

CRIMINAL CODE

CHAPTER 120

SENATE BILL NO. 2211

(Senators Traynor, W. Stenehjem, Watne)
(Representative Mahoney)

BODILY INJURY DEFINITION

AN ACT to amend and reenact section 12.1-01-04 of the North Dakota Century Code, relating to the definition of types of bodily injury.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰³ **SECTION 1. AMENDMENT.** Section 12.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-01-04. (Effective until January 1, 2000) General definitions. As used in this title, unless a different meaning plainly is required:

1. "Act" or "action" means a bodily movement, whether voluntary or involuntary.
2. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act".
3. "Actor" includes, where relevant, a person guilty of an omission.
4. "Bodily injury" means any impairment of physical condition, including physical pain.
5. "Court" means any of the following courts: the supreme court, the temporary court of appeals, a district court, and where relevant, a municipal court.
6. "Dangerous weapon" means, but is not limited to, any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon which will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO₂ gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.

¹⁰³ Section 12.1-01-04 was also amended by section 1 of House Bill No. 1076, chapter 277.

7. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade, mine, rocket, missile, or similar device.
8. "Explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material, or any part thereof may cause an explosion.
9. Repealed by S.L. 1975, ch. 116, § 33.
10. "Firearm" means any weapon which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such weapon, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.
11. "Force" means physical action.
12. "Government" means:
 - a. The government of this state or any political subdivision of this state;
 - b. Any agency, subdivision, or department of the foregoing, including the executive, legislative, and judicial branches;
 - c. Any corporation or other entity established by law to carry on any governmental function; and
 - d. Any commission, corporation, or agency established by statute, compact, or contract between or among governments for the execution of intergovernmental programs.
13. "Governmental function" includes any activity which one or more public servants are legally authorized to undertake on behalf of government.
14. "Harm" means loss, disadvantage, or injury to the person affected, and includes loss, disadvantage, or injury to any other person in whose welfare he is interested.
15. "Included offense" means an offense:
 - a. Which is established by proof of the same or less than all the facts required to establish commission of the offense charged;
 - b. Which consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or
 - c. Which differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission.

16. "Includes" should be read as if the phrase "but is not limited to" were also set forth.
17. "Law enforcement officer" or "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
18. "Local" means of or pertaining to any political subdivision of the state.
19. Repealed by S.L. 1975, ch. 116, § 33.
20. "Offense" means conduct for which a term of imprisonment or a fine is authorized by statute after conviction.
21. "Official action" includes a decision, opinion, recommendation, vote, or other exercise of discretion by any governmental agency.
22. "Official proceeding" means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.
23. "Omission" means a failure to act.
24. As used in this title and in sections outside this title which define offenses, "person" includes, where relevant, a corporation, limited liability company, partnership, unincorporated association, or other legal entity. When used to designate a party whose property may be the subject of action constituting an offense, the word "person" includes a government which may lawfully own property in this state.
25. "Political subdivision" as used in this title and in any statute outside this title which defines an offense means a county, city, school district, township, and any other local governmental entity created by law.
26. "Property" includes both real and personal property.
27. "Public servant" as used in this title and in any statute outside this title which defines an offense means any officer or employee of government, including law enforcement officers, whether elected or appointed, and any person participating in the performance of a governmental function, but the term does not include witnesses.
28. "Risk assessment" means an initial phase with a secondary process approved by the department of human services for the evaluation of the likelihood that a person who committed an offense will commit another similar offense. The initial phase is an assessment tool that is administered by a trained probation and parole officer. A predetermined score on the initial phase initiates the secondary process that includes a clinical interview, psychological testing, and verification through collateral information or psychophysiological testing, or both. The department of human services shall perform the secondary process of the risk assessment.

29. "Serious bodily injury" means bodily injury ~~which~~ that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, ~~or~~ permanent loss or impairment of the function of any bodily member or organ, or a bone fracture.
30. "Signature" includes any name, mark, or sign written or affixed with intent to authenticate any instrument or writing.
31. "Substantial bodily injury" means a substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ; ~~or a bone fracture~~.
32. "Thing of value" or "thing of pecuniary value" means a thing of value in the form of money, tangible or intangible property, commercial interests, or anything else the primary significance of which is economic gain to the recipient.
33. "Writing" includes printing, typewriting, and copying.

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

(Effective January 1, 2000) General definitions. As used in this title, unless a different meaning plainly is required:

1. "Act" or "action" means a bodily movement, whether voluntary or involuntary.
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7. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade, mine, rocket, missile, or similar device.
8. "Explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit

breakers), detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material, or any part thereof may cause an explosion.

9. Repealed by S.L. 1975, ch. 116, § 33.
10. "Firearm" means any weapon which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such weapon, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.
11. "Force" means physical action.
12. "Government" means:
 - a. The government of this state or any political subdivision of this state;
 - b. Any agency, subdivision, or department of the foregoing, including the executive, legislative, and judicial branches;
 - c. Any corporation or other entity established by law to carry on any governmental function; and
 - d. Any commission, corporation, or agency established by statute, compact, or contract between or among governments for the execution of intergovernmental programs.
13. "Governmental function" includes any activity which one or more public servants are legally authorized to undertake on behalf of government.
14. "Harm" means loss, disadvantage, or injury to the person affected, and includes loss, disadvantage, or injury to any other person in whose welfare he is interested.
15. "Included offense" means an offense:
 - a. Which is established by proof of the same or less than all the facts required to establish commission of the offense charged;
 - b. Which consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or
 - c. Which differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission.
16. "Includes" should be read as if the phrase "but is not limited to" were also set forth.
17. "Law enforcement officer" or "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the

law and to conduct or engage in investigations or prosecutions for violations of law.

18. "Local" means of or pertaining to any political subdivision of the state.
19. Repealed by S.L. 1975, ch. 116, § 33.
20. "Offense" means conduct for which a term of imprisonment or a fine is authorized by statute after conviction.
21. "Official action" includes a decision, opinion, recommendation, vote, or other exercise of discretion by any governmental agency.
22. "Official proceeding" means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.
23. "Omission" means a failure to act.
24. As used in this title and in sections outside this title which define offenses, "person" includes, where relevant, a corporation, limited liability company, partnership, unincorporated association, or other legal entity. When used to designate a party whose property may be the subject of action constituting an offense, the word "person" includes a government which may lawfully own property in this state.
25. "Political subdivision" as used in this title and in any statute outside this title which defines an offense means a county, city, school district, township, and any other local governmental entity created by law.
26. "Property" includes both real and personal property.
27. "Public servant" as used in this title and in any statute outside this title which defines an offense means any officer or employee of government, including law enforcement officers, whether elected or appointed, and any person participating in the performance of a governmental function, but the term does not include witnesses.
28. "Risk assessment" means an initial phase with a secondary process approved by the department of human services for the evaluation of the likelihood that a person who committed an offense will commit another similar offense. The initial phase is an assessment tool that is administered by a trained probation and parole officer. A predetermined score on the initial phase initiates the secondary process that includes a clinical interview, psychological testing, and verification through collateral information or psychophysiological testing, or both. The department of human services shall perform the secondary process of the risk assessment.
29. "Serious bodily injury" means bodily injury ~~which~~ that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, ~~or~~ permanent loss or impairment of the function of any bodily member or organ, or a bone fracture.

30. "Signature" includes any name, mark, or sign written or affixed with intent to authenticate any instrument or writing.
31. "Substantial bodily injury" means a substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ; ~~or a~~ ~~bone fracture.~~
32. "Thing of value" or "thing of pecuniary value" means a thing of value in the form of money, tangible or intangible property, commercial interests, or anything else the primary significance of which is economic gain to the recipient.
33. "Writing" includes printing, typewriting, and copying.

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

Approved March 4, 1999
Filed March 4, 1999

CHAPTER 121

HOUSE BILL NO. 1184 (Representative Porter)

LAW ENFORCEMENT APPLICATIONS AND REPORTS

AN ACT to provide for questions on an application for a position as a law enforcement officer; and to amend and reenact section 12.1-11-03 of the North Dakota Century Code, relating to giving false information or a false report to law enforcement officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-11-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-11-03. False reports information or report to law enforcement officers or security officials. A person is guilty of a class A misdemeanor if ~~he~~ that person:

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

SECTION 2. Law enforcement officer job application. Every applicant for a position as a law enforcement officer for any state or political subdivision agency must be asked in any written application for that position whether that applicant has ever pled or been found guilty of a felony including a felony charge that was later dismissed under a deferred imposition of sentence.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 122

SENATE BILL NO. 2362

(Senators Kilzer, O'Connell, Wanzek)
(Representatives Boehm, Kerzman)

ASSISTED SUICIDE PREVENTION

AN ACT to create and enact two new sections to chapter 12.1-16 of the North Dakota Century Code, relating to the prevention of assisted suicide.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-16 of the North Dakota Century Code is created and enacted as follows:

Civil damages. Any person given standing under subsection 1 of section 12.1-16-05, except the health care provider, may maintain a claim for relief for compensatory and punitive damages against any person who violates or attempts to violate section 12.1-16-04. Prior knowledge of or consent to the violation by the plaintiff does not preclude a claim for relief under this section. This section does not preclude any claim under any other provision of law.

SECTION 2. A new section to chapter 12.1-16 of the North Dakota Century Code is created and enacted as follows:

Suspension or revocation of license of health care provider. If the person who assists in a suicide in violation of section 12.1-16-04 is a person who is licensed, certified, or otherwise authorized by title 43 to administer health care in the ordinary course of business or professional practice, the licensing agency that issued the license or certification to that person may suspend or revoke the license or certification of that person upon receipt of:

1. A copy of the record of criminal conviction or plea of guilty to a felony in violation of section 12.1-16-04;
2. A copy of the record of a judgment of contempt of court for violating an injunction issued under section 12.1-16-05; or
3. A copy of the record of a judgment assessing damages under section 1 of this Act.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 123

SENATE BILL NO. 2223

(Senators W. Stenehjem, C. Nelson)
(Representatives Cleary, DeKrey, Delmore)

CHILD ASSAULT

AN ACT to amend and reenact sections 12.1-17-01.1, 12.1-17-02, subdivision a of subsection 1 of section 12.1-32-15, and subsection 1 of section 14-09-22 of the North Dakota Century Code, relating to the crimes of assault, aggravated assault, and abuse or neglect of a child; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-17-01.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01.1. Assault. A person is guilty of a class A misdemeanor, except if the victim is under the age of twelve years in which case the offense is a class C felony, if that person:

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

SECTION 2. AMENDMENT. Section 12.1-17-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-02. Aggravated assault. A person is guilty of a class C felony, except if the victim is under the age of twelve years or the victim suffers permanent loss or impairment of the function of a bodily member or organ in which case the offense is a class B felony, if that person:

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

¹⁰⁴ **SECTION 3. AMENDMENT.** Subdivision a of subsection 1 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

- a. "A crime against a child" means a violation of chapter 12.1-16, 12.1-17, 12.1-18, ~~or~~ 12.1-29, or subdivision a of subsection 1 or subsection 2 of section 14-09-22, or an equivalent ordinance, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.

SECTION 4. AMENDMENT. Subsection 1 of section 14-09-22 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in subsection 2, a parent, guardian, or other custodian of any child who willfully commits any of the following offenses is guilty of a class C felony except if the victim of an offense under subdivision a is under the age of six years in which case the offense is a class B felony:
 - a. Inflicts, or allows to be inflicted, upon the child, ~~physical~~ bodily injury, substantial bodily injury, or serious bodily injury as defined by section 12.1-01-04 or mental injury.
 - b. Fails to provide 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.
 - c. Permits the child to be, or fails to exercise reasonable diligence in preventing the child from being, in a disreputable place or associating with vagrants or vicious or immoral persons.
 - d. Permits the child to engage in, or fails to exercise reasonable diligence in preventing the child from engaging in, an occupation forbidden by the laws of this state or an occupation injurious to the child's health or morals or the health or morals of others.

Approved March 22, 1999
Filed March 22, 1999

¹⁰⁴ Section 12.1-32-15 was also amended by section 33 of House Bill No. 1045, chapter 50, and section 1 of Senate Bill No. 2299, chapter 131.

CHAPTER 124

SENATE BILL NO. 2305

(Senators Krauter, T. Mathern)
(Representatives Froelich, Kerzman)

HARASSMENT AS CRIME

AN ACT to create and enact a new subsection to section 12.1-17-07 and a new subdivision to subsection 4 of section 12.1-32-07 of the North Dakota Century Code, relating to the crime of harassment and to the powers of a trial court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-17-07 of the North Dakota Century Code is created and enacted as follows:

Any offense defined herein is deemed communicated in writing if it is transmitted electronically, by electronic mail, facsimile, or other similar means.

¹⁰⁵ **SECTION 2.** A new subdivision to subsection 4 of section 12.1-32-07 of the North Dakota Century Code is created and enacted as follows:

Refrain from any subscription to, access, or use of the internet.

Approved March 17, 1999
Filed March 17, 1999

¹⁰⁵ Section 12.1-32-07 was also amended by section 6 of House Bill No. 1016, chapter 16.

CHAPTER 125

SENATE BILL NO. 2186 (Senators Watne, Lyson, W. Stenehjem)

BODILY FLUIDS CONTACT AND INFORMATION

AN ACT to create and enact a new section to chapter 12.1-17 and a new section to chapter 23-07 of the North Dakota Century Code, relating to contact by bodily fluids or excrement and the reporting of test results for certain diseases; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Contact by bodily fluids or excrement.

1. An individual is guilty of an offense if the individual causes blood, emesis, excrement, mucus, saliva, semen, vaginal fluid, or urine to come in contact with:
 - a. A law enforcement officer acting in the scope of employment;
 - b. An employee of a correctional facility or the department of corrections and rehabilitation acting in the scope of employment unless the employee does an act within the scope of employment which requires or causes the contact;
 - c. Any person lawfully present in a correctional facility who is not an inmate;
 - d. Any person lawfully present in the penitentiary or an affiliated facility of the penitentiary who is not an inmate; or
 - e. Any person who is transporting an individual who is lawfully detained.
2. Subsection 1 does not apply to a mentally ill person as defined in section 25-03.1-02 who has been detained pursuant to chapter 25-03.1.
3. The offense is a class C felony if the individual knowingly causes the contact and is a class A misdemeanor if the individual recklessly causes the contact.

SECTION 2. A new section to chapter 23-07 of the North Dakota Century Code is created and enacted as follows:

Report of testing result of imprisoned individuals. Notwithstanding any other provision of law, the state department of health or any other agency shall release the results of any testing for any reportable disease performed on an individual convicted of a crime who is imprisoned if the request is made by any individual and the individual provides written proof from the administrator of the facility with control over the individual imprisoned which states that the individual has had a significant exposure as defined in section 23-07.3-01.

Approved April 1, 1999

Filed April 2, 1999

CHAPTER 126

SENATE BILL NO. 2212

(Senators Watne, Schobinger)
(Representatives Klein, Koppelman)

FLEEING A PEACE OFFICER

AN ACT to create and enact a new section to chapter 12.1-17 of the North Dakota Century Code, relating to injuring another while fleeing a peace officer; and to amend and reenact section 39-10-71 of the North Dakota Century Code, relating to the penalty for fleeing a peace officer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Assault or homicide while fleeing peace officer. A person is guilty of a class A felony if that person negligently causes the death of another or a class B felony if that person negligently causes serious bodily injury to another while in violation of section 39-10-71.

SECTION 2. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

39-10-71. Fleeing or attempting to elude a peace officer - Penalty. Any driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a class A misdemeanor for a first ~~or second~~ offense and a class C felony for a subsequent offense within three years. A signal complies with this section if the signal is perceptible to the driver and:

1. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
2. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform and prominently displays the officer's badge of office.

Approved April 8, 1999
Filed April 8, 1999

CHAPTER 127**HOUSE BILL NO. 1379**

(Representatives Carlisle, Froseth, Kliniske)
(Senators DeMers, Krebsbach, Lee)

EMERGENCY CALL INTERFERENCE

AN ACT to create and enact a new section to chapter 12.1-21 of the North Dakota Century Code, relating to interference with a telephone during emergency calls.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-21 of the North Dakota Century Code is created and enacted as follows:

Interference with telephone during emergency call. A person is guilty of an offense if that person removes, damages, or obstructs any telephone or telephone line or any part or apparatus on the line, or severs any wire connected to the line, so as to interfere with an emergency telephone call. The offense is a class C felony if it was done intentionally. The offense is a class A misdemeanor if it was done knowingly or recklessly.

Approved March 18, 1999
Filed March 19, 1999

CHAPTER 128**SENATE BILL NO. 2225**

(Senator Klein)
(Representative Cleary)

PERSONAL IDENTIFICATION INFORMATION MISUSE

AN ACT to create and enact a new section to chapter 12.1-23 of the North Dakota Century Code, relating to the unauthorized use of personal identifying information; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Unauthorized use of personal identifying information - Penalty.

1. As used in this section, "personal identifying information" means any of the following information:
 - a. An individual's name;
 - b. An individual's address;
 - c. An individual's telephone number;
 - d. The distinguishing operator's license number assigned to an individual by the department of transportation under section 39-04-14;
 - e. An individual's social security number;
 - f. An individual's employer or place of employment;
 - g. An identification number assigned to the individual by the individuals' employer;
 - h. The maiden name of the individual's mother; or
 - i. The identifying number of a depository account in a financial institution.
2. A person is guilty of a class C felony if the person uses or attempts to use any personal identifying information of an individual to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the individual and by representing that person is the individual or is acting with the authorization or consent of the individual.

Approved March 29, 1999
Filed March 29, 1999

CHAPTER 129**SENATE BILL NO. 2255**

(Senators Traynor, Heitkamp)
(Representatives Carlisle, Gulleson)

NONRESIDENT THEFT

AN ACT to create and enact a new section to chapter 12.1-23 of the North Dakota Century Code, relating to theft by nonresidents; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Jurisdiction - Conduct outside this state. Notwithstanding section 29-03-01.1, a person who, while outside this state and by use of deception, obtains, deprives, or conspires, solicits, or attempts to obtain the property of a person within this state or to deprive such person of property is subject to prosecution under this chapter in the courts of this state. The venue is in the county in which the victim resides or any other county in which any part of the crime occurred.

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

Approved March 22, 1999
Filed March 22, 1999

CHAPTER 130

SENATE BILL NO. 2125

(Senators Thane, Kilzer, Krebsbach)

(Representatives Jensen, Rose)

(At the request of the State Department of Health)

TOBACCO USE BY MINORS

AN ACT to amend and reenact section 12.1-31-03 of the North Dakota Century Code, relating to the purchase, possession, and use of tobacco by minors; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-31-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-03. Sale of tobacco to minors and use by minors prohibited.

1. It is ~~a class B misdemeanor~~ an infraction for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. As used in this subsection, "sell" includes dispensing from a vending machine under the control of the actor.
2. It is ~~a class B misdemeanor~~ an infraction for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. However, an individual under eighteen years of age may purchase and possess tobacco as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.
3. A city or county may adopt an ordinance or resolution regarding the sale of tobacco to minors and use of tobacco by minors which is more stringent than this section. Any ordinance or resolution adopted which deems a violation of subsection 1 or 2 a noncriminal violation must provide for a fee of not less than twenty-five dollars.
 - a. Any individual who has been cited for a violation that is designated a noncriminal offense may appear before a court of competent jurisdiction and pay the statutory fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the statutory fee or bond, or both. If the individual cited follows the procedures of this subdivision, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure

appearance before the court must be identical to the statutory fee. This subdivision does not allow a halting officer to receive the statutory fee or bond.

- b. If an individual cited for a violation that is designated a noncriminal offense does not choose to follow any procedure provided under subdivision a, that individual may request a hearing on the issue of the commission of the violation charged. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance. At the time of a request for a hearing on the issue on commission of the violation, the individual charged shall deposit with the court an appearance bond equal to the statutory fee for the violation charged. The state must prove the commission of a charged violation at the hearing under this section by a preponderance of the evidence.
4. A law enforcement officer or juvenile court that cites a minor for violation of this section shall mail a notice of the violation to the parent or legal guardian of the minor within ten days of the citation.

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

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 131

SENATE BILL NO. 2299

(Senators W. Stenehjem, Cook, Tomac)
(Representatives R. Kelsch, Porter)

SEXUAL OFFENDER REGISTRATION

AN ACT to amend and reenact section 12.1-32-15 of the North Dakota Century Code, relating to the registration of offenders against children and sexual offenders; and to repeal section 27-20-52.1 of the North Dakota Century Code, relating to the law enforcement data base.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰⁶ **SECTION 1. AMENDMENT.** Section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

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

1. As used in this section:
 - a. "A crime against a child" means a violation of chapter 12.1-16, 12.1-17, 12.1-18, or 12.1-29, or an equivalent ordinance, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.
 - b. "Department" means the department of corrections and rehabilitation.
 - c. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.
 - d. "Predatory" means an act directed at a stranger, or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.
 - e. ~~"Qualified board" means two or more experts in the field of behavior and treatment of sexual offenders as determined by the department of human services.~~
 - f. "Sexual offender" means a person who has pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, chapter

¹⁰⁶ Section 12.1-32-15 was also amended by section 33 of House Bill No. 1045, chapter 50, and section 3 of Senate Bill No. 2223, chapter 123.

12.1-27.2, or subsection 2 of section 12.1-22-03.1, or an equivalent ordinance, or an attempt to commit these offenses.

- f. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.
 - g. "Sexually violent predator" means a sexual offender who suffers from a mental abnormality or personality disorder that makes that offender likely to engage in predatory sexually violent offenses
"Temporarily domiciled" means staying or being physically present at a location for longer than ten days, attending school for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence.
2. ~~After a person has pled guilty or been found guilty as a sexual offender, the court shall determine upon the motion of the state's attorney and after receiving a report from the qualified board if that person is a sexually violent predator. The court may order the defendant to undergo an evaluation to enable the qualified board to make an appropriate determination.~~
 3. ~~After a person has pled guilty to or been found guilty of a crime against a child or an attempted crime against a child, or after a person has pled guilty or been found guilty as a sexual offender, the~~ The court shall impose, in addition to any penalty provided by law, a requirement that the ~~person~~ individual register, within ten days of coming into a county in which the ~~person~~ individual resides or is temporarily domiciled. The individual must register with the chief of police of the city or the sheriff of the county if the ~~person~~ individual resides, attends school, or is employed in an area other than a city. The court shall require a ~~person~~ an individual to register by stating this requirement on the court records. A ~~person~~ must also register, if that ~~person~~ individual:
 - a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender, including juvenile delinquent adjudications of equivalent offenses unless the offense is listed in subdivision c.
 - b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender for a misdemeanor or attempted misdemeanor. The court may deviate from requiring an individual to register if the court first finds the individual is no more than three years older than the victim if the victim is a minor, the individual has not previously been convicted as a sexual offender or of a felony crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - c. Is a juvenile found delinquent under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual offender for a misdemeanor. The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a felony crime against a child, and the juvenile did not exhibit mental abnormality or predatory conduct in the commission of the offense.

The official or the department shall require the ~~person~~ individual to read and sign a form as required by the attorney general, stating that the duty of the ~~person~~ individual to register has been explained to that ~~person~~ individual. The official in charge of the place of confinement, or the department, shall obtain the address where the ~~person~~ individual expects to reside, attend school, or work 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~~ three copies of the form to the ~~person~~ individual and shall send ~~four~~ three copies to the attorney general no later than forty-five days before the scheduled release of that ~~person~~ individual. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the ~~person~~ individual expects to reside, attend school, or work upon discharge, parole, or release, one copy to the prosecutor who prosecuted the ~~person~~ individual, and one copy to the court in which the ~~person~~ individual 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~~ individual.

5. 6. A ~~person~~ individual 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~~ the duty to register under this section by the court in which that ~~person~~ individual is convicted. The court shall require the ~~person~~ individual to read and sign a form as required by the attorney general, stating that the duty of the ~~person~~ individual to register under this section has been explained to that ~~person~~ individual. The court shall obtain the address where the ~~person~~ individual expects to reside, attend school, or work 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~~ individual 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~~ individual expects to reside, attend school, or work upon discharge, parole, or release.
6. 7. Registration consists of a written statement signed by the ~~person~~ individual, giving the information required by the attorney general, and the fingerprints and photograph of the ~~person~~ individual. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general. If a ~~person~~ individual required to register pursuant to this section has a change in name, school, or address, that ~~person~~ individual shall inform in writing, within ten days, the law enforcement agency with whom that ~~person~~ individual last registered of the ~~person's~~ individual's new name, school, or address, or employment address if the individual is working in this state but not residing in this state. 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, school, or employment. Upon a change of address, the ~~person~~ individual required to register shall also register within ten days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. A law enforcement agency that has previously registered an offender may omit the fingerprint portion of the registration if that agency has a set of

fingerprints on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration.

7. ~~8.~~ ~~A person~~ An individual required to register under this section shall comply with the registration requirement for the longer of the following periods:
- a. A period of ten years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later; or
 - b. ~~Until a court determination is made that the person no longer is a sexually violent predator. The sexually violent predator may petition no more than once a year for a court determination on the status of being a sexually violent predator. The court must receive a report from the qualified board before making the determination~~ For the life of the individual, if that individual:
 - (1) On two or more occasions has pled guilty or nolo contendere to, or been found guilty of, an offense in which that individual was ordered by a court or otherwise required to register as a felonious sexual offender or felonious offender against a child under this section;
 - (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense committed after the effective date of this Act which is described in subdivision a of subsection 1 of section 12.1-20-03, subdivision d of subsection 1 of section 12.1-20-03 if the person is an adult and the victim is under age twelve, or section 12.1-18-01 if that individual is an adult other than a parent of the victim; or
 - (3) Has been civilly committed as a sexually dangerous individual under chapter 25-03.3, under the laws of another state, or by the federal government.
8. ~~9.~~ ~~A person~~ An individual required to register under this section who violates this section is guilty of a class A misdemeanor. A court may not relieve ~~a person~~ an individual, other than a juvenile, who willfully violates this section from serving a term of at least ninety days in jail and completing probation of one year. ~~A person~~ An individual who violates this section who previously has pled guilty or been found guilty of violating this section is guilty of a class C felony.
9. ~~10.~~ When ~~a person~~ an individual 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~~ individual revoked. The statements, photographs, and fingerprints required by this section are open to inspection by the public.
10. ~~11.~~ If ~~a person~~ an individual required to register pursuant to this section is temporarily sent outside the facility or institution where that ~~person~~ individual is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that ~~person~~

individual is being sent must be notified within a reasonable time period before that ~~person~~ individual is released from the facility or institution. This subsection does not apply to any ~~person~~ individual temporarily released under guard from the facility or institution in which that ~~person~~ individual is confined.

44. 12. Relevant and necessary registration information ~~shall~~ must 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 state officer, law enforcement agency, or school district, its officials, and its employees and an appointee, officer, or employee of those entities are not subject to civil or criminal liability for making risk determinations or 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.
13. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual offender or as an offender against a child under this section. the juvenile shall comply with the registration requirements in this section. Notwithstanding any other provision of law, a law enforcement agency shall register a juvenile offender in the same manner as adult offenders and may release any relevant and necessary information on file to other law enforcement agencies, the department of human services, the superintendent or principal of the school the juvenile attends, or the public if disclosure is necessary to protect public health or safety. The school administration may notify others in similar positions if the juvenile transfers to another learning institution in or outside the state.
14. If an individual has been required to register as a sexual offender or an offender against a child under section 12.1-32-15 or 27-20-52.1 before the effective date of this Act, the individual may petition the court to be removed from the offender list if registration is no longer mandatory for that individual. In considering the petition, the court shall comply with the requirements of this section.

SECTION 2. REPEAL. Section 27-20-52.1 of the 1997 Supplement to the North Dakota Century Code is repealed.

Approved April 2, 1999
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