

**Sixtieth Legislative Assembly of North Dakota  
In Regular Session Commencing Wednesday, January 3, 2007**

HOUSE BILL NO. 1216  
(Representatives DeKrey, Delmore, Koppelman)  
(Senators Hacker, Lyson, Nelson)

AN ACT to amend and reenact subsection 3 of section 12.1-20-01, section 12.1-20-03, subsection 1 of section 12.1-20-03.1, and sections 12.1-32-06.1 and 12.1-32-07.1 of the North Dakota Century Code, relating to sentencing and probation supervision of sexual offenders; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 3 of section 12.1-20-01 of the North Dakota Century Code is amended and reenacted as follows:

3. When criminality depends on the victim being a minor fifteen years of age or older, the actor is guilty of an offense only if the actor is at least ~~four~~ three years older than the minor.

**SECTION 2. AMENDMENT.** Section 12.1-20-03 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-20-03. Gross sexual imposition - Penalty.**

1. A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:
  - a. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;
  - b. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance;
  - c. That person knows that the victim is unaware that a sexual act is being committed upon him or her;
  - d. The victim is less than fifteen years old; or
  - e. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct.
2. A person who engages in sexual contact with another, or who causes another to engage in sexual contact, is guilty of an offense if:
  - a. The victim is less than fifteen years old; ~~or~~
  - b. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being; or
  - c. That person knows that the victim is unaware that sexual contact is being committed on the victim.

3. a. An offense under this section is a class AA felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, if the actor's conduct violates subdivision a of subsection 1, or if the actor's conduct violates subdivision d of subsection 1 and the actor was ~~more than five years older than the victim~~ at least twenty-two years of age at the time of the offense. For any conviction of a class AA felony under subdivision a of subsection 1, the court shall impose a minimum sentence of twenty years' imprisonment, with probation supervision to follow the incarceration. The court may deviate from the mandatory sentence if the court finds that the sentence would impose a manifest injustice as defined in section 39-01-01 and the defendant has accepted responsibility for the crime or cooperated with law enforcement. However, a defendant convicted of a AA felony under this section may not be sentenced to serve less than five years of incarceration.
- b. ~~An offense under this section is a class C felony if the actor's conduct violates subdivision d of subsection 1 or subdivision a of subsection 2, and the actor was at least four but not more than five years older than the victim at the time of the offense.~~
- e. Otherwise the offense is a class A felony.
4. If, as a result of injuries sustained during the course of an offense under this section, the victim dies, the offense is a class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed.

**SECTION 3. AMENDMENT.** Subsection 1 of section 12.1-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual in adult court is guilty of an offense if the individual engages in any combination of three or more sexual acts or sexual contacts with a minor under the age of fifteen years during a period of three or more months. The offense is a class AA felony if the actor was ~~more than five years older than the victim at the time of the offense. The offense is a class C felony if the actor was at least four but not more than five years older than the victim~~ at least twenty-two years of age at the time of the offense. Otherwise, the offense is a class A felony. The court may not defer imposition of sentence.

**SECTION 4. AMENDMENT.** Section 12.1-32-06.1 of 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 - Penalty.**

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 pled 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. If the defendant has pled or been found guilty of a felony sexual offense in violation of chapter 12.1-20, the court shall impose ~~a period~~ at least five years but not more than ten years of supervised probation ~~of five years~~ to be served after sentencing or incarceration.

~~The court may impose an additional period of supervised probation not to exceed five years. If the defendant has pled or been found guilty of a class AA felony sexual offense in violation of chapter 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime supervised probation on the defendant. If the defendant has pled or been found guilty of a misdemeanor sexual offense in violation of chapter 12.1-20, the court may impose an additional period of probation not to exceed two years. If the unserved portion of the defendant's maximum period of incarceration is less than one year, a violation of the probation imposed under this subsection is a class A misdemeanor.~~

4. If the defendant has pled 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.
5. 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.
6. 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.
7. 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.

**SECTION 5. AMENDMENT.** Section 12.1-32-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-07.1. Release, discharge, or termination of probation.**

1. Whenever a person has been placed on probation and in the judgment of the court that person has satisfactorily met the conditions of probation, the court shall cause to be issued to the person a final discharge from further supervision.
2. Whenever a person has been placed on probation pursuant to subsection 4 of section 12.1-32-02, the court at any time, when the ends of justice will be served, and when reformation of the probationer warrants, may terminate the period of probation and discharge the person so held. A person convicted of gross sexual imposition under subdivision a of subsection 1 of section 12.1-20-03 is not entitled to early termination of probation pursuant to this section, unless the court finds after at least eight years of supervised probation that further supervision would impose a manifest injustice as defined in section 39-01-01. Every defendant who has fulfilled the conditions of probation for the entire period, or who has been discharged from probation prior to termination of the probation period, may at any time be permitted in the discretion of the court to withdraw the defendant's plea of guilty. The court may in its discretion set aside the verdict of guilty. In either case, the court may dismiss the information or indictment against the defendant. The court may, upon its own motion or upon application by the defendant and before dismissing the information or indictment, reduce to a misdemeanor a felony conviction for which the plea of guilty has been withdrawn or set aside. The defendant must then be released from all penalties and disabilities resulting from the offense or crime of which the defendant has been convicted except as provided by ~~section~~ sections 12.1-32-15 and 62.1-02-01.

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Speaker of the House

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President of the Senate

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Chief Clerk of the House

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Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1216.

House Vote:      Yeas    89      Nays    2      Absent    3

Senate Vote:    Yeas    35      Nays    9      Absent    3

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2007.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2007.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2007,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State