual to an evidence-based alcohol and drug education program operated under rules adopted by the department of human services under section 50-06-44. For a second or subsequent offense regarding possession of one-half ounce [14.175 grams] or less of marijuana, the court also shall sentence the individual to an evidence-based alcohol and drug education program operated under rules adopted by the department of health and human services under section 50-06-44.

⁸² **SECTION 3. AMENDMENT.** Section 39-08-01.5 of the North Dakota Century Code is amended and reenacted as follows:

39-08-01.5. Partial suspension of sentence for drug court program, mental health court program, or veterans treatment docket completion.

1. Notwithstanding section 39-08-01, all but ten days of the minimum mandatory sentence required for a defendant charged with a third or subsequent violation of section 39-08-01 may be suspended on the condition the defendant successfully completes a drug court program, mental health court program, or veterans treatment docket approved by the supreme court.
2. Upon successful completion of a drug court program, mental health court program, or veterans treatment docket, a defendant convicted of a felony under section 39-08-01 and sentenced to drug court, mental health court, or veterans treatment docket is deemed to have been convicted of a misdemeanor.
3. If a defendant convicted of a misdemeanor under section 39-08-01 is sentenced to drug court, mental health court, or veterans treatment docket and successfully completes a drug court program, mental health court, or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2.

Approved April 11, 2023

Filed April 12, 2023

⁸² Section 39-08-01.5 was also amended by section 1 of House Bill No. 1277, chapter 354.

CHAPTER 133

HOUSE BILL NO. 1490

(Representatives Ista, Hagert, Heinert, Louser, O'Brien, Schauer, Schreiber-Beck)
(Senator Dwyer)

AN ACT to amend and reenact section 12.1-32-07.4 of the North Dakota Century Code, relating to presumptive probation; to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-32-07.4 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-07.4. Presumptive probation.

1. The sentencing court shall sentence an individual who has pled guilty to, or has been found guilty of, a class C felony offense or class A misdemeanor offense to a term of probation at the time of initial sentencing, except for an offense involving domestic violence; an offense subject to registration under section 12.1-32-15; an offense involving a firearm or dangerous weapon, explosive, or incendiary device; or if a mandatory term of incarceration is required by law.
2. The sentencing court may impose a sentence of imprisonment if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. Aggravating factors include:
 - a. That the individual has plead guilty to, or has been found guilty of, a felony offense or class A misdemeanor offense prior to the date of the commission of the offense or offenses charged in the complaint, information, or indictment;
 - b. The age and vulnerability of the victim, whether the individual was in a position of responsibility or trust over the victim, or whether the individual abused a public position of responsibility or trust; or
 - c. If the individual used force, threats, or coercion in the commission of the offense.
3. This section does not preclude the sentencing court from deferring imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an individual to a term of incarceration with credit for time spent in custody if execution of the sentence is suspended.

SECTION 2. APPLICATION. This Act applies to criminal charges filed after the effective date of this Act.

Approved April 11, 2023

Filed April 12, 2023

CHAPTER 134

HOUSE BILL NO. 1041

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

AN ACT to amend and reenact section 12.1-32-08 of the North Dakota Century Code, relating to restitution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-32-08 of 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 - Collection of restitution for insufficient funds checks - Continuing appropriation.

- ~~1. Before 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 of restitution. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence the court may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property. In determining the amount of restitution, the court shall take into account the reasonable damages sustained by the victim or victims of the criminal offense, which damages are 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. The court shall fix the amount of restitution or reparation and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the 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 may, unless the court directs otherwise, be filed without filing fee, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced. Upon thirty days' written notice to the victim's last known address, the court may~~

order the judgment imposing a duty to pay restitution or reparation be docketed in the same manner as a civil judgment under section 29-26-22.1.

2. If the court has retained jurisdiction after the sentencing hearing for claims of restitution, to make a claim for restitution, the victim shall submit information by affidavit or declaration and, as applicable, documentary evidence within the time specified in the order. The information submitted must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and present facts and evidence sufficient to support a finding the restitution is directly related to the offense and the amount awarded. The prosecutor shall serve the defendant with a copy of the information submitted by the victim no later than sixty days following sentencing.
3. The defendant may challenge restitution but must do so by requesting a hearing within thirty days of being served with the written notification of the amount of restitution requested. The hearing request must be made in writing and filed with the court. If no hearing is requested, the court may enter a judgment ordering restitution. A defendant may not challenge restitution after the thirty-day time period has passed.
4. In determining the amount of restitution, the court shall take into account the reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually sustained 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. The court shall fix the amount of restitution or reparation and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court may order the defendant to disclose income and assets on forms developed by the state court administrator to facilitate the setting of an appropriate payment plan. The court shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay to the victim under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the order must be deducted from damages awarded in a civil action arising from the same incident.
5. An order that a defendant make restitution or reparation as a sentence or condition of probation, unless the court directs otherwise, may be filed without filing fee, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced. Upon thirty days' written notice to the victim's last known address, the court may order the judgment imposing a duty to pay restitution or reparation be docketed in the same manner as a civil judgment under section 29-26-22.1.
6. When the restitution ordered by the court under subsection 1 is the result of a finding that the defendant issued a check or draft without sufficient funds or without an account, the court shall impose as costs the greater of the sum of ten dollars or an amount equal to twenty-five percent of the amount of restitution ordered. The costs imposed under this subsection, however, may not exceed one thousand dollars. The state-employed clerks of district court

shall remit the funds collected as costs under this subsection to the state treasurer for deposit in the restitution collection assistance fund. The funds deposited into the restitution collection assistance fund are appropriated to the judicial branch on a continuing basis for the purpose of defraying expenses incident to the collection of restitution, including operating expenses and the compensation of additional necessary personnel. The state's attorneys and county-employed clerks of district court shall remit the funds collected as costs under this subsection to the county treasurer to be deposited in the county general fund.

- ~~3-7.~~ 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.
- ~~4-a-8.~~ Under section 12.1-32-07, the court may order that the defendant reimburse indigent defense costs and expenses as a condition of probation.
- ~~a.~~ Unless it finds that there is no likelihood that the defendant is or will be able to pay attorney's fees and expenses, the court, in its judgment of conviction, and in any order or amended judgment following a revocation or other postjudgment proceeding, shall notify the defendant, the defendant's probation officer, and the prosecuting attorney of the presumed amount of costs and expenses to be reimbursed, as determined by the commission on legal counsel for indigents, and of the right to a hearing on the reimbursement amount. The reimbursement amount must include an application fee imposed under section 29-07-01.1 if the fee has not been paid before disposition of the case and the court has not waived payment of the fee.
- ~~b.~~ If the defendant or prosecutor requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the actual amount of attorney's fees and expenses must be shown. 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-c.~~ 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.
- ~~e-d.~~ 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 6 or 7, as applicable, of section 12.1-32-07.
- ~~5-9.~~ 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 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 22, 2023

Filed March 23, 2023

CHAPTER 135

SENATE BILL NO. 2067

(Senator Larson)

AN ACT to amend and reenact section 12.1-34-07 of the North Dakota Century Code, relating to medical screening and acute forensic medical examination costs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-34-07 of the North Dakota Century Code is amended and reenacted as follows:

12.1-34-07. Medical screening and acute forensic medical examinations costs - Reimbursement by attorney general - Use of evidence.

1. An acute forensic medical examination is an examination performed on an alleged victim of criminal sexual conduct for the purpose of gathering evidence of an alleged crime and is performed within ninety-six hours after the alleged crime unless good cause is shown for the delay in performing the examination. When an acute forensic medical examination is performed, the costs incurred by a health care facility or health care professional for performing the acute forensic medical examination or any preliminary medical screening examination may not be charged, either directly or through a third-party payer, to the alleged victim.
2. A child forensic medical examination is an examination performed on an alleged child victim of criminal sexual conduct for the purpose of gathering evidence of an alleged crime. When a child forensic medical examination is performed, the costs incurred by a health care facility or health care professional for performing the child forensic medical examination or any preliminary medical screening examination may not be charged, either directly or through a third-party payer, to the alleged child victim or the child's parent, guardian, or custodian.
3. Upon submission of appropriate documentation, the attorney general, within the limits of legislative appropriations, shall reimburse the health care facility or a health care professional for the reasonable costs incurred in performing the medical screening and acute forensic medical examination. ~~Beginning on April first of the final year of each biennium, the~~ The attorney general, subject to legislative appropriations, shall reimburse each accredited children's advocacy center located in the state for a forensic interview that is not reimbursable by ~~insurance~~, Medicaid; or crime victims compensation.
4. Evidence obtained during a medical examination under this section may not be used against an alleged victim for the prosecution of the alleged victim for a separate offense.

Approved March 27, 2023

Filed March 28, 2023

CHAPTER 136

HOUSE BILL NO. 1254

(Representatives Tveit, D. Anderson, Bellew, Prichard, Rohr, VanWinkle)
(Senators Boehm, Clemens, Estenson, Luick, Myrdal, Vedaa)

AN ACT to create and enact chapter 12.1-36.1 of the North Dakota Century Code, relating to the prohibition of certain practices against a minor; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸³ **SECTION 1.** Chapter 12.1-36.1 of the North Dakota Century Code is created and enacted as follows:

12.1-36.1-01. Definitions.

As used in this chapter:

1. "Health care provider" means a licensed physician, physician assistant, nurse, or a certified medical assistant.
2. "Minor" means an individual under the age of eighteen. The term includes an emancipated individual.
3. "Sex" means the biological state of being female or male, based on the individual's nonambiguous sex organs, chromosomes, and endogenous hormone profiles at birth.

12.1-36.1-02. Perception of a minor's sex - Prohibited practices - Penalty.

1. Except as provided under section 12.1-36.1-03, if a minor's perception of the minor's sex is inconsistent with the minor's sex, a health care provider may not engage in any of the following practices for the purpose of changing or affirming the minor's perception of the minor's sex:
 - a. Perform castration, vasectomy, hysterectomy, oophorectomy, metoidioplasty, orchiectomy, penectomy, phalloplasty, or vaginoplasty;
 - b. Perform a mastectomy;
 - c. Prescribe, dispense, administer, or otherwise supply any drug that has the purpose of aligning the minor's sex with the minor's perception of the minor's sex when the perception is inconsistent with the minor's sex, including:
 - (1) Puberty-blocking medication to stop normal puberty;
 - (2) Supraphysiologic doses of testosterone to females; or

⁸³ Section 12.1-36.1-01 was amended by section 2 of House Bill No. 1474, chapter 66.

(3) Supraphysiologic doses of estrogen to males; or

d. Remove any otherwise healthy or nondiseased body part or tissue, except for a male circumcision.

2. A health care provider who willfully violates:

a. Subdivision a, b, or d of subsection 1 is guilty of a class B felony.

b. Subdivision c of subsection 1 is guilty of a class A misdemeanor.

12.1-36.1-03. Exceptions.

Section 12.1-36.1-02 does not apply:

1. To the good-faith medical decision of a parent or guardian of a minor born with a medically verifiable genetic disorder of sex development, including:

a. A minor with external biological sex characteristics that are irresolvably ambiguous, including having forty-six, XX chromosomes with virilization, forty-six, XY chromosomes with undervirilization, or having both ovarian and testicular tissue; or

b. When a physician otherwise has diagnosed a disorder of sexual development in which the physician, through genetic testing, has determined the minor does not have the normal sex chromosome structure for a male or female; or

2. If performance or administration of the medical procedure on the minor began before the effective date of this Act.

12.1-36.1-04. Statutory limitation.

Notwithstanding the limitations of section 29-04-02, prosecution for a violation of section 12.1-36.1-02 must be commenced within three years of the date of the offense or within three years after the offense is reported to law enforcement, whichever is later.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 19, 2023

Filed April 21, 2023