

CRIMINAL CODE

CHAPTER 124

SENATE BILL NO. 2264

(Senator W. Stenehjem)

(Representative Wilkie)

CRIMINAL STREET GANGS

AN ACT to create and enact a new chapter to title 12.1, a new subsection to section 12.1-34-02, a new section to chapter 26.1-40, four new sections to chapter 27-20, a new subsection to section 27-20-31, and a new section to chapter 39-06 of the North Dakota Century Code, relating to criminal street gangs and street crime, fair treatment of victims and witnesses in juvenile court proceedings, a juvenile's suspension of driving privileges, suspension of driving privileges by delinquent children, juvenile court's exercise of contempt authority over parents ordered to participate in the treatment of a child, authority of the juvenile court to order the parents of a juvenile adjudicated delinquent to make restitution to the victim, disclosure of identifying information about a juvenile, disposition of a delinquent child, and a juvenile delinquent's suspension of driving privileges; to amend and reenact subsections 1 and 2 of section 12.1-06.1-01, sections 12.1-06.1-02 and 12.1-06.1-03, subsection 1 of section 12.1-32-02, subsection 5 of section 27-20-02, sections 27-20-26, 27-20-34, 27-20-51, 27-20-52, 27-20-53, and 62.1-02-01 of the North Dakota Century Code, relating to criminal associations and racketeering, leading a criminal association, illegal control of an enterprise, sentencing alternatives, definition of a deprived child, right to counsel for juveniles under the Uniform Juvenile Court Act, transfer of juveniles to other courts, inspection of court files and records, law enforcement records, fingerprinting and photographing of juveniles, and possession of firearms; to repeal section 29-01-28 of the North Dakota Century Code, relating to exclusion of spectators from trials of minors; and to provide a penalty.

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, the term:

1. "Crime of pecuniary gain" means any violation of state law that directly results or was intended to result in the defendant alone, or in association with others, receiving income, benefit, property, money, or anything of value.
2. "Crime of violence" means any violation of state law where a person purposely or knowingly causes or threatens to cause death or physical bodily injury to another person or persons.

3. "Criminal street gang" means any ongoing organization or group of three or more persons, whether formal or informal, that acts in concert or agrees to act in concert with a purpose that any of those persons alone or in any combination commit or will commit two or more predicate gang crimes one of which occurs after the date of enactment of this Act and the last of which occurred within five years after the commission of a prior predicate gang crime.
4. "Participate in a criminal street gang" means to act in concert with a criminal street gang with intent to commit or with the intent that any other person associated with the criminal street gang will commit one or more predicate gang crimes.
5. "Predicate gang crime" means the commission, attempted commission, or solicitation of any felony, misdemeanor crime of violence, or misdemeanor crime of pecuniary gain.

Criminal street gang crime - Penalty. Any person who commits a felony or class A misdemeanor crime of violence or crime of pecuniary gain for the benefit of, at the direction of, or in association with any criminal street gang, with the intent to promote, further, or assist in the affairs of a criminal gang, or obtain membership into a criminal gang, is guilty of a class C felony.

Encouraging minors to participate in criminal street gang - Penalty.

1. Any person eighteen years of age or older who knowingly or willfully causes, aids, abets, encourages, solicits, or recruits a person under the age of eighteen years to participate in a criminal street gang is upon conviction guilty of a class C felony.
2. Nothing in this section may be construed to limit prosecution under any other provision of law.

Local ordinances not preempted. Nothing in this chapter may be construed as preventing a local governing body from adopting and enforcing ordinances relating to gangs and gang-related violence.

SECTION 2. AMENDMENT. Subsections 1 and 2 of section 12.1-06.1-01 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. For the purpose of section 12.1-06.1-02:
 - a. "Combination" means persons who collaborate in carrying on or furthering the activities or purposes of a criminal ~~syndicate~~ association even though such persons may not know each other's identity or membership in the combination may change from time to time or one or more members may stand in a wholesaler-retailer or other arm's length relationship with others as to activities or dealings between or among themselves in an illicit operation.
 - b. "Criminal ~~syndicate~~ association" means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct which violates any one or more provisions of any felony statute of this state.

2. For the purposes of sections 12.1-06.1-03 through 12.1-06.1-07, unless the context otherwise requires:
- a. "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.
 - b. "Enterprise" means any corporation, limited liability company, association, labor union, or other legal entity or any group of persons associated in fact although not a legal entity.
 - c. "Financial institution" means any bank, trust company, savings and loan association, credit union, or money lender under the jurisdiction of the state department of banking and financial institutions or its commissioner, or the state banking board, or the state credit union board.
 - d. "Pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after July 8, 1987, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity.
 - e. "Racketeering" means any act including any criminal attempt, facilitation, solicitation, or conspiracy, committed for financial gain, which is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable by imprisonment for more than one year, regardless of whether such act is charged or indicted, involving:
 - (1) Homicide.
 - (2) Robbery.
 - (3) Kidnapping.
 - (4) Forgery.
 - (5) Theft.
 - (6) Bribery.
 - (7) Gambling.
 - (8) Usury.
 - (9) Extortion.
 - (10) ~~Dealing in narcotic drugs or dangerous drugs.~~ Unlawful delivery of controlled substances.
 - (11) Trafficking in explosives, weapons, or stolen property.
 - (12) Leading ~~organized crime~~ a criminal association.

- (13) Obstructing or hindering criminal investigations or prosecutions.
- (14) Asserting false claims including, but not limited to, false claims asserted through fraud or arson.
- (15) Fraud.
- (16) Sale of unregistered securities or real property securities and transactions involving such securities by unregistered dealers or salesmen.
- (17) Obscenity.
- (18) Child pornography.
- (19) Prostitution.

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

SECTION 3. AMENDMENT. Section 12.1-06.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-06.1-02. Leading ~~organized crime~~ a criminal association - Classification.

1. A person ~~commits leading organized crime~~ is guilty of an offense by any of the following:
 - a. Intentionally organizing, managing, directing, supervising, or financing a criminal ~~syndicate~~ association.
 - b. Knowingly inciting or inducing others to engage in violence or intimidation to promote or further the criminal objectives of a criminal ~~syndicate~~ association.
 - c. ~~Furnishing~~ Willfully furnishing advice, assistance, or direction in the conduct, financing, or management of a criminal ~~syndicate's~~ association's affairs with the intent to promote or further the criminal objectives of a ~~syndicate~~ criminal association.
 - d. Intentionally promoting or furthering the criminal objectives of a ~~syndicate~~ criminal association by inducing or committing any act or omission by a public servant in violation of ~~his~~ official duty.
2. No person shall be convicted pursuant to this section on the basis of accountability as an accomplice unless ~~he~~ that person aids or participates in violating this section in one of the ways specified.
3. Leading organized crime is a class B felony.

SECTION 4. AMENDMENT. Section 12.1-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-06.1-03. Illegal control of an enterprise - Illegally conducting an enterprise.

1. A person is in illegal control of an enterprise guilty of an offense if such person, through a pattern of racketeering activity or its proceeds, acquires or maintains, by investment or otherwise, control of any enterprise.
2. A person is illegally conducting an enterprise guilty of an offense if the person is employed or associated with any enterprise and conducts or participates in the conduct of that enterprise's affairs through a pattern of racketeering activity.
3. A knowing violation of this section is a class B felony.

⁶² SECTION 5. AMENDMENT. Subsection 1 of section 12.1-32-02 of the 1993 Supplement to 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, a regional corrections center, a county jail, or in the Missouri River correctional center in accordance with section 12-51-07, 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 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.
 - d. A fine.
 - e. Restitution for damages resulting from the commission of the offense.

⁶² Section 12.1-32-02 was also amended by section 3 of House Bill No. 1218, chapter 136, and section 17 of House Bill No. 1027, chapter 120.

- 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.

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 must not be construed as not permitting 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.

SECTION 6. A new subsection to section 12.1-34-02 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Victims and witnesses of crimes committed by juveniles are entitled to the same rights under this chapter in juvenile delinquency proceedings as in any other proceeding. In addition, every victim or a witness who is a minor is entitled to have that person's spouse, parent, guardian, and no more than two other designated adults present with that person during any juvenile delinquency proceedings.

SECTION 7. A new section to chapter 26.1-40 of the North Dakota Century Code is created and enacted as follows:

Juvenile's suspension of driving privileges - Nontraffic delinquent conduct. Insurers are prohibited from using or relying on a nontraffic delinquent juvenile's suspension of driving privileges under section 9 of this Act as a reason for canceling, denying, or nonrenewing the automobile insurance policy of the nontraffic delinquent juvenile offender or the parents of the nontraffic delinquent juvenile offender.

⁶³ **SECTION 8. AMENDMENT.** Subsection 5 of section 27-20-02 of the North Dakota Century Code is amended and reenacted as follows:

- 5. "Deprived child" means a child who:
 - a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;
 - b. Has been placed for care or adoption in violation of law;
 - c. Has been abandoned by the child's parents, guardian, or other custodian; ~~or~~

⁶³ Section 27-20-02 was also amended by section 1 of House Bill No. 1151, chapter 299.

- d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent; or
- e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court.

SECTION 9. A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Delinquent children - Suspension of driving privileges.

1. If a juvenile is adjudicated delinquent of an offense that would be a class A misdemeanor or a felony if the offense were committed by an adult, the juvenile court may order the suspension of the juvenile's driving privileges for a period of up to six months for the first offense. For a second or subsequent offense, the juvenile court may order the suspension of the juvenile's driving privileges for up to one year. As a condition to the return of driving privileges, the juvenile court may order the successful completion of an appropriate driver's examination.
2. When the juvenile court orders the suspension of a juvenile's driving privileges, the juvenile court shall immediately take possession of the juvenile's driver's license or permit and send copies of the court's order to the director of the department of transportation who shall make notation of the juvenile's suspension of driving privileges.
3. The record of the juvenile's suspension of driving privileges under this section must be kept confidential and may not be released except to law enforcement personnel in connection with law enforcement activities. The record of a juvenile's suspension of driving privileges under this section may not be disclosed to or shared with the licensing officials of any other state or jurisdiction. At the end of the six-month or one-year period, the director shall remove and destroy all record of the juvenile's suspension of driving privileges under this section.
4. This section may not be construed to limit consensual agreements between the juvenile court and the juvenile restricting the driving privileges of the juvenile.

SECTION 10. A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Orders directed to parents or guardians. It is the policy of this state that every parent or guardian has an obligation to participate in any treatment of the parent's or guardian's child as ordered by the juvenile court. The juvenile court may hold any parent or guardian who willfully fails to participate in the treatment in contempt of court.

SECTION 11. A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Restitution.

1. a. In addition to a child being ordered to make restitution under section 27-20-31, a parent of a child adjudged delinquent may be ordered to make restitution on the child's behalf in an amount not exceeding five thousand dollars.
 - b. Prior to ordering parental restitution under this section, the court shall hold a hearing on the matter with notice given to all interested parties as to the nature and amount of the parental restitution. In determining whether to order parental restitution, the court must take the following factors into account:
 - (1) The ability of the parent or parents to pay monetary restitution and the care and control exercised by the parents.
 - (2) The ability of the child to pay monetary restitution.
 - (3) Whether ordering parental restitution would detract from the child's treatment, rehabilitation, or welfare.
 - (4) The number of delinquent acts, if any, previously committed by the child.
 - c. A parental order of restitution must be limited to those damages directly related to the delinquent act and expenses actually incurred as a result of the delinquent act.
2. Unless the court directs otherwise, any order of restitution under this section or section 27-20-31 may be filed, transcribed, and enforced by the person entitled to the restitution in the same manner as civil judgments rendered by the courts of this state may be enforced. A child against whose parents a judgment may be entered under this section is jointly and severally liable with that child's parents for the amounts up to five thousand dollars and solely liable for any amounts over that amount. Any judgment rendered under this section may not be discharged in bankruptcy and is not subject to the statutes of limitation provided for in chapter 28-01 and the judgment may not be canceled under section 28-20-35.

SECTION 12. A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Disclosure of information needed to apprehend juvenile. Notwithstanding any other provision of law, the name, photographs, fingerprints, or other identifying information of a juvenile who is alleged to have committed a delinquent act involving actual or threat of serious bodily injury that would constitute a felony if committed by an adult or who has escaped or left without authorization from a secure facility may be released by law enforcement or the juvenile court for purposes of apprehending the juvenile.

SECTION 13. AMENDMENT. Section 27-20-26 of the North Dakota Century Code is amended and reenacted as follows:

27-20-26. Right to counsel.

1. Except as otherwise provided under this chapter, a party is entitled to representation by legal counsel at ~~all~~ custodial, post-petition, and informal adjustment stages of ~~any~~ proceedings under this chapter and, if as a needy person ~~he~~ the party is unable to employ counsel, to have the court provide counsel for ~~him~~ the party. If a party appears without counsel the court shall ascertain whether ~~he~~ the party knows of ~~his~~ the party's right ~~thereto~~ to counsel and to be provided with counsel by the court if ~~he~~ the party is a needy person. The court may continue the proceeding to enable a party to obtain counsel and shall provide counsel for an unrepresented needy person upon ~~his~~ the person's request. Counsel must be provided for a child not represented by ~~his~~ the child's parent, guardian, or custodian at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. If the interests of two or more parties conflict, separate counsel must be provided for each of them.
2. A needy person is one who at the time of requesting counsel is unable, without undue financial hardship, to provide for full payment of legal counsel and all other necessary expenses for representation. A child is not to be considered needy under this section if ~~his~~ the child's parents or parent can, without undue financial hardship, provide full payment for legal counsel and other expenses of representation. Any parent entitled to the custody of a child involved in a proceeding under this chapter is, unless undue financial hardship would ensue, responsible for providing legal counsel and for paying other necessary expenses of representation for their child. The court may enforce performance of this duty by appropriate order. As used in this subsection, the word "parent" includes adoptive parents.

⁶⁴ SECTION 14. A new subsection to section 27-20-31 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Under section 9 of this Act, order the driver's license or permit of the child be delivered to the juvenile supervisor, probation officer, or other appropriate officer of the court and to inform the director of the department of transportation of the child's suspension of driving privileges and the duration of the suspension of privileges.

SECTION 15. AMENDMENT. Section 27-20-34 of the North Dakota Century Code is amended and reenacted as follows:

27-20-34. Transfer to other courts.

1. After a petition has been filed alleging delinquency based on conduct which is designated a crime or public offense under the laws, including local ordinances or resolutions of this state, the court before hearing the petition on its merits ~~may~~ shall transfer the offense for prosecution to the appropriate court having jurisdiction of the offense if:

⁶⁴ Section 27-20-31 was also amended by section 19 of House Bill No. 1027, chapter 120.

- a. The child is over sixteen or more years of age and requests the transfer; ~~or~~
- b. The child was fourteen years of age or more at the time of the alleged conduct and the court determines that there is probable cause to believe the child committed the alleged delinquent act and the delinquent act involves the offense of murder or attempted murder; gross sexual imposition or the attempted gross sexual imposition of a victim by force or by threat of imminent death, serious bodily injury, or kidnapping; or
 - c. (1) The child was fourteen or more years of age at the time of the alleged conduct;
 - (2) A hearing on whether the transfer should be made is held in conformity with sections 27-20-24, 27-20-26, and 27-20-27;
 - (3) Notice in writing of the time, place, and purpose of the hearing is given to the child and ~~his~~ the child's parents, guardian, or other custodian at least three days before the hearing; and
 - (4) The court finds that there are reasonable grounds to believe that:
 - (a) The child committed the delinquent act alleged;
 - (b) The child is not amenable to treatment or rehabilitation as a juvenile through available programs;
 - (c) The child is not treatable in an institution for the mentally retarded or mentally ill;
 - (d) The interests of the community require that the child be placed under legal restraint or discipline; and
 - (e) If the child is fourteen or fifteen years old, the child committed a delinquent act involving the infliction or threat of serious bodily harm.
2. The burden of proving reasonable grounds to believe that a child is amenable to treatment or rehabilitation as a juvenile through available programs is on the child in those cases in which the alleged delinquent act involves the offense of manslaughter, aggravated assault, robbery, arson involving an inhabited structure, or escape involving the use of a firearm, destructive device, or other dangerous weapon or in those cases where the alleged delinquent act involves an offense which if committed by an adult would be a felony and the child has two or more previous delinquency adjudications for offenses which would be a felony if committed by an adult.
3. In determining a child's amenability to treatment and rehabilitation, the court shall consider and make specific findings on the following factors:
 - a. Age;

- b. Mental capacity;
 - c. Maturity;
 - d. Degree of criminal sophistication exhibited;
 - e. Previous record;
 - f. Success or failure of previous attempts to rehabilitate;
 - g. Whether the juvenile can be rehabilitated prior to expiration of juvenile court jurisdiction;
 - h. Any psychological, probation, or institutional reports;
 - i. The nature and circumstances of the acts for which the transfer is sought;
 - j. The prospect for adequate protection of the public; and
 - k. Any other relevant factors.
4. The transfer terminates the jurisdiction of the juvenile court over the child with respect to the delinquent acts alleged in the petition. In addition, any transfer under subdivisions b or c of subsection 1 operates to terminate the juvenile court's jurisdiction over the child with respect to any future offense if the child is ultimately convicted of the offense giving rise to the transfer.
- 3- 5. No child subject to the jurisdiction of the juvenile court, either before or after reaching eighteen years of age, may be prosecuted for an offense previously committed unless the case has been transferred as provided in this section.
- 4- 6. Statements made by the child at the hearing under this section are not admissible against ~~him~~ the child over objection in the criminal proceedings following the transfer except for impeachment.
- 5- 7. If the case is not transferred, the judge who conducted the hearing may not over objection of an interested party preside at the hearing on the petition. If the case is transferred to a court of which the judge who conducted the hearing is also a judge, ~~he~~ the judge likewise is disqualified over objection from presiding in the prosecution.

⁶⁵ SECTION 16. AMENDMENT. Section 27-20-51 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-51. Inspection of court files and records.

⁶⁵ Section 27-20-51 was also amended by section 1 of Senate Bill No. 2093, chapter 303, and section 1 of Senate Bill No. 2090, chapter 304.

1. Except as provided in ~~subsection 2~~ this section, all files and records of the juvenile court, whether in the office of the clerk of district court or juvenile court, of a proceeding under this chapter are ~~confidential and may not be disclosed~~ closed to the public. Such files and records are open to inspection only by:
 - a. The judge and staff of the juvenile court.
 - b. The parties to the proceeding or their counsel or guardian ad litem of any party.
 - c. A public or private agency or institution providing supervision or having custody of the child under order of the juvenile court, which must be given a copy of the findings and order of disposition when it receives custody of the child.
 - d. Any court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to the proceeding in juvenile court.
 - e. The professional staff of the uniform crime victims reparations program when necessary for the discharge of their duties pursuant to chapter 54-23.4.
2. Such files and records are also open to inspection with written leave of a juvenile court judge or judicial referee to whom juvenile court matters have been referred:
 - a. Upon a showing in writing of a legitimate interest in a proceeding or in the work of the juvenile court, but only to the extent necessary to respond to the legitimate interest; and
 - b. By the principal of any public or private school that is a member of the North Dakota high school activities association, or the superintendent of any school district that has one or more schools involved in the association, but only to the extent necessary to enforce the rules and regulations of the North Dakota high school activities association.
3. In a proceeding under this chapter, if the juvenile court finds that a child committed a delinquent or unruly act which constitutes a violation of a law or local ordinance governing the operation of a motor vehicle or a delinquent act of manslaughter or negligent homicide caused by the child's operation of a motor vehicle, the juvenile court shall, within ten days, report the finding to the director of the department of transportation.
4. Following an adjudication of delinquency for an offense that would be a felony if committed by an adult, the juvenile's school principal, chief administrative officer, or designated school guidance counselor, if requested, must be allowed access to the disposition order.
5. Following an adjudication of delinquency for an offense that results in the prohibitions included in subsection 1 or 2 of section 62.1-02-01, if

requested, a law enforcement officer must be allowed access to the disposition order.

6. Notwithstanding that juvenile court records are closed to the public, nothing in this section may be construed to limit the release of general information upon request not identifying the identity of any juvenile, witness, or victim in any proceeding under this chapter. However, upon a third adjudication of delinquency involving an offense which if committed by an adult would constitute a felony and upon a second adjudication of delinquency involving an offense defined in sections 12.1-20-03, 12.1-20-04, or 12.1-20-07, the name of the juvenile adjudicated delinquent may be disclosed.

SECTION 17. AMENDMENT. Section 27-20-52 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. A juvenile court having the child before it in any proceeding;
2. Counsel for a party to the proceeding;
3. The officers of public institutions or agencies to whom the child is committed;
4. Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties;
5. A court in which ~~he~~ the child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which ~~he~~ the child is committed, or by a parole or pardon board in considering ~~his~~ the child's parole or discharge or in exercising supervision over ~~him~~ the child; and
6. The professional staff of the uniform crime victims reparations program when necessary for the discharge of their duties pursuant to chapter 54-23.4.

Notwithstanding that law enforcement records concerning a child are not open to public inspection, nothing in this section may be construed to limit the release of general information not identifying the identity of the child.

SECTION 18. AMENDMENT. Section 27-20-53 of the North Dakota Century Code is amended and reenacted as follows:

27-20-53. Children's fingerprints, photographs.

1. No child under fourteen years of age may be fingerprinted in the investigation of a crime except as provided in this section. Fingerprints

of a child ~~fourteen or more years of age~~ who is referred to the court may be taken and filed by law enforcement officers in investigating the commission of the following crimes: murder, manslaughter, gross sexual imposition, robbery, aggravated assault, burglary, ~~and theft, forgery, and unlawful possession or use of a handgun.~~

2. Fingerprint files of children must be kept separate from those of adults. Copies of fingerprints known to be those of a child ~~must be maintained on a local basis only and not sent to a central state or~~ may be maintained locally and copies may be sent to a central state depository but may not be sent to a federal depository unless needed in the interest of national security.
3. Fingerprint files of children may be inspected by law enforcement officers when necessary for the discharge of their official duties. Other inspections may be authorized by the court in individual cases upon a showing that it is necessary in the public interest.
4. Fingerprints of a child ~~must be considered a part of the child's juvenile or adult investigative file and must be removed from the file state and local files and destroyed if:~~
 - a. ~~A petition alleging delinquency is not filed, or the proceedings are dismissed after either a petition is filed or the case is transferred to the juvenile court as provided in section 27-20-09, or the child is adjudicated not to be a delinquent child; or~~
 - b. ~~The child reaches eighteen years of age and there is no record that he committed a criminal offense after reaching sixteen years of age in accordance with section 27-20-54.~~
5. If latent fingerprints are found during the investigation of an offense and a law enforcement officer has probable cause to believe that they are those of a particular child, ~~he the officer~~ may fingerprint the child regardless of age or offense for purposes of immediate comparison with the latent fingerprints. If the comparison is negative, the fingerprint card and other copies of the fingerprints taken must be immediately destroyed. ~~If the comparison is positive and the child is referred to the court, the fingerprint card and other copies of the fingerprints taken must be delivered to the court for disposition.~~ If the child is not referred to the court, the fingerprints must be immediately destroyed.
6. ~~Without the consent of the judge, a~~ A child may not be photographed after he is taken into custody ~~unless the case is transferred to another court for prosecution:~~ by a law enforcement officer at the time of arrest for the crimes of murder, manslaughter, gross sexual imposition, robbery, aggravated assault, burglary, theft, forgery, or unlawful possession or use of a handgun. The photograph must be destroyed if the child is not referred to the juvenile court. If a court finds facts that would justify a finding that a child at least fourteen years of age at the time of the offense is delinquent and the finding involves the unlawful use or possession of a handgun or the commission of an act proscribed by the criminal laws of this state and punishable as a felony or a class A misdemeanor committed for the benefit of, at the direction of, or in association or affiliation with any criminal street gang, with the intent to promote, further, or assist in the activities of a criminal gang, the

juvenile court shall order upon the request of the state's attorney the taking and retention of a photograph of the child for purposes of identification. Photographs of children under this subsection may be maintained on a local basis and sent to a central state depository but must be maintained separate from those of adults and must be destroyed in accordance with section 27-20-54.

SECTION 19. A new section to chapter 39-06 of the North Dakota Century Code is created and enacted as follows:

Juvenile delinquent's suspension of driving privileges. Upon receipt of a copy of an order of a juvenile court ordering the suspension of a juvenile's driving privileges, the director shall suspend the juvenile's driver's license or permit and make notation of the length of time of the suspension of driving privileges. During the time of the juvenile's suspension of driving privileges, no application for a driver's permit may be accepted from the juvenile.

SECTION 20. AMENDMENT. Section 62.1-02-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

62.1-02-01. Who not to possess firearms - Penalty.

1. A person who has been convicted anywhere for a felony involving violence or intimidation, as defined in chapters 12.1-16 through 12.1-25, 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 release from incarceration or probation, whichever is the latter.
2. A person who has been convicted of any felony not provided for in subsection 1 or has been convicted of a class A misdemeanor involving violence or intimidation and that crime was committed while using or possessing a firearm or dangerous weapon, as defined in chapters 12.1-16 through 12.1-25, 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 release from incarceration or probation, whichever is the latter.
3. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in North Dakota or elsewhere by a court of competent jurisdiction, as a mentally ill person as defined in section 25-03.1-02, or as a mentally deficient person as defined in section 25-01-01, 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.
4. A person under the age of eighteen years may not possess a handgun except that such a person may, while under the direct supervision of an adult, possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

A person who violates subsection 1 or 2 is guilty of a class C felony, and a person who violates subsection 3 or 4 is guilty of a class A misdemeanor. For the purposes of this section, "conviction" means determination by a jury or court that a person committed one of the above-mentioned crimes even though the court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02 or

deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02, placed the defendant on probation, granted a conditional discharge in accordance with section 19-03.1-30, ~~or~~ the defendant's conviction has been reduced in accordance with subsection 10 of section 12.1-32-02 or section 12.1-32-07.1, or a determination under chapter 27-20 that the person committed a delinquent act equivalent to the offenses provided in subsection 1 or 2.

SECTION 21. REPEAL. Section 29-01-28 of the North Dakota Century Code is repealed.

Approved April 18, 1995
Filed April 18, 1995

CHAPTER 125**SENATE BILL NO. 2130**

(Judiciary Committee)

(At the request of State Radio Communications)

HARASSING 911 EMERGENCY TELEPHONE CALLS

AN ACT to amend and reenact section 12.1-17-07 of the North Dakota Century Code, relating to annoying or harassing emergency telephone calls; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-17-07 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-07. Harassment.

1. A person is guilty of an offense if, with intent to frighten or harass another, he:
 - a. Communicates in writing or by telephone a threat to inflict injury on any person, to any person's reputation, or to any property;
 - b. Makes a telephone call anonymously or in offensively coarse language;
 - c. Makes repeated telephone calls, whether or not a conversation ensues, with no purpose of legitimate communication; or
 - d. Communicates a falsehood in writing or by telephone and causes mental anguish.
2. The offense is a class A misdemeanor if it is under subdivision a of subsection 1 or subsection 4. Otherwise it is a class B misdemeanor.
3. Any offense defined herein and committed by use of a telephone may be deemed to have been committed at either the place at which the telephone call or calls were made, or at the place where the telephone call or calls were received.
4. A person who telephones a 911 emergency line with the intent to annoy or harass another person or who makes a false 911 report is guilty of a class A misdemeanor.
 - a. Intent to annoy or harass is established by proof of one or more calls with no legitimate 911 purpose.
 - b. Upon conviction of a violation of this subsection, a person is also liable for all costs incurred by any unnecessary emergency response.

Approved March 17, 1995

Filed March 20, 1995

CHAPTER 126**HOUSE BILL NO. 1371**

(Representatives Carlisle, D. Henegar)
(Senators W. Stenehjem, DeMers, Heinrich)

STALKING

AN ACT to amend and reenact subsection 1 of section 12.1-17-07.1 of the North Dakota Century Code, relating to stalking.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-17-07.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. As used in this section:

- a. "Course of conduct" means a pattern of conduct consisting of two or more acts evidencing a continuity of purpose. The term does not include constitutionally protected activity.
- b. "Immediate family" means a spouse, parent, child, or sibling. The term also includes any other individual who regularly resides in the household or who within the prior six months regularly resided in the household.
- c. "Stalk" means to engage in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person, and ~~which~~ that serves no legitimate purpose. The course of conduct may be directed toward that person or a member of that person's immediate family and must be such as would cause a reasonable person to experience fear, intimidation, or harassment.

Approved March 15, 1995
Filed March 15, 1995

CHAPTER 127**HOUSE BILL NO. 1334**

(Representatives Christopherson, K. Henegar, Rydell, Aarsvold)
(Senators Solberg, O'Connell)

POLICE DOGS

AN ACT relating to the killing or injury of certified, law enforcement support dogs; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Killing or injury of certified, law enforcement support dog - Definition - Penalty. A person is guilty of a class A misdemeanor and is subject to a civil penalty up to ten thousand dollars if that person willfully and unjustifiably kills, shoots, tortures, torments, beats, kicks, strikes, mutilates, disables, or otherwise injures a certified, law enforcement support dog. For purposes of this section, "certified, law enforcement support dog" means any dog used by a law enforcement officer in the performance of the officer's functions and duties, regardless of whether the dog is on or off duty. This section does not apply to a law enforcement officer or a veterinarian who terminates the life of a certified, law enforcement support dog to relieve the dog of undue suffering and pain.

Approved March 24, 1995

Filed March 27, 1995

CHAPTER 128**SENATE BILL NO. 2315**

(Senators Robinson, Nalewaja, St. Aubyn)
(Representatives Stenehjem, Svedjan, Wentz)

HAZING

AN ACT to provide a penalty for hazing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Hazing - Penalty. A person is guilty of an offense when, in the course of another person's initiation into or affiliation with any organization, the person willfully engages in conduct that creates a substantial risk of physical injury to that other person or a third person. As used in this section, "conduct" means any treatment or forced physical activity that is likely to adversely affect the physical health or safety of that other person or a third person, or which subjects that other person or third person to extreme mental stress, and may include extended deprivation of sleep or rest or extended isolation, whipping, beating, branding, forced calisthenics, overexposure to the weather, and forced consumption of any food, liquor, beverage, drug, or other substance. The offense is a class A misdemeanor if the actor's conduct causes physical injury, otherwise the offense is a class B misdemeanor.

Approved March 24, 1995

Filed March 27, 1995

CHAPTER 129**SENATE BILL NO. 2382**

(Senator W. Stenehjerm)
(Representative Delmore)

SEXUAL EXPLOITATION BY THERAPIST

AN ACT to amend and reenact section 12.1-20-06.1 of the North Dakota Century Code, relating to sexual exploitation by a therapist.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-20-06.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-20-06.1. Sexual exploitation by therapist - Definitions - Penalty. Any person who is or who holds oneself out to be a therapist and who intentionally has sexual contact, as defined in section 12.1-20-02, with a patient or client during any treatment, consultation, interview, or examination is guilty of a class C felony. Consent by the complainant is not a defense under this section. A complaint of a violation of this section may be made to the police department of the city in which the violation occurred, the sheriff of the county in which the violation occurred, or the bureau of criminal investigation. Local law enforcement agencies and the bureau of criminal investigation shall cooperate in investigations of violations of this section. As used in this section, unless the context or subject matter otherwise requires:

1. "Psychotherapy" means the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction.
2. "Therapist" means a physician, psychologist, psychiatrist, social worker, nurse, chemical dependency counselor, member of the clergy, or other person, whether licensed or not by the state, who performs or purports to perform psychotherapy.

Approved March 27, 1995
Filed March 28, 1995

CHAPTER 130

HOUSE BILL NO. 1077
(Representatives Rennerfeldt, Kretschmar)
(Senator Traynor)

UNLAWFUL ENTRY OF VEHICLE

AN ACT to amend and reenact section 12.1-22-04 of the North Dakota Century Code, relating to unlawful entry into a vehicle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-22-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-22-04. ~~Breaking~~ Unlawful entry into or concealment within a vehicle.

1. A person is guilty of an offense if, knowing that ~~he~~ the person is not licensed or privileged to do so, ~~he breaks into~~ the person:
 - a. Forcibly enters a vehicle, vessel, or aircraft; ~~or~~;
 - b. Enters a vehicle, vessel, or aircraft, without the use of force, with intent to commit a crime; or
 - c. Enters a vehicle, vessel, or aircraft lawfully, and with the intent to commit a crime, conceals himself therein oneself in the vehicle, vessel, or aircraft.
2. The offense is a class B felony if the actor is armed with a firearm, destructive device, or other weapon the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury. Otherwise ~~it~~ the offense is a class C felony.

Approved March 21, 1995

Filed March 21, 1995

CHAPTER 131**HOUSE BILL NO. 1436**
(Representatives Mickelson, Kelsch)**THEFT OF CREDIT OR DEBIT CARDS**

AN ACT to create and enact a new subdivision to subsection 2 of section 12.1-23-05 of the North Dakota Century Code, relating to theft offenses that are class C felonies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 2 of section 12.1-23-05 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

The property stolen is a card, plate, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit, or is a debit card, electronic fund transfer card, code, or other means of access to an account for the purposes of initiating electronic fund transfers;

Approved April 7, 1995
Filed April 7, 1995

CHAPTER 132

SENATE BILL NO. 2087

(Senators Nalewaja, Lee, Robinson)
(Representatives Byerly, Thoreson, Wald)

FAILURE TO CARE FOR ELDERLY ADULT

AN ACT to amend and reenact section 12.1-31-07 of the North Dakota Century Code, relating to the penalty for failure to care for a vulnerable elderly adult.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-31-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

- a. "Caregiver" means a person who is responsible for the care of ~~an~~ a vulnerable elderly adult as a result of a familial or legal relationship, or a person who has assumed responsibility for the care of ~~an~~ a vulnerable elderly adult. The term does not include a licensed health care provider who is acting within the provider's legal scope of practice in providing appropriate care or assistance to a vulnerable elderly adult who is the patient or client of the licensed health care provider.
 - b. "~~Elderly~~ Vulnerable elderly adult" means a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that the person is incapable of adequately providing for the person's own health or personal care.
2. Except as provided for by chapters 23-06.4, 23-06.5, and 30.1-30, a caregiver who knowingly performs an act that causes ~~an~~ a vulnerable elderly adult's life to be endangered, health to be injured, or preexisting physical or mental condition to deteriorate, or a caregiver who fails to perform acts that the caregiver knows are necessary to maintain or preserve the life or health of the vulnerable elderly adult and ~~such~~ the failure causes the vulnerable elderly adult's life to be endangered, health to be injured, or preexisting physical or mental condition to deteriorate, is guilty of a class ~~A misdemeanor~~ C felony.

Approved April 12, 1995
Filed April 13, 1995

CHAPTER 133**HOUSE BILL NO. 1372**

(Representatives Carlisle, D. Henegar)
(Senators W. Stenejem, DeMers, Heinrich)

RESTRAINING ORDER FEES AND DURATION

AN ACT to create and enact a new subsection to section 12.1-31.2-01 of the North Dakota Century Code, relating to fees for a disorderly conduct restraining order; and to amend and reenact subsection 4 of section 12.1-31.2-01 of the North Dakota Century Code, relating to a temporary restraining order.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-31.2-01 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Fees for filing and service of process may not be charged to the petitioner in any proceeding seeking relief due to domestic violence under chapter 12.1-31.2.

SECTION 2. AMENDMENT. Subsection 4 of section 12.1-31.2-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. If the petition for relief alleges reasonable grounds to believe that an individual has engaged in disorderly conduct, the court, pending a full hearing, may grant a temporary disorderly conduct restraining order ordering the individual to cease or avoid the disorderly conduct or to have no contact with the person requesting the order. A temporary restraining order may be entered only against the individual named in the petition. The court may issue the temporary restraining order without giving notice to the respondent. The temporary restraining order is in effect until a hearing is held on the issuance of a restraining order under subsection 5 for not more than thirty days, unless otherwise terminated by the court.

Approved March 10, 1995

Filed March 13, 1995

CHAPTER 134**SENATE BILL NO. 2496**

(Senators C. Nelson, LaFountain, Wogsland)
(Representatives Kroeber, Mahoney, Maragos)

**LIFE IMPRISONMENT WITHOUT PAROLE FOR AA
FELONY**

AN ACT to amend and reenact subsection 1 of section 12.1-32-01 of the North Dakota Century Code, relating to the imposition of life imprisonment without parole as the maximum penalty for a class AA felony.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have ~~his~~ that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after ~~his~~ that person's admission to the penitentiary.

Approved March 27, 1995

Filed March 28, 1995

CHAPTER 135**SENATE BILL NO. 2040**

(Legislative Council)

(Interim Budget Committee on Youth Services)

(Senator Robinson)

(Representatives Martin, Johnson)

SEX OFFENSE AGAINST MINOR SENTENCING

AN ACT to amend and reenact subsection 1 of section 12.1-32-02 and section 12.1-32-06.1 of the North Dakota Century Code, relating to sentencing alternatives and to an additional period of probation that may be imposed for a person found guilty of a sexual offense against a minor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-32-02 of the 1993 Supplement to 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, a regional corrections center, a county jail, or in the Missouri River correctional center in accordance with section 12-51-07, 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 programs.
 - 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.

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 must not be construed as not permitting 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.

⁶⁶ SECTION 2. AMENDMENT. Section 12.1-32-06.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-06.1. Length and termination of probation - Additional probation for violation of conditions.

1. Except as provided in this section, the length of the period of probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony and two years for a misdemeanor or infraction from the later of the date of:

- a. The order imposing probation;
- b. The defendant's release from incarceration; or
- c. Termination of the defendant's parole.

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

3. If the defendant has ~~pled~~ plead or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility for support continues.

~~3+~~ 4. In felony cases, in consequence of violation of probation conditions, the court may impose an additional period of probation not to exceed five

⁶⁶ Section 12.1-32-06.1 was also amended by section 1 of House Bill No. 1223, chapter 137.

years. The additional period of probation may follow a period of incarceration if the defendant has not served the maximum period of incarceration available at the time of initial sentencing or deferment.

- ~~4~~ 5. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
- ~~5~~ 6. Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes.

Approved March 10, 1995
Filed March 10, 1995

CHAPTER 136**HOUSE BILL NO. 1218**

(Representatives Carlisle, Mahoney, Wald)
(Senators Nalewaja, B. Stenehjem, Robinson)

SENTENCING OF VIOLENT OFFENDERS

AN ACT to create and enact a new section to chapter 12.1-32 of the North Dakota Century Code, relating to sentencing of violent offenders; and to amend and reenact sections 12-54.1-01, 12-54.1-03, subsection 12 of section 12.1-32-02, and section 12.1-32-09 of the North Dakota Century Code, relating to sentence reductions for good or meritorious conduct, presentence investigations, and extended sentences for special dangerous or habitual offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-54.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-54.1-01. Performance based sentence reduction. ~~Offenders~~ Except as provided under section 5 of this Act, offenders sentenced to the penitentiary or any of its affiliated facilities are eligible to earn sentence reductions based upon performance criteria established through penitentiary rules. Performance criteria includes participation in court-ordered or staff-recommended treatment and education programs and good work performance. While incarcerated in the penitentiary or any of its affiliated facilities, an inmate may earn five days good time per month except for any sentence where the incarceration time is six months or less.

SECTION 2. AMENDMENT. Section 12-54.1-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-54.1-03. Meritorious conduct sentence reduction. ~~In addition to sentence reductions under section 12-54.1-01~~ Except as provided under section 5 of this Act, offenders sentenced to the state penitentiary or any of its affiliated facilities may be awarded, as provided by penitentiary rules ~~and regulations~~ upon written recommendation of a penitentiary multidisciplinary team, lump-sum or a monthly rate of meritorious conduct sentence reductions for outstanding performance or heroic acts or as a special control and security measure. Such sentence reductions are in addition to sentence reductions under section 12-54.1-01 and may be made only after a written recommendation is made by the warden, and approved by the director of the department of corrections and rehabilitation. Any sentence reduction for special control or security measures may not exceed two days good time per month per inmate.

⁶⁷ **SECTION 3. AMENDMENT.** Subsection 12 of section 12.1-32-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 4. AMENDMENT. Section 12.1-32-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09. Dangerous special offenders, ~~extended~~ - Habitual offenders - Extended sentences - Procedure.

1. A court may sentence a convicted offender to an extended sentence as a dangerous special offender or a habitual offender in accordance with the provisions of this section upon a finding of any one or more of the following:
 - a. The convicted offender is a dangerous, mentally abnormal person. The court ~~shall~~ may not make such a finding unless the presentence report, including a psychiatric examination, concludes that the offender's conduct has been characterized by persistent aggressive behavior, and that such behavior makes ~~him~~ the offender a serious danger to other persons.
 - b. The convicted offender is a professional criminal. The court ~~shall~~ may not make such a finding unless the offender is an adult and the presentence report shows that the offender has substantial income or resources derived from criminal activity.
 - c. The convicted offender is a ~~persistent~~ habitual offender. The court ~~shall~~ may not make such a finding unless the offender is an adult and has previously been convicted in any state or states or by the United States of two felonies of class ~~B C~~ C or above; ~~or of one class B felony or above plus two offenses potentially punishable by imprisonment classified below class B felony~~; committed at different times when the offender was an adult. For the purposes of this

⁶⁷ Section 12.1-32-02 was also amended by section 5 of Senate Bill No. 2264, chapter 124, and section 17 of House Bill No. 1027, chapter 120.

subdivision, a felony conviction in another state or under the laws of the United States shall be considered a felony of class ~~B~~ C or above if it is punishable by a maximum term of imprisonment of ~~ten~~ five years or more.

- d. The offender was convicted of an offense which seriously endangered the life of another person, and the offender had previously been convicted of a similar offense.
- e. The offender is especially dangerous because ~~he~~ the offender used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

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

2. The extended sentence may be imposed in the following manner:
 - a. If the offense for which the offender is convicted is a class A felony, the court may impose a sentence up to a maximum of life imprisonment.
 - b. If the offense for which the offender is convicted is a class B felony, the court may impose a sentence up to a maximum of imprisonment for twenty years.
 - c. If the offense for which the offender is convicted is a class C felony, the court may impose a sentence up to a maximum of imprisonment for ten years.
3. Whenever an attorney charged with the prosecution of a defendant in a court of this state for an alleged felony committed when the defendant was over the age of eighteen years has reason to believe that the defendant is a dangerous special offender or a habitual offender, ~~such~~ the attorney, at a reasonable time before trial or acceptance by the court of a plea of guilty, may sign and file with the court, and may amend, a notice specifying that the defendant is a dangerous special offender or a habitual offender who upon conviction for ~~such~~ the felony is subject to the imposition of a sentence under subsection 2, and setting out with particularity the reasons why ~~such~~ the attorney believes the defendant to be a dangerous special offender or a habitual offender. In no case ~~shall~~ may the fact that the prosecuting attorney is seeking sentencing of the defendant as a dangerous special offender or a habitual offender be disclosed to the jury. If the court finds that the filing of the notice as a

public record may prejudice fair consideration of a pending criminal matter, it may order the notice sealed and the notice shall not be subject to subpoena or public inspection during the pendency of such criminal matter, except on order of the court, but shall be subject to inspection by the defendant alleged to be a dangerous special offender or a habitual offender and ~~his~~ the offender's counsel.

4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a hearing must be held, before sentence is imposed, by the court sitting without a jury. Except in the most extraordinary cases, the court shall obtain a presentence report and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02 before holding a hearing under this subsection. The court shall fix a time for the hearing, and notice thereof must be given to the defendant and the prosecution at least five days prior thereto. The court shall permit the prosecution and counsel for the defendant, or the defendant if the defendant is not represented by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant is entitled to compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment is prima facie evidence of such former judgment or commitment. If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special offender or a habitual offender, the court shall sentence the defendant to imprisonment for an appropriate term within the limits specified in subsection 2. The court shall place in the record its findings including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

SECTION 5. A new section to chapter 12.1-32 of the North Dakota Century Code is created and enacted as follows:

Sentencing of violent offenders. Any offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, 12.1-17-02, 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted.

Approved March 24, 1995
Filed March 27, 1995

CHAPTER 137

HOUSE BILL NO. 1223

(Representatives Hanson, Kretschmar, Wardner)
(Senators O'Connell, Freborg, Nalewaja)

PROBATION EXTENDED FOR CERTAIN OFFENSES

AN ACT to amend and reenact section 12.1-32-06.1 of the North Dakota Century Code, relating to an additional period of probation that may be imposed for certain types of offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁶⁸ SECTION 1. AMENDMENT. Section 12.1-32-06.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-06.1. Length and termination of probation - Additional probation for violation of conditions.

1. Except as provided in this section, the length of the period of probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony and two years for a misdemeanor or infraction from the later of the date of:
 - a. The order imposing probation;
 - b. The defendant's release from incarceration; or
 - c. Termination of the defendant's parole.
2. If the defendant has plead or been found guilty of an offense for which the court imposes a sentence of restitution or reparation for damages resulting from the commission of the offense, the court may, following a restitution hearing pursuant to section 12.1-32-08, impose an additional period of probation not to exceed five years.
3. ~~In cases where~~ If the defendant has plead or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility for support continues.
- ~~3-~~ 4. In felony cases, in consequence of violation of probation conditions, the court may impose an additional period of probation not to exceed five years. The additional period of probation may follow a period of incarceration if the defendant has not served the maximum period of incarceration available at the time of initial sentencing or deferment.

⁶⁸ Section 12.1-32-06.1 was also amended by section 2 of Senate Bill No. 2040, chapter 135.

4. 5. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
5. 6. Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes.

Approved March 31, 1995
Filed March 31, 1995

CHAPTER 138**SENATE BILL NO. 2194**

(Senators Thane, DeMers)

(Representative Carlisle)

(At the request of the Department of Corrections and
Rehabilitation)**PROBATION REVOCATION AND COMMUNITY
CONSTRAINTS**

AN ACT to amend and reenact subsections 3 and 4 of section 12.1-32-07 of the North Dakota Century Code, relating to community constraints and conditions as intermediate measures to avoid probation revocation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 4 of section 12.1-32-07 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

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

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

- a. Community service;
 - b. Day reporting;
 - c. Curfew;
 - d. Home confinement;
 - e. House arrest;
 - f. Electronic monitoring;
 - g. Residential halfway house; or
 - h. Intensive supervision program.
4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:

- a. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the defendant for suitable employment.
- b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
- c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
- d. Support the defendant's dependents and meet other family responsibilities.
- e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.
- f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05, except when imposition of sentence is deferred.
- g. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription.
- h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.
- i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
- j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
- k. Report to a probation officer at reasonable times as directed by the court or the probation officer.
- l. Submit to a medical examination or other reasonable testing for the purpose of determining the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
- m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
- n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
- o. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.

- p. ~~Undergo various agreed to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation.~~
- q. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 3 of section 12.1-32-08.

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

Approved March 27, 1995
Filed March 28, 1995

CHAPTER 139

HOUSE BILL NO. 1152

(Judiciary Committee)

(At the request of the Attorney General)

SEX OFFENDER REGISTRATION

AN ACT to amend and reenact section 12.1-32-15 of the North Dakota Century Code, relating to registration requirements for offenders against children and sexual offenders and community notification; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-32-15 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-15. Offenders against children and sexual offenders - Registration requirement - Penalty.

1. As used in this section:

- a. "A crime against a child" means a violation of chapter 12.1-16, 12.1-17, 12.1-18, ~~12.1-27.2~~, or 12.1-29 in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.
- b. "Department" means the department of corrections and rehabilitation.
- c. "Sexual offender" means a person who has ~~been convicted~~ pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, ~~or~~ 12.1-20-11, ~~chapter 12.1-27.2~~, or an attempt to commit these offenses.

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

- a. Is incarcerated or is on probation or parole on the effective date of this Act for a crime against a child or as a sexual offender;
- b. Has pled guilty or nolo contendere to, or been found guilty of, an offense in a court of another state or the federal government equivalent to those offenses set forth in subdivisions a and c of subsection 1; or

- c. Has pled guilty to or been found guilty of a crime against a child or as a sexual offender within ten years prior to the effective date of this Act.
3. When the court has imposed the requirement for registration a person is required to register under this section, the official in charge of a facility or institution where the person required to register is confined, or the department, shall, before the discharge, parole, or release of that person, inform the person of the duty to register pursuant to this section. The official or the department shall require the person to read and sign a form as required by the attorney general, stating that the duty of the person to register has been explained to that person. The official in charge of the place of confinement, or the department, shall obtain the address where the person expects to reside upon discharge, parole, or release and shall report the address to the attorney general. The official in charge of the place of confinement, or the department, shall give one copy of the form to the person and shall send four copies to the attorney general no later than forty-five days before the scheduled release of that person. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the person expects to reside upon discharge, parole, or release, one copy to the prosecutor who prosecuted the person, and one copy to the court in which the person was prosecuted. All forms must be transmitted and received by the law enforcement agency, prosecutor, and court thirty days before the discharge, parole, or release of the person.
 4. A person who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine must, before the release or discharge, be informed of that person's duty to register under this section by the court in which that person is convicted. The court shall require the person to read and sign a form as required by the attorney general, stating that the duty of the person to register under this section has been explained to that person. The court shall obtain the address where the person expects to reside upon release or discharge and shall report the address to the attorney general within three days. The court shall give one copy of the form to the person and shall send two copies to the attorney general. The attorney general shall forward one copy to the appropriate law enforcement agency having jurisdiction where the person expects to reside upon discharge, parole, or release.
 5. Registration consists of a written statement signed by the person, giving the information required by the attorney general, and the fingerprints and photograph of the person. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general. If a person required to register pursuant to this section has a change in name or address, that person shall inform in writing, within ten days, the law enforcement agency with whom that person last registered of the person's new name or address. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence. Upon a change of address, the person required to register shall also register within ten days at the law enforcement agency having local jurisdiction of the new place of

residence. These provisions also apply in any other state that requires registration.

6. A person required to register under this section shall comply with the registration requirement for a period of ten years after conviction the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later; except that for violations of section 12.1-17-01, 12.1-17-02, 12.1-17-05, 12.1-17-06, 12.1-17-07, 12.1-18-03, 12.1-20-05, or 12.1-20-07, the person shall comply with the registration requirement for a period of five years after conviction or after release from incarceration, whichever is later.
7. A person required to register under this section who violates this section is guilty of a class A misdemeanor. A court may not relieve a person who willfully violates this section from serving a term of at least ninety days in jail and completing probation of one year. A person who violates this section who previously has pled guilty or been found guilty of violating this section is guilty of a class C felony.
8. When a person is released on parole or probation and is required to register pursuant to this section, but fails to do so within the time prescribed, the court shall order the probation, or the parole board shall order the parole, of the person revoked. The statements, photographs, and fingerprints required by this section are open to inspection by the public.
9. If a person required to register pursuant to this section is temporarily sent outside the facility or institution where that person is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that person is being sent must be notified within a reasonable time period before that person is released from the facility or institution. This subsection does not apply to any person temporarily released under guard from the facility or institution in which that person is confined.
10. Relevant and necessary registration information may be disclosed to the public by a law enforcement agency if the agency determines that the individual registered under this section is a public risk and disclosure of the registration information is necessary for public protection. The department, in a timely manner, shall provide law enforcement agencies any information the department determines is relevant concerning individuals required to be registered under this section who are about to be released or placed into the community. A law enforcement agency, its officials, and its employees are not subject to civil or criminal liability for disclosing or for failing to disclose information as permitted by this section. Nonregistration information concerning an offender required to register under this section consisting of the name of the offender, the last known address of the offender, the offense or offenses as defined in subsection 1 to which the offender pled guilty or of which the offender was found guilty, the date of the judgment or order imposing a sentence or probation and the court entering the judgment or order, the sentence or probation imposed upon the offender, and any disposition, if known, of a sentence or probation may be disclosed to the public. The attorney general shall compile nonregistration information concerning offenders required to register under this section from criminal history record information maintained pursuant to chapter 12-60 or from an agency or

department of another state or the federal government and shall provide the information upon request at no cost.

Approved April 11, 1995

Filed April 12, 1995

CHAPTER 140**SENATE BILL NO. 2454**

(Senators Scherber, Mathern, Watne)
(Representatives Kelsch, Maragos, Price)

FEMALE GENITAL MUTILATION

AN ACT to prohibit female genital mutilation; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Surgical alteration of the genitals of female minor - Penalty - Exception.

1. Except as provided in subsection 2, any person who knowingly separates or surgically alters normal, healthy, functioning genital tissue of a female minor is guilty of a class C felony.
2. A surgical operation is not a violation of this section if a licensed medical practitioner performs the operation to correct an anatomical abnormality or to remove diseased tissue that is an immediate threat to the health of the female minor. In applying this subsection, any belief that the operation is required as a matter of custom, ritual, or standard of practice may not be taken into consideration.

Approved March 17, 1995

Filed March 20, 1995

CHAPTER 141**HOUSE BILL NO. 1463**

(Representatives Poolman, Rydell, Svedjan)
(Senators Nalewaja, Thane, DeMers)

CHILD SUPPORT NONPAYMENT PENALTIES

AN ACT to create and enact a new chapter to title 12.1 of the North Dakota Century Code, relating to willful failure to pay child support; to amend and reenact section 14-07-15 of the North Dakota Century Code, relating to abandonment or nonsupport of a child; and to provide a penalty.

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:

Willful failure to pay child support - Classification of offenses - Affirmative defense - Penalty.

1. A person is guilty of an offense if the person willfully fails to pay child support in an amount ordered by a court or other governmental agency having authority to issue the orders.
2.
 - a. If the unpaid amount is greater than the greater of two thousand dollars or six times the monthly child support obligation, the offense is a class C felony.
 - b. If the unpaid amount is greater than the greater of one thousand dollars or three times the monthly child support obligation, but less than the amount required under subdivision a, the offense is a class A misdemeanor.
 - c. If the unpaid amount is less than the amount required under subdivision b, the offense is a class B misdemeanor.
3. If the failure to pay child support occurs while the defendant was in another state, and while the child was in this state, the offense must be construed to have been committed in this state.
4. It is an affirmative defense to a charge under subsection 1 that the defendant suffered from a disability during the periods an unpaid child support obligation accrued, such as to effectively preclude the defendant's employment at any gainful occupation. This defense is available only if the defendant lacked the means to pay the ordered amounts other than from employment.
5. For purposes of this section, "child support" has the meaning provided in section 14-09-09.10.
6. This section applies only to the willful failure to pay child support after the effective date of this Act.

SECTION 2. AMENDMENT. Section 14-07-15 of the North Dakota Century Code is amended and reenacted as follows:

14-07-15. Abandonment or nonsupport of child - Penalty.

1. Every parent who is unable to support himself by lawful employment, who wholly abandons such the child or willfully fails to furnish food, shelter, clothing, and medical attention reasonably necessary and sufficient to keep meet the child's life from danger and discomfort and his health from injury needs is guilty of a class C felony.
2. Any food, shelter, clothing, or medical attentions, furnished by or through a welfare or charitable program of any governmental agency, civic or religious organization, or a combination thereof, or any intervening third party, on the basis of need, does not avoid, excuse, relieve, or discharge, either parent, or person legally responsible for care and support of a child, from the criminal penalty for the willful failure or neglect to provide such support.
3. Neither may a A parent be is not relieved, excused, nor or discharged from such the responsibility and criminal penalty provided for herein, for the willful neglect or failure to provide such care and support, in this section if the other parent is providing the child with care and support to the best of his or her ability, but where such care and support is not sufficient to keep the child's life from danger and discomfort, or its health from injury unless the parents reside together.
4. The fact, if it is a fact, that either parent may have secured a decree of divorce awarding the custody of such the child, in no manner relieves either parent from the requirements and penalty of this section, except that compliance with the terms of such decree for a child support of such child must be deemed a compliance herewith; provided, however, that if order by a parent is an affirmative defense to a charge under this section made against that parent.
5. If the parent or other person legally responsible for the care or support of a child who is under the age of eighteen years and unable to support himself, as hereinbefore provided, while in another state, and while such the minor child is in this state, wholly abandons the child or willfully and intentionally fails to furnish food, clothing, shelter, and medical attention as herein provided, such reasonably necessary and sufficient to meet the child's needs, the failure must nevertheless be construed to have been committed in this state, and all of the laws of this state with reference to punishment apply with the same force and effect as if such the abandonment and failure to support had occurred in this state.
6. For purposes of this section, "willfully" has the meaning provided in section 12.1-02-02.