

CRIMINAL CODE

CHAPTER 105

HOUSE BILL NO. 1039

(Legislative Management)
(Justice Reinvestment Committee)

AN ACT to amend and reenact section 12.1-04-01 of the North Dakota Century Code, relating to culpability of a juvenile.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁴ **SECTION 1. AMENDMENT.** Section 12.1-04-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04-01. Juveniles.

~~Persons~~An individual under the age of ~~seventen~~ seventeen years ~~are~~is deemed incapable of commission of an offense defined by the constitution or statutes of this state. The prosecution of any ~~person~~individual as an adult is barred if the offense was committed while the ~~person~~individual was less than fourteen years of age.

Approved March 6, 2019

Filed March 6, 2019

³⁴ Section 12.1-04-01 was also amended by section 1 of House Bill No. 1520, chapter 256.

CHAPTER 106

SENATE BILL NO. 2281

(Senator Dever)

AN ACT to amend and reenact section 12.1-05-05 of the North Dakota Century Code, relating to limitations on permissible use of force on a child.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-05-05 of the North Dakota Century Code is amended and reenacted as follows:

12.1-05-05. Use of force by persons with parental, custodial, or similar responsibilities.

The use of force upon ~~another person~~ an individual is justified under any of the following circumstances:

1. Except as provided in section 15.1-19-02, a parent, guardian, or other person responsible for the care and supervision of a minor, or other person responsible for the care and supervision of a minor for a special purpose, or a person acting at the direction of any of the foregoing persons, may use reasonable force upon the minor for the purpose of safeguarding or promoting the minor's welfare, including prevention and punishment of the minor's misconduct, and the maintenance of proper discipline.
 - a. If the person using reasonable force for the prevention and punishment of the minor's misconduct or the maintenance of proper discipline is a paid caregiver, that person must be acting under written direction of the parent or guardian of the minor.
 - b. The reasonable force may be used for this purpose, regardless of whether or not it the reasonable force is "necessary" as required by subsection 1 of section 12.1-05-07.
 - c. The reasonable force used ~~must~~ may not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.
2. A guardian or other person responsible for the care and supervision of an individual who is incompetent person, or a person acting at the direction of the guardian or responsible person, may use reasonable force upon the ~~incompetent person~~ individual for the purpose of safeguarding or promoting the ~~incompetent person's welfare of the individual~~, including the prevention of the ~~incompetent person's individual's~~ misconduct or, ~~when~~ if the ~~incompetent person~~ individual is in a hospital or other institution for care and custody, for the purpose of maintaining reasonable discipline in the institution.
 - a. The force may be used for these purposes, ~~whether or not it~~ regardless of whether the force is "necessary" as required by subsection 1 of section 12.1-05-07.

- b. The force used ~~must~~may not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.
3. A person responsible for the maintenance of order in a vehicle, train, vessel, aircraft, or other carrier, or in a place ~~where~~in which others are assembled, or a person acting at the responsible person's direction, may use force to maintain order.
 4. A duly licensed physician, or a person acting at a duly licensed physician's direction, may use force in order to administer a recognized form of treatment to promote the physical or mental health of a patient if the treatment is administered:
 - a. In an emergency;
 - b. With the consent of the patient, or, if the patient is a minor or an individual who is incompetent person, with the consent of the patient's parent, guardian, or other person entrusted with the patient's care and supervision; or
 - c. By order of a court of competent jurisdiction.
 5. A person may use force upon ~~another person~~, an individual about to commit suicide or suffer serious bodily injury, to prevent the death or serious bodily injury of ~~such other person~~that individual.

Approved April 11, 2019

Filed April 12, 2019

CHAPTER 107

HOUSE BILL NO. 1393

(Representatives Heinert, Hanson, K. Koppelman)
(Senators Bakke, D. Larson, Myrdal)

AN ACT to create and enact section 12.1-17-01.2 of the North Dakota Century Code, relating to domestic violence; to amend and reenact subsection 4 of section 12-60-16.4, section 12.1-17-01, subsection 6 of section 12.1-17-07.1, sections 12.1-17-13 and 12.1-32-07, and subsection 3 of section 12.1-38-01 of the North Dakota Century Code, relating to simple assault; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 12-60-16.4 of the North Dakota Century Code is amended and reenacted as follows:

4. Class B misdemeanor offenses in sections 12.1-17-01, 12.1-17-01.2, 12.1-20-12.1, 12.1-21-05, 12.1-21-06, 12.1-22-03, 12.1-23-05, and 12.1-29-03.

SECTION 2. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
 - a. Willfully causes bodily injury to another human being; or
 - b. Negligently causes 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.
2. The offense is:
 - a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.
 - b. ~~A class B misdemeanor for the first offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and a class A misdemeanor for a second or subsequent offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and the actor has a prior conviction for simple assault under this section or an assault offense under~~

~~section 12.1-17-01.1 or 12.1-17-02 involving the commission of domestic violence as defined in subsection 2 of section 14-07.1-01. For purposes of this subdivision, a prior conviction includes a conviction of any assault offense in which a finding of domestic violence was made under a law or ordinance of another state which is equivalent to this subdivision.~~

- e. A class B misdemeanor except as provided in subdivision a or b.

SECTION 3. Section 12.1-17-01.2 of the North Dakota Century Code is created and enacted as follows:

12.1-17-01.2. Domestic violence.

1. For purposes of this section "family or household member" means family or household member as defined in section 14-07.1-01.
2. A person is guilty of an offense if that person willfully causes:
 - a. Bodily injury to the actor's family or household member;
 - b. Substantial bodily injury to the actor's family or household member; or
 - c. Serious bodily injury to the actor's family or household member.
3. The offense is:
 - a. A class B misdemeanor for the first offense under subdivision a of subsection 2 and a class A misdemeanor for a second or subsequent offense under this section or sections 12.1-17-01, 12.1-17-01.1, or 12.1-17-02 involving the commission of domestic violence, as defined in section 14-07.1-01. For purposes of this subdivision, a prior conviction includes a conviction of any assault offense in which a finding of domestic violence was made under a law or ordinance of another state which is equivalent to this section.
 - b. A class A misdemeanor for an offense under subdivision b of subsection 2 and a class C felony for an offense under subdivision c of subsection 2.
 - c. A class B felony for an offense under subdivision b or c of subsection 2 if the victim is under twelve years of age.
4. A person charged with an offense under this section must be prosecuted in district court.

SECTION 4. AMENDMENT. Subsection 6 of section 12.1-17-07.1 of the North Dakota Century Code is amended and reenacted as follows:

6. a. A person who violates this section is guilty of a class C felony if:
 - (1) The person previously has been convicted of violating section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-02, 12.1-17-04, 12.1-17-05, or 12.1-17-07, or a similar offense from another court in North Dakota, a court of record in the United States, or a tribal court, involving the victim of the stalking;

- (2) The stalking violates a court order issued under chapter 14-07.1 protecting the victim of the stalking, if the person had notice of the court order; or
- (3) The person previously has been convicted of violating this section.

- b. If subdivision a does not apply, a person who violates this section is guilty of a class A misdemeanor.

SECTION 5. AMENDMENT. Section 12.1-17-13 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-13. Mandated treatment of domestic violence offenders.

The sentence for an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-02, 12.1-17-03, 12.1-17-04, or 12.1-17-05 against an actor's family or household member, as defined in subsection 4 of section 14-07.1-01, must include an order to complete a domestic violence offender evaluation and treatment program as determined by the court. A court may not order the offender to attend anger management classes or individual counseling unless a domestic violence offender treatment program is not reasonably available to the defendant and the court makes findings for the record explaining why an order to complete a domestic violence offender treatment program would be inappropriate.

³⁵ **SECTION 6. AMENDMENT.** Section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.

1. When the court imposes probation upon conviction for a felony offense subject to section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. When the court imposes probation upon conviction or order of disposition in all other felony cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court.
2. The conditions of probation must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which the probation remains subject to revocation. The

³⁵ Section 12.1-32-07 was also amended by section 2 of House Bill No. 1185, chapter 118.

court shall order supervision costs and fees of not less than fifty-five dollars per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship. If the offender has not paid the full amount of supervision fees and costs before completion or termination of probation, the court may issue an order, after opportunity for hearing, to determine the amount of supervision fees and costs that are unpaid. The order may be filed, transcribed, and enforced by the department of corrections and rehabilitation in the same manner as civil judgments rendered by a district court of this state.

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. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of 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;
 - h. Intensive supervision program;
 - i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours;
 - j. Participation in the twenty-four seven sobriety program; or
 - k. One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.
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 career and technical education 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.
- 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.
- p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed or provided at public expense 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 4 of section 12.1-32-08.
- q. Provide community service for the number of hours designated by the court.
 - r. Refrain from any subscription to, access to, or use of the internet.
5. When the court imposes a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the defendant must be given a certificate explicitly setting forth the conditions on which the defendant is being released.
 6. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the probation remains conditional. If the defendant violates a condition of probation at any time before the expiration or termination of the period, the court may continue the defendant on the existing probation, with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended execution of sentence, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.
 7. The court may continue or modify probation conditions or revoke probation for a violation of probation conditions occurring before the expiration or termination of the period of probation notwithstanding that the order of the court is imposed after the expiration or termination has occurred. The petition for revocation must be issued within sixty days of the expiration or termination of probation.
 8. Jurisdiction over a probationer may be transferred from the court that imposed the sentence to another court of this state with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection may exercise all powers permissible under this chapter over the defendant.
 9. Notwithstanding any other provision of law, the court may authorize the defendant to assist law enforcement officers in an investigation of a criminal offense upon the terms and conditions as the court may require by written order. The court shall hold a hearing in camera before issuing an order under this subsection. The order must be sealed and is subject to inspection only upon order of the court.

SECTION 7. AMENDMENT. Subsection 3 of section 12.1-38-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Crime" includes an offense named in section 12.1-16-01, 12.1-16-02, 12.1-16-03, 12.1-17-01, 12.1-17-01.1, ~~12.1-17-01.2~~, 12.1-17-02, 12.1-17-03, 12.1-17-04, chapter 12.1-18, section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-07, chapter 12.1-21, section 12.1-22-01, 12.1-22-02, or 12.1-22-03, or an attempt to commit any of these offenses. The term includes a crime in other states which would have been within this definition if the crime had been committed in this state.

Approved May 1, 2019

Filed May 2, 2019

CHAPTER 108

SENATE BILL NO. 2273

(Senators Poolman, Bakke, D. Larson)
(Representatives Hanson, Karls)

AN ACT to create and enact a new section to chapter 12.1-20 of the North Dakota Century Code, relating to sexual extortion; and to amend and reenact section 12.1-32-15 and subsection 3 of section 50-25.1-02 of the North Dakota Century Code, relating to offenders against children, sexual offenders, sexually violent predators, and child abuse and neglect.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-20 of the North Dakota Century Code is created and enacted as follows:

Sexual extortion.

1. An individual commits the offense of sexual extortion if the individual:
 - a. With an intent to coerce a victim to engage in sexual contact, in sexually explicit conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute an image, video, or other recording of any individual engaged in sexually explicit conduct or any intimate image of an individual, or a demand for money, communicates in person or by electronic means:
 - (1) A threat to the victim's or another's person, property, or reputation; or
 - (2) A threat to distribute or an enticement to delete an intimate image or video of the victim or another.
 - b. Knowingly causes a victim to engage in sexual contact, in sexually explicit conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute any image, video, or other recording of any individual engaged in sexually explicit conduct or any intimate image of an individual, or a demand for money, by means of:
 - (1) A threat to the victim's or another's person, property, or reputation; or
 - (2) A threat to distribute or an enticement to delete an intimate image or video of the victim or another.
2. The offense is:
 - a. A class B felony if the actor's conduct violates subdivision b of subsection 1 and the victim is a minor or vulnerable adult, otherwise a class A misdemeanor.
 - b. A class A misdemeanor if the actor's conduct violates subdivision a of subsection 1.

3. For purposes of this section:

- a. "Intimate image" has the meaning provided in subsection 1 of section 12.1-17-07.2.
- b. "Sexual contact" has the meaning provided in section 12.1-20-02.
- c. "Sexually explicit conduct" has the meaning provided in subsection 1 of section 12.1-17-07.2.
- d. "Simulated sexually explicit conduct" has the meaning provided in subsection 1 of section 12.1-17-07.

³⁶ **SECTION 2. 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, section 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04, subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01, 12.1-18-02, 12.1-18-05, chapter 12.1-29, or section 14-09-22, subsection 3 of section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense from another court in the United States, a tribal court, or court of another country, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt or conspiracy to commit these offenses.
- b. "Department" means the department of corrections and rehabilitation.
- c. "Homeless" means an individual who is physically present in this state, but is living in a park, under a bridge, on the streets, in a vehicle or camper, or is otherwise without a traditional dwelling, and also one who resides in this state but does not maintain a permanent address. The term does not include individuals who are temporarily domiciled or individuals residing in public or private shelters that provide temporary living accommodations.
- d. "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.
- e. "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.
- f. "Reside" means to live permanently or be situated for a considerable time in a home or a particular place.

³⁶ Section 12.1-32-15 was also amended by section 1 of Senate Bill No. 2253, chapter 120.

- g. "Sexual offender" means a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1, 12.1-20-07 except for subdivision a of subsection 1, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2, chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, subdivision b of subsection 1 of section 12.1-41-02, section 12.1-41-04, 12.1-41-05, or 12.1-41-06, section 1 of this Act except for subdivision a of subsection 1 and subdivision b of subsection 1 if the offense involves only a demand for money, or an equivalent offense from another court in the United States, a tribal court, or court of another country, or an attempt or conspiracy to commit these offenses.
- h. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.
- i. "Temporarily domiciled" means staying or being physically present in this state for more than thirty days in a calendar year or at a location for longer than ten consecutive 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. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within three days of coming into a county in which the individual resides, is homeless, or within the period identified in this section that the individual becomes temporarily domiciled. The individual must register with the chief of police of the city or the sheriff of the county if the individual resides, attends school, or is employed in an area other than a city. A homeless individual shall register every three days with the sheriff or chief of police of the jurisdiction in which the individual is physically present. The court shall require an individual to register by stating this requirement on the court records, if that 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 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 crime against a child, and the juvenile did not exhibit mental abnormality or predatory conduct in the commission of the offense.

- d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a child or an attempted crime against a child, including juvenile delinquent adjudications of equivalent offenses. Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim, the court may deviate from requiring an individual to register if the court first finds the individual has not previously been convicted as a sexual offender or for a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated delinquent of any crime against another individual which is not otherwise specified in this section if the court determines that registration is warranted by the nature of the crime and therefore orders registration for the individual. If the court orders an individual to register as an offender under this section, the individual shall comply with all of the registration requirements in this chapter.
3. If a court has not ordered an individual to register in this state, an individual who resides, is homeless, or is temporarily domiciled in this state shall register if the individual:
 - a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime against a child described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 if the individual was not the parent of the victim, or as a sexual offender;
 - b. Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of, an offense in a court of this state for which registration is mandatory under this section or an offense from another court in the United States, a tribal court, or court of another country equivalent to those offenses set forth in this section; or
 - c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against a child or as a sexual offender for which registration is mandatory under this section if the conviction occurred after July 31, 1985.
 4. In its consideration of mental abnormality or predatory conduct, the court shall consider the age of the offender, the age of the victim, the difference in ages of the victim and offender, the circumstances and motive of the crime, the relationship of the victim and offender, and the mental state of the offender. The court may order an offender to be evaluated by a qualified counselor, psychologist, or physician before sentencing. Except as provided under subdivision e of subsection 2, the court shall state on the record in open court its affirmative finding for not requiring an offender to register.
 5. When an individual is required to register under this section, the official in charge of a facility or institution where the individual required to register is confined, or the department, shall, before the discharge, parole, or release of that individual, inform the individual of the duty to register pursuant to this section. The official or the department shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register has been explained to that individual. The official in charge of the place of confinement, or the department, shall obtain the address where the 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 three copies of the form to the individual and shall send three copies to the attorney general no later than forty-five days before the scheduled release of that individual. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work upon discharge, parole, or release, one copy to the prosecutor who prosecuted the individual, and one copy to the court in which the 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 individual.

6. An 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 the duty to register under this section by the court in which that individual is convicted. The court shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register under this section has been explained to that individual. The court shall obtain the address where the 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 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 individual expects to reside, attend school, or work upon discharge, parole, or release.
7. Registration consists of a written statement signed by the individual, giving the information required by the attorney general, and the biometric data and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized database of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, biometric data, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register under this section has a change in vehicle or computer online identity, the individual shall register, within three days after the change, with the law enforcement agency with which that individual last registered of the individual's new vehicle or computer online identity. If an individual required to register pursuant to this section has a change in name, school, or residence or employment address, that individual shall register, at least ten days before the change, with the law enforcement agency with which that individual last registered of the individual's new name, school, residence address, or employment address. A change in school or employment address includes the termination of school or employment for which an individual required to register under this section, the

individual shall register within three days of the termination with the law enforcement agency with which the individual last registered. 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 individual required to register shall also register within three days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval determined by the attorney general. A law enforcement agency that has previously registered an offender may omit the biometric data portion of the registration if that agency has a set of biometric data 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.

8. 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 fifteen 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;
 - b. A period of twenty-five 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, if the offender is assigned a moderate risk by the attorney general as provided in subsection 12; or
 - c. 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 a crime against a child or as a sexual offender. If all qualifying offenses are misdemeanors, this lifetime provision does not apply unless a qualifying offense was committed after August 1, 1999;
 - (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense committed after August 1, 1999, which is described in subdivision a of subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or 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 an equivalent offense from another court in the United States, a tribal court, or court of another country; or
 - (3) Is assigned a high risk by the attorney general as provided in subsection 12.
9. An individual required to register under this section who violates this section is guilty of a class C felony. The failure of a homeless individual to register as required in subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of court shall forward all warrants issued for a violation of this section to the county sheriff, who shall enter all such warrants into the national crime information center wanted person file. A court may not relieve

an individual, other than a juvenile, who violates this section from serving a term of at least ninety days in jail and completing probation of one year.

10. When 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 individual revoked.
11. If an individual required to register pursuant to this section is temporarily sent outside the facility or institution where that individual is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that individual is being sent must be notified within a reasonable time period before that individual is released from the facility or institution. This subsection does not apply to any individual temporarily released under guard from the facility or institution in which that individual is confined.
12. The attorney general, with the assistance of the department and the juvenile courts, shall develop guidelines for the risk assessment of sexual offenders who are required to register, with a low-risk, moderate-risk, or high-risk level being assigned to each offender as follows:
 - a. The department shall conduct a risk assessment of sexual offenders who are incarcerated in institutions under the control of the department and sexual offenders who are on supervised probation. The department, in a timely manner, shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning individuals required to be registered under this section who are about to be released or placed into the community.
 - b. The attorney general shall conduct a risk assessment of sexual offenders who are not under the custody or supervision of the department. The attorney general may adopt a law enforcement agency's previous assignment of risk level for an individual if the assessment was conducted in a manner substantially similar to the guidelines developed under this subsection.
 - c. The juvenile courts or the agency having legal custody of a juvenile shall conduct a risk assessment of juvenile sexual offenders who are required to register under this section. The juvenile courts or the agency having legal custody of a juvenile shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning juveniles required to register and who are about to be released or placed into the community.
 - d. The attorney general shall notify the offender of the risk level assigned to that offender. An offender may request a review of that determination with the attorney general's sexual offender risk assessment committee and may present any information that the offender believes may lower the assigned risk level.
13. An individual assessed as a high-risk sexual offender in accordance with subsection 12, may not reside within five hundred feet [152.4 meters] of a public or nonpublic preschool or elementary, middle, or high school.

14. Relevant and necessary conviction and registration information must be disclosed to the public by a law enforcement agency if the individual is a moderate or high risk and the agency determines that disclosure of the conviction and registration information is necessary for public protection. The attorney general shall develop guidelines for public disclosure of offender registration information. Public disclosure may include internet access if the offender:
 - a. Is required to register for a lifetime under subsection 8;
 - b. Has been determined to be a high risk to the public by the department, the attorney general, or the courts, according to guidelines developed by those agencies; or
 - c. Has been determined to be a high risk to the public by an agency of another state or the federal government.

If the offender has been determined to be a moderate risk, public disclosure must include, at a minimum, notification of the offense to the victim registered under chapter 12.1-34 and to any agency, civic organization, or group of persons who have characteristics similar to those of a victim of the offender. Upon request, law enforcement agencies may release conviction and registration information regarding low-risk, moderate-risk, or high-risk offenders.

15. A state officer, law enforcement agency, or public school district or governing body of a nonpublic school or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations, allowing a sexual offender to attend a school function under section 12.1-20-25, or for disclosing or for failing to disclose information as permitted by this section.
16. 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, or the public if disclosure is necessary to protect public health or safety. The law enforcement agency shall release any relevant and necessary information on file to the superintendent or principal of the school the juvenile attends. The school administration shall notify others in similar positions if the juvenile transfers to another learning institution in or outside the state.
17. 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 August 1, 1999, 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.
18. A sexual offender who is currently assigned a moderate or high-risk level by the attorney general may not use a state park of this state as a residence or residential address to comply with the registration requirements of this section. Before arriving at a state park for overnight lodging or camping, a sexual offender who is assigned a moderate or high-risk level by the attorney general

shall notify a parks and recreation department law enforcement officer at the state park where the sexual offender will be staying.

Offenders against children and sexual offenders - Sexually violent predators - Registration requirement - Penalty. (Contingent effective date - [See note](#))

1. As used in this section:

- a. "A crime against a child" means a violation of chapter 12.1-16, section 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04, subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01, 12.1-18-02, 12.1-18-05, chapter 12.1-29, or section 14-09-22, subsection 3 of section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense from another court in the United States, a tribal court, or court of another country, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt or conspiracy to commit these offenses.
- b. "Department" means the department of corrections and rehabilitation.
- c. "Homeless" means an individual who is physically present in this state, but is living in a park, under a bridge, on the streets, in a vehicle or camper, or is otherwise without a traditional dwelling, and also one who resides in this state but does not maintain a permanent address. The term does not include individuals who are temporarily domiciled or individuals residing in public or private shelters that provide temporary living accommodations.
- d. "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.
- e. "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.
- f. "Reside" means to live permanently or be situated for a considerable time in a home or a particular place.
- g. "Sexual offender" means a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1, 12.1-20-07 except for subdivision a of subsection 1, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2, chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, subdivision b of subsection 1 of section 12.1-41-02, section 12.1-41-04, 12.1-41-05, or 12.1-41-06, section 1 of this Act except for subdivision a of subsection 1 and subdivision b of subsection 1 if the offense involves only a demand for money, or an equivalent offense from another court in the United States, a tribal court, or court of another country, or an attempt or conspiracy to commit these offenses.
- h. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.

- i. "Temporarily domiciled" means staying or being physically present in this state for more than thirty days in a calendar year or at a location for longer than ten consecutive 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. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within three days of coming into a county in which the individual resides, is homeless, or within the period identified in this section that the individual becomes temporarily domiciled. The individual must register with the chief of police of the city of the individual's place of residence, or the sheriff of the county if the individual resides in an area other than a city. A homeless individual shall register every three days with the sheriff or chief of police of the jurisdiction in which the individual is physically present. The court shall require an individual to register by stating this requirement on the court records, if that 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 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 crime against a child, and the juvenile did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a child or an attempted crime against a child, including juvenile delinquent adjudications of equivalent offenses. Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim, the court may deviate from requiring an individual to register if the court first finds the individual has not previously been convicted as a sexual offender or for a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated delinquent of any crime against another individual which is not otherwise specified in this section if the court determines that registration is warranted by the nature of the crime and therefore orders registration for the individual. If the court orders an individual to register as an offender under this section, the individual shall comply with all of the registration requirements in this chapter.

3. If a court has not ordered an individual to register in this state, an individual who resides, is homeless, or is temporarily domiciled in this state shall register if the individual:
 - a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime against a child described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 if the individual was not the parent of the victim, or as a sexual offender;
 - b. Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of, an offense in a court of this state for which registration is mandatory under this section or an offense from another court in the United States, a tribal court, or court of another country equivalent to those offenses set forth in this section; or
 - c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against a child or as a sexual offender for which registration is mandatory under this section if the conviction occurred after July 31, 1985.
4. In its consideration of mental abnormality or predatory conduct, the court shall consider the age of the offender, the age of the victim, the difference in ages of the victim and offender, the circumstances and motive of the crime, the relationship of the victim and offender, and the mental state of the offender. The court may order an offender to be evaluated by a qualified counselor, psychologist, or physician before sentencing. Except as provided under subdivision e of subsection 2, the court shall state on the record in open court its affirmative finding for not requiring an offender to register.
5. When an individual is required to register under this section, the official in charge of a facility or institution where the individual required to register is confined, or the department, shall, before the discharge, parole, or release of that individual, inform the individual of the duty to register pursuant to this section. The official or the department shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register has been explained to that individual. The official in charge of the place of confinement, or the department, shall obtain the address where the 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 three copies of the form to the individual and shall send three copies to the attorney general no later than forty-five days before the scheduled release of that individual. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work upon discharge, parole, or release, one copy to the prosecutor who prosecuted the individual, and one copy to the court in which the 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 individual.
6. An 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 the duty to register under this section by the court in which that individual is convicted. The court shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register under this section has been explained

to that individual. The court shall obtain the address where the 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 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 individual expects to reside, attend school, or work upon discharge, parole, or release.

7. Registration consists of a written or electronic statement signed by the individual, giving the information required by the attorney general, and the biometric data and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized database of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, biometric data, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register under this section has a change in vehicle or computer online identity, the individual shall register, within three days after the change, with the law enforcement agency having local jurisdiction of the individual's place of residence of the individual's new vehicle or computer online identity. If an individual required to register pursuant to this section has a change in name, school, or residence or employment address, that individual shall register, at least ten days before the change, with the law enforcement agency having local jurisdiction of the individual's place of residence of the individual's new name, school, residence address, or employment address. A change in school or employment address includes the termination of school or employment for which an individual required to register under this section, the individual shall register within three days of the termination with the law enforcement agency having local jurisdiction of the individual's place of residence. 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 individual required to register also shall register within three days at the law enforcement agency having local jurisdiction of the new place of residence. If an individual required to register in North Dakota, including in a tribal registry, resides in another state or on tribal lands, that individual shall register employment and school addresses and any changes in required registration information with the law enforcement agency having local jurisdiction over the school or employment address. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval determined by the attorney general. A law enforcement agency that has previously registered an offender may omit the biometric data portion of the registration if that agency has a set of

biometric data 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.

8. 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 fifteen 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;
 - b. A period of twenty-five 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, if the offender is assigned a moderate risk by the attorney general as provided in subsection 12; or
 - c. 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 a crime against a child or as a sexual offender. If all qualifying offenses are misdemeanors, this lifetime provision does not apply unless a qualifying offense was committed after August 1, 1999;
 - (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense committed after August 1, 1999, which is described in subdivision a of subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or 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 an equivalent offense from another court in the United States, a tribal court, or court of another country; or
 - (3) Is assigned a high risk by the attorney general as provided in subsection 12.
9. An individual required to register under this section who violates this section is guilty of a class C felony. The failure of a homeless individual to register as required in subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of court shall forward all warrants issued for a violation of this section to the county sheriff, who shall enter all such warrants into the national crime information center wanted person file. A court may not relieve an individual, other than a juvenile, who violates this section from serving a term of at least ninety days in jail and completing probation of one year.
10. When 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 individual revoked.
11. If an individual required to register pursuant to this section is temporarily sent outside the facility or institution where that individual is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that individual is being sent must be notified within a reasonable time period before that individual is released from the facility or

institution. This subsection does not apply to any individual temporarily released under guard from the facility or institution in which that individual is confined.

12. The attorney general, with the assistance of the department and the juvenile courts, shall develop guidelines for the risk assessment of sexual offenders who are required to register, with a low-risk, moderate-risk, or high-risk level being assigned to each offender as follows:
 - a. The department shall conduct a risk assessment of sexual offenders who are incarcerated in institutions under the control of the department and sexual offenders who are on supervised probation. The department, in a timely manner, shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning individuals required to be registered under this section who are about to be released or placed into the community.
 - b. The attorney general shall conduct a risk assessment of sexual offenders who are not under the custody or supervision of the department. The attorney general may adopt a law enforcement agency's previous assignment of risk level for an individual if the assessment was conducted in a manner substantially similar to the guidelines developed under this subsection.
 - c. The juvenile courts or the agency having legal custody of a juvenile shall conduct a risk assessment of juvenile sexual offenders who are required to register under this section. The juvenile courts or the agency having legal custody of a juvenile shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning juveniles required to register and who are about to be released or placed into the community.
 - d. The attorney general shall notify the offender of the risk level assigned to that offender. An offender may request a review of that determination with the attorney general's sexual offender risk assessment committee and may present any information that the offender believes may lower the assigned risk level.
13. An individual assessed as a high-risk sexual offender in accordance with subsection 12, may not reside within five hundred feet [152.4 meters] of a public or nonpublic preschool or elementary, middle, or high school.
14. Relevant and necessary conviction and registration information must be disclosed to the public by a law enforcement agency if the individual is a moderate or high risk and the agency determines that disclosure of the conviction and registration information is necessary for public protection. The attorney general shall develop guidelines for public disclosure of offender registration information. Public disclosure may include internet access if the offender:
 - a. Is required to register for a lifetime under subsection 8;
 - b. Has been determined to be a high risk to the public by the department, the attorney general, or the courts, according to guidelines developed by those agencies; or

- c. Has been determined to be a high risk to the public by an agency of another state or the federal government.

If the offender has been determined to be a moderate risk, public disclosure must include, at a minimum, notification of the offense to the victim registered under chapter 12.1-34 and to any agency, civic organization, or group of persons who have characteristics similar to those of a victim of the offender. Upon request, law enforcement agencies may release conviction and registration information regarding low-risk, moderate-risk, or high-risk offenders.

15. A state officer, law enforcement agency, or public school district or governing body of a nonpublic school or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations, allowing a sexual offender to attend a school function under section 12.1-20-25, or for disclosing or for failing to disclose information as permitted by this section.
16. 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, or the public if disclosure is necessary to protect public health or safety. The law enforcement agency shall release any relevant and necessary information on file to the superintendent or principal of the school the juvenile attends. The school administration shall notify others in similar positions if the juvenile transfers to another learning institution in or outside the state.
17. 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 August 1, 1999, 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.
18. A sexual offender who is currently assigned a moderate or high-risk level by the attorney general may not use a state park of this state as a residence or residential address to comply with the registration requirements of this section. Before arriving at a state park for overnight lodging or camping, a sexual offender who is assigned a moderate or high-risk level by the attorney general shall notify a parks and recreation department law enforcement officer at the state park where the sexual offender will be staying.

³⁷ **SECTION 3. AMENDMENT.** Subsection 3 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Abused child" means an individual under the age of eighteen years who is suffering from abuse as defined in section 14-09-22 caused by a person

³⁷ Section 50-25.1-02 was also amended by section 1 of House Bill No. 1108, chapter 416, section 6 of House Bill No. 1520, chapter 256, section 124 of Senate Bill No. 2124, chapter 391, and section 8 of Senate Bill No. 2245, chapter 406.

responsible for the child's welfare and "sexually abused child" means an individual under the age of eighteen years who is subjected by a person responsible for the child's welfare, or by any individual who acts in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, section 1 of this Act, or chapter 12.1-27.2.

Approved April 11, 2019

Filed April 12, 2019

CHAPTER 109

HOUSE BILL NO. 1465

(Representatives Meier, Buffalo, Hanson, K. Koppelman, Roers Jones)
(Senators Dever, Hogan, Myrdal)

AN ACT to amend and reenact sections 12.1-20-16 and 12.1-29-06 of the North Dakota Century Code, relating to appointment of guardian ad litem in prosecution for sex offenses and solicitation offense; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-20-16 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-16. Appointment of a guardian ad litem in prosecution for sex offenses.

A minor or ~~a person~~an individual with a developmental disability who is a material or prosecuting witness in a criminal proceeding involving an act in violation of sections 12.1-20-01 through 12.1-20-08, ~~or~~ section 12.1-20-11, ~~or chapter 12.1-41,~~ may, at the discretion of the district court, have the witness' interests represented by a guardian ad litem at all stages of the proceedings arising from the violation. The appointment may be made upon the order of the court on its own motion or at the request of a party to the action. The guardian ad litem may, but need not, be a licensed attorney and must be designated by the court after due consideration is given to the desires and needs of the minor or the ~~person~~individual with a developmental disability. ~~A person~~An individual who is also a material witness or prosecuting witness in the same proceeding may not be designated guardian ad litem. The guardian ad litem must receive notice of and may attend all depositions, hearings, and trial proceedings to support the minor or the ~~person~~individual with a developmental disability and advocate for the protection of the minor or the ~~person~~individual with a developmental disability but may not separately introduce evidence or directly examine or cross-examine witnesses. The expenses of the guardian ad litem, when approved by the judge, must be paid by the supreme court. The state shall also pay the expenses of the guardian ad litem in commitment proceedings held in district court pursuant to chapter 25-03.1.

SECTION 2. AMENDMENT. Section 12.1-29-06 of the North Dakota Century Code is amended and reenacted as follows:

12.1-29-06. Hiring an individual to engage in sexual activity.

~~An~~Except as provided in section 12.1-41-06, an individual who hires or offers or agrees to hire another individual with the intention of engaging in sexual activity is guilty of:

1. A class B misdemeanor for a first offense; and
2. A class A misdemeanor for a second or subsequent offense within ten years.

Approved March 21, 2019

Filed March 22, 2019

CHAPTER 110

SENATE BILL NO. 2044

(Senators Myrdal, Unruh, Oehlke)
(Representatives Schmidt, Damschen)

AN ACT to amend and reenact section 12.1-21-06 of the North Dakota Century Code, relating to tampering with or damaging a critical infrastructure facility or a public service; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-21-06 of the North Dakota Century Code is amended and reenacted as follows:

12.1-21-06. Tampering with or damaging a critical infrastructure facility or a public service - Penalty.

1. ~~A person is guilty of an offense if he causes a substantial interruption or impairment of a public communication, transportation, supply of water, gas, power, or other facility or a public service by:~~
An individual may not cause a critical infrastructure facility or a public service by:
 - a. Tampering with or damaging the tangible property of another;
 - b. Incapacitating an operator of ~~such a~~ a critical infrastructure facility or a public service; ~~or~~
 - c. ~~Negligently damaging the tangible property of another by fire, explosive, or other dangerous means. Damaging, destroying, vandalizing, defacing, or tampering with equipment in a critical infrastructure facility;~~ Damaging, destroying, vandalizing, defacing, or tampering with the operations of a critical infrastructure facility;
 - d. Damaging, destroying, vandalizing, defacing, impeding, inhibiting, or tampering with the operations of a critical infrastructure facility; ~~or~~
 - e. Interfering, inhibiting, impeding, or preventing the construction or repair of a critical infrastructure facility.
2. ~~The offense~~A violation of this section is a class C felony if the actor engages in the conduct intentionally and a class A misdemeanor if the actor engages in the conduct knowingly or recklessly. Otherwise it is a class B misdemeanor.
3. This section does not apply to an employee or contractor acting within the scope of the employee's or contractor's employment. As used in this subsection, "employee or contractor" means any person hired or under contract to provide services to a critical infrastructure facility or public service.
4. An organization that has pled guilty or been convicted of a violation under section 12.1-06-04 for conspiring with an individual who has pled guilty or been convicted under subsection 1 must be assessed a fine equivalent to the penalty authorized by subsection 2 for each individual who has pled guilty or

been convicted under subsection 1, not to exceed one hundred thousand dollars.

5. This section may not be construed to prevent or prohibit lawful assembly and peaceful and orderly petition for the redress of grievances, including a labor dispute between an employer and its employee.
6. As used in this section, "critical infrastructure facility" includes:
 - a. A petroleum or alumina refinery;
 - b. An electrical power generating facility, substation, switching station, electrical control center, or electric power line and associated equipment infrastructure;
 - c. A chemical, polymer, or rubber manufacturing facility;
 - d. A drinking water source, water transmission line, water treatment plant, water distribution system, ground water monitoring well, waste water treatment plant, or waste water collection system;
 - e. A natural gas compressor station;
 - f. A liquid natural gas terminal or storage facility;
 - g. Wireline telecommunications and internet infrastructure, including central offices, fiber optic lines, cable lines, and all additional equipment associated with the provision of broadband or telecommunication services;
 - h. Wireless telecommunications infrastructure, including a cell tower, telephone pole or line, including a fiber optic line;
 - i. A port, railroad switching yard, railroad track, trucking terminal, or other freight transportation facility;
 - j. A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas or a natural gas liquid;
 - k. A transmission facility used by a federally licensed radio or television station;
 - l. A steel-making facility using an electric arc furnace to make steel;
 - m. A facility identified and regulated by the United States department of homeland security chemical facility anti-terrorism standards program;
 - n. A dam regulated by the state or federal government;
 - o. A natural gas transmission or distribution utility facility, including a pipeline interconnection, a city gate or town border station, a metering station, below or aboveground piping, a regulator station, and a natural gas storage facility;
 - p. A crude oil or refined product storage and distribution facility, including a valve site, pipeline interconnection, pump station, metering station, below or aboveground pipeline or piping, and a truck loading or offloading facility;

- q. Any below or aboveground portion of an oil, gas, hazardous liquid, or chemical pipeline, tank, railroad facility, or other storage facility;
- r. An oil and gas production site; and
- s. A site or location designated or approved for the construction of a facility described in this subsection.

Approved April 10, 2019

Filed April 11, 2019

CHAPTER 111

SENATE BILL NO. 2262

(Senators Klein, Patten)
(Representatives Keiser, Zubke)

AN ACT to create and enact two new sections to chapter 12.1-23 of the North Dakota Century Code, relating to the use and possession of re-encoders and scanning devices; to amend and reenact section 12.1-23-11 of the North Dakota Century Code, relating to the unauthorized use of personal identifying information; to repeal section 12.1-23-17 of the North Dakota Century Code, relating to the unlawful skimming of credit, debit, or other electronic payment cards; 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:

Definitions.

As used in this chapter:

1. "Payment card" means a credit card, charge card, debit card, or any other card issued to an authorized card user which allows the user to obtain, purchase, or receive credit, money, goods, services, or anything else of value.
2. "Re-encoder" means an electronic device that places encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or magnetic strip or stripe of a different payment card, driver's license, or state-issued identification card, or any electronic medium that allows an authorized transaction to occur.
3. "Scanning device" means a scanner, reader, or any other electronic device used to access, read, scan, obtain, memorize, or store, information encoded on a computer chip or magnetic strip or stripe of a payment card, driver's license, or state-issued identification card.
4. "Skimmer" means an electronic, photographic, visual imaging, recording, or other device capable of accessing, reading, recording, capturing, copying, imaging, scanning, reproducing, or storing in any manner the financial information contained on a payment card or encoded on a computer chip or magnetic strip or stripe of a payment card.

SECTION 2. AMENDMENT. Section 12.1-23-11 of the North Dakota Century Code is amended and reenacted as follows:

12.1-23-11. 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 operator's license information assigned to an individual by the department of transportation under section 39-06-14;
 - 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 individual's employer;
 - h. The maiden name of the individual's mother;
 - i. An individual's financial institution account number, credit card number, or debit card number;
 - j. An individual's birth, death, or marriage certificate;
 - k. An individual's health insurance policy number or subscriber identification number or any unique identifier used by a health insurer to identify the individual;
 - l. The nondriver color photo identification card information assigned to the individual by the department of transportation under section 39-06-03.1; or
 - m. An individual's digitized or other electronic signature;
 - n. An individual's photograph or computerized image;
 - o. An individual's electronic mail address; or
 - p. An individual's username and password of any digital service or computer system;
 - q. An individual's payment card information;
 - r. An individual's biometric data; or
 - s. Any other numbers, documents, or information that can be used to access another person's financial records.
2. An individual is guilty of an offense if the individual obtains or attempts to obtain, transfers, records, or uses or attempts to use any personal identifying information of another individual, living or deceased, to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the other individual. The offense is a class B felony if the credit, money, goods, services, or anything else of value exceeds one thousand dollars in value, otherwise the offense is a class C felony. A second or subsequent offense is a class A felony.

3. A person is guilty of an offense if the person uses or attempts to use any personal identifying information of an individual, living or deceased, without the authorization or consent of the individual, in order to interfere with or initiate a contract or service for a person other than that individual, to obtain or continue employment, to gain access to personal identifying information of another individual, or to commit an offense in violation of the laws of this state, regardless of whether there is any actual economic loss to the individual. A first offense under this subsection is a class A misdemeanor. A second or subsequent offense under this subsection is a class C felony.
4. A violation of this section, of a law of another state, or of federal law that is equivalent to this section and which resulted in a plea or finding of guilt must be considered a prior offense. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.
5. A prosecution for a violation of this section must be commenced within six years after discovery by the victim of the offense of the facts constituting the violation.
6. When a person commits violations of this section in more than one county involving either one or more victims or the commission of acts constituting an element of the offense, the multiple offenses may be consolidated for commencement of prosecution in any county where one of the offenses was committed.

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

Use and possession of re-encoders and scanning devices - Penalty.

1. An individual is guilty of a class B felony if the individual uses or attempts to use a skimmer, re-encoder, or a scanning device to obtain information from a payment card, driver's license, or state-issued identification card without the permission of the authorized card user of the card from which the information is being skimmed, re-encoded, or scanned. An individual convicted of a second or subsequent violation of this subsection is guilty of a class A felony and also is subject to a civil penalty of not more than one hundred thousand dollars.
2. An individual is guilty of a class A misdemeanor if the individual owns or possess a skimmer, re-encoder, or scanning device with the intent to commit, aid, or abet any unlawful activity.

SECTION 4. REPEAL. Section 12.1-23-17 of the North Dakota Century Code is repealed.

Approved March 20, 2019

Filed March 21, 2019

CHAPTER 112

HOUSE BILL NO. 1097

(Representatives Roers Jones, Beadle, Pyle, Blum, Louser, Nathe, Becker)
(Senators Holmberg, J. Lee, Meyer, Poolman, Davison)

AN ACT to amend and reenact section 12.1-30-04 of the North Dakota Century Code, relating to Sunday closing laws and retail agreements; to repeal sections 12.1-30-01, 12.1-30-02, and 12.1-30-03 of the North Dakota Century Code, relating to Sunday closing laws; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-30-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-30-04. Retail business leases or agreements - Penalty.

A retail business may not be required to be open on Sunday as a part of a lease agreement, franchise agreement, or any other contractual arrangement entered and executed before January 1, 2019. A violation of this section is a class A misdemeanor.

SECTION 2. REPEAL. Sections 12.1-30-01, 12.1-30-02, and 12.1-30-03 of the North Dakota Century Code are repealed.

Approved March 25, 2019

Filed March 25, 2019

CHAPTER 113

SENATE BILL NO. 2203

(Senators Myrdal, Bakke, Dwyer)
(Representatives Buffalo, Satrom, Vetter)

AN ACT to amend and reenact section 12.1-31-01.2 of the North Dakota Century Code, relating to sexual assault restraining orders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁸ **SECTION 1. AMENDMENT.** Section 12.1-31-01.2 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-01.2. Sexual assault restraining order - Penalty.

1. For purposes of this section:
 - a. "Second or subsequent violation of a protection order" means two or more violations of protection orders.
 - b. "Sexual assault" means any nonconsensual offense in chapter 12.1-20 for which sexual act or sexual contact, as defined in section 12.1-20-07, 12.1-20-02, is an element.
2. An individual who is the victim of sexual assault or the parent, stepparent, or guardian of a minor who reasonably believes the minor is a victim of sexual assault may seek a sexual assault restraining order from a court of competent jurisdiction in the manner provided in this section.
3. A petition for relief must allege facts sufficient to show the name of the alleged victim, the name of the individual who committed the sexual assault, and that the individual committed the sexual assault. An affidavit made under oath stating the specific facts and circumstances supporting the relief sought must accompany the petition.
4. If the petition for relief alleges reasonable grounds to believe an individual has committed sexual assault, the court, pending a full hearing, may grant a temporary sexual assault restraining order.
5. A temporary restraining order may be entered only against the individual named in the petition. The order must include prohibiting the individual from:
 - a. Harassing, stalking, or threatening the individual requesting the order;
 - b. Appearing at the individual's residence, school, and place of employment; and
 - c. Contacting the individual requesting the order.

³⁸ Section 12.1-31-01.2 was also amended by section 1 of Senate Bill No. 2071, chapter 114.

6. The court may grant a sexual assault restraining order prohibiting the respondent from contacting, harassing, stalking, or threatening the applicant, and from appearing at the applicant's residence, school, and place of employment if:
 - a. An individual files a petition under subsection 3;
 - b. The sheriff serves the respondent with a copy of the temporary restraining order issued under subsections 4 and 5, and with notice of the time and place of the hearing;
 - c. The court sets a hearing for not later than fourteen days after issuance of the temporary restraining order unless the time period is extended upon written consent of the parties, or upon a showing the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence; and
 - d. The court finds after the hearing there are reasonable grounds to believe the respondent committed sexual assault.
7. A restraining order may be issued only against the individual named in the petition. Relief granted by the restraining order may not exceed a period of two years. The restraining order may be served on the respondent by publication pursuant to rule 4 of the North Dakota Rules of Civil Procedure.
8. A sexual assault restraining order must contain a conspicuous notice to the respondent providing:
 - a. The specific conduct that constitutes a violation of the order;
 - b. Notice that violation of the restraining order is punishable as a class A misdemeanor; and
 - c. Notice that a peace officer may arrest the respondent without a warrant and take the respondent into custody if the peace officer has probable cause to believe the respondent has violated an order issued under this section.
9. If the respondent knows of an order issued under subsections 4 and 5, or subsection 6, violation of the order is a class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of a protection order is a class C felony. If the existence of an order issued under subsection 3, or subsections 4 and 5 can be verified by a peace officer, the officer, without a warrant, may arrest and take into custody an individual whom the peace officer has probable cause to believe has violated the order.
10. The clerk of court shall transmit a copy of a restraining order by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the alleged victim of sexual assault. Each appropriate law enforcement agency may make available to its officers current information as to the existence and status of any restraining order involving sexual assault.

11. Notwithstanding subsection 5 of section 11-16-05, a state's attorney may advise and assist an individual in the preparation of documents necessary to secure a restraining order under this section.
12. Fees for filing and service of process may not be charged to the petitioner in a proceeding seeking relief due to sexual assault under section 12.1-20-07.

Approved April 8, 2019

Filed April 9, 2019

CHAPTER 114

SENATE BILL NO. 2071

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

AN ACT to amend and reenact subsection 6 of section 12.1-31-01.2 and subsection 5 of section 12.1-31.2-01 of the North Dakota Century Code, relating to restraining orders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁹ **SECTION 1. AMENDMENT.** Subsection 6 of section 12.1-31-01.2 of the North Dakota Century Code is amended and reenacted as follows:

6. The court may grant a sexual assault restraining order prohibiting the respondent from contacting, harassing, stalking, or threatening the applicant, and from appearing at the applicant's residence, school, and place of employment if:
 - a. An individual files a petition under subsection 3;
 - b. The sheriff serves the respondent with a copy of the temporary restraining order issued under subsections 4 and 5, and with notice of the time and place of the hearing;
 - c. The court sets a hearing for not later than fourteen days after issuance of the temporary restraining order ~~unless the time period is extended upon written consent of the parties, or upon a showing the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence or at a later date if good cause is shown;~~ and
 - d. The court finds after the hearing there are reasonable grounds to believe the respondent committed sexual assault.

⁴⁰ **SECTION 2. AMENDMENT.** Subsection 5 of section 12.1-31.2-01 of the North Dakota Century Code is amended and reenacted as follows:

5. The court may grant a disorderly conduct restraining order ordering the respondent to cease or avoid the disorderly conduct or to have no contact with the applicant if:
 - a. A person files a petition under subsection 3;

³⁹ Section 12.1-31-01.2 was also amended by section 1 of Senate Bill No. 2203, chapter 113.

⁴⁰ Section 12.1-31.2-01 was also amended by section 2 of Senate Bill No. 2036, chapter 54.

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- b. The sheriff serves the respondent with a copy of the temporary restraining order issued under subsection 4 and with notice of the time and place of the hearing;
 - c. The court sets a hearing for not later than fourteen days after issuance of the temporary restraining order ~~unless the time period is extended upon written consent of the parties, or upon a showing that the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence or at a later date if good cause is shown;~~ and
 - d. The court finds after the hearing that there are reasonable grounds to believe that the respondent has engaged in disorderly conduct. If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

Approved March 21, 2019

Filed March 22, 2019

CHAPTER 115

HOUSE BILL NO. 1477

(Representative Mitskog)
(Senator J. Lee)

AN ACT to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to prohibiting the sale of flavored e-liquid to minors; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-31 of the North Dakota Century Code is created and enacted as follows:

Sale of flavored e-liquid to minors prohibited - Penalty.

1. A person may not sell, offer for sale, or distribute in this state any flavored e-liquid or electronic smoking device containing flavored e-liquid to a minor.
2. A person that violates subsection 1 and is not a manufacturer is subject to a fine of five hundred dollars for each individual package of flavored e-liquid product or electronic smoking device containing flavored e-liquid sold or offered for sale.

Approved April 8, 2019

Filed April 9, 2019

CHAPTER 116

HOUSE BILL NO. 1503

(Representatives Damschen, Boe, Headland, Magrum, Schmidt)
(Senators Myrdal, Patten, Schaible, Unruh)

AN ACT to amend and reenact section 12.1-31-14 of the North Dakota Century Code, relating to prohibiting use of a device to observe, record, or photograph wildlife on private property without permission and a permanently affixed identifier; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴¹ **SECTION 1. AMENDMENT.** Section 12.1-31-14 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-14. Surreptitious intrusion or interference with privacy.

1. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of another, the individual:
 - a. Enters upon another's property and surreptitiously gazes, stares, or peeps into a house or place of dwelling of another; or
 - b. Enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a house or place of dwelling of another.
2. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of an occupant, the individual:
 - a. Surreptitiously gazes, stares, or peeps into a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy; or
 - b. Surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy.
3. An individual is guilty of an infraction if the individual enters upon another's property and installs any device for observing, recording, or photographing wildlife while the owner of the device is absent:
 - a. Without written permission from the owner or occupant of the property; or
 - b. If the device does not have a permanently affixed metal or plastic tag with a registration number issued by the game and fish department, or the individual's name, address, and telephone number.

⁴¹ Section 12.1-31-14 was also amended by section 1 of Senate Bill No. 2113, chapter 403.

Approved March 28, 2019

Filed March 29, 2019

CHAPTER 117

HOUSE BILL NO. 1252

(Representatives Louser, Becker, Blum, Kading, Kasper, K. Koppelman)
(Senators Burckhard, Hogue, Poolman, Unruh)

AN ACT to create and enact a new subsection to section 12.1-34-02 of the North Dakota Century Code, relating to rights of victims; to amend and reenact subsection 1 of section 12.1-32-02, subsection 1 of section 12.1-32-08, and subsection 10 of section 12.1-34-01 of the North Dakota Century Code, relating to contact with victims, the definition of victim, and restitution; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴² **SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

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

⁴² Section 12.1-32-02 was also amended by section 1 of House Bill No. 1164, chapter 188, and section 1 of House Bill No. 1185, chapter 118.

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

⁴³ **SECTION 2. AMENDMENT.** Subsection 1 of section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

1. Before imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount of restitution. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence the court may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court, ~~unless the court states on the record, based upon the criteria in this subsection, the reason it does not order restitution or orders only partial restitution.~~ Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property. In determining ~~whether to order the~~ amount of restitution, the court shall take into account:
 - a. ~~The~~ the reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2.
 - b. ~~The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.~~

⁴³ Section 12.1-32-08 was also amended by section 1 of Senate Bill No. 2068, chapter 270.

- e. ~~The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.~~

~~The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the order must be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, unless the court directs otherwise, be filed, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced.~~

SECTION 3. AMENDMENT. Subsection 10 of section 12.1-34-01 of the North Dakota Century Code is amended and reenacted as follows:

10. "Victim" means a ~~natural~~ person who ~~has suffered~~suffers direct or threatened physical, financial, or psychological harm as the result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. ~~The term "victim" includes the family members of a minor, incompetent, incapacitated, or deceased person.~~ The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

⁴⁴ **SECTION 4.** A new subsection to section 12.1-34-02 of the North Dakota Century Code is created and enacted as follows:

If the victim is deceased, incompetent, incapacitated, or a minor, the victim's spouse, parent, grandparent, child, sibling, grandchild, or guardian, and any person with a relationship to the victim which is substantially similar to a listed relationship, may exercise the rights granted to a victim under this chapter.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 8, 2019

Filed April 9, 2019

⁴⁴ Section 12.1-34-02 was also amended by section 1 of House Bill No. 1425, chapter 268.

CHAPTER 118

HOUSE BILL NO. 1185

(Representatives Kading, Blum, Meier, Vetter)
(Senator O. Larsen)

AN ACT to create and enact a new subsection to section 12.1-32-07 of the North Dakota Century Code, relating to petitions for revocation of probation; to amend and reenact subsection 9 of section 12.1-32-02 of the North Dakota Century Code, relating to reduction of felonies to misdemeanors by operation of law; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴⁵ **SECTION 1. AMENDMENT.** Subsection 9 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

9. A person who is convicted of a felony and sentenced to imprisonment for not more than ~~one year~~three hundred sixty days is deemed to have been convicted of a misdemeanor ~~upon successful completion of the term of imprisonment and a term of probation imposed as a part of the sentence.~~ However, if an order is entered revoking a term of probation that was imposed as part of a sentence, the person is deemed to have been convicted of a felony. This subsection does not apply to a person convicted of violating subdivision a, b, or c of subsection 1 of section 19-03.1-23.

⁴⁶ **SECTION 2.** A new subsection to section 12.1-32-07 of the North Dakota Century Code is created and enacted as follows:

The department of corrections and rehabilitation shall provide written notice to a defendant who is in the department's physical custody of any untried petition for revocation against the defendant of which the department has notice and of the defendant's right to make a request for final disposition of the petition.

- a. Upon notice of an untried petition for revocation of probation, the defendant may request final disposition of the petition. The defendant's request must be in writing and name the court in which the petition for revocation of probation is pending and the prosecuting official charged with the duty of prosecuting the petition.
- b. The defendant shall submit the request to the department. The department shall certify the term of commitment under which the defendant is being held, the time the defendant has served on the sentence, the time remaining to be served, sentence reduction credit the defendant has earned, the defendant's eligibility for parole, and whether the parole board has made a decision regarding the defendant's parole.

⁴⁵ Section 12.1-32-02 was also amended by section 1 of House Bill No. 1164, chapter 188, and section 1 of House Bill No. 1252, chapter 117.

⁴⁶ Section 12.1-32-07 was also amended by section 6 of House Bill No. 1393, chapter 107.

- c. The department shall send by registered mail, return receipt requested, one copy of the request and certificate to the court and one copy to the prosecuting official to whom the request and certificate is addressed.
- d. The petition for revocation of probation must be brought to the court for hearing within ninety days after the receipt of the request and certificate by the court and prosecuting official. If the petition is not brought to the court for hearing within the ninety days, the court shall dismiss the petition with prejudice.
- e. The parties may stipulate for a continuance or the court may grant a continuance upon a showing of good cause by either party for a petition under this subsection.
- f. If the defendant escapes from custody subsequent to the defendant's execution of a request for final disposition of a petition for revocation, the request is considered void.

Approved March 12, 2019

Filed March 13, 2019

CHAPTER 119

HOUSE BILL NO. 1051

(Representatives Roers Jones, Schreiber-Beck, Dockter, Satrom)
(Senator Myrdal)

AN ACT to amend and reenact section 12.1-32-09.1 of the North Dakota Century Code, relating to sentencing violent offenders; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. Sentencing of violent offenders.

1. Except as provided under section 12-48.1-02 and pursuant to rules adopted by the department of corrections and rehabilitation, an offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 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.
2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.
3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.
4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.
5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation.

SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively to judgments of conviction for offenses subject to section 12.1-32-09.1 entered after July 31, 1995.

Approved March 13, 2019

Filed March 14, 2019

CHAPTER 120

SENATE BILL NO. 2253

(Senators D. Larson, Bakke, Myrdal)
(Representatives P. Anderson, Jones, Karls)

AN ACT to create and enact a new subsection to section 12.1-32-15 of the North Dakota Century Code, relating to international travel reporting requirements for registered offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴⁷ **SECTION 1.** A new subsection to section 12.1-32-15 of the North Dakota Century Code is created and enacted as follows:

When an individual who is required to register pursuant to this section plans to travel outside of the United States, at least 21 days before the intended travel, the individual shall inform the agency with which the individual last registered his residence address the details of the intended travel. Upon receipt of the information from the registering law enforcement agency, the attorney general shall report the travel to the United States marshal service.

Approved March 14, 2019

Filed March 14, 2019

⁴⁷ Section 12.1-32-15 was also amended by section 2 of Senate Bill No. 2273, chapter 108.

CHAPTER 121

HOUSE BILL NO. 1282

(Representatives Schneider, Adams, Buffalo, Dobervich, Guggisberg, Hanson,
McWilliams, Mitskog, Roers Jones, Satrom)
(Senators Bakke, Dwyer)

AN ACT to create and enact a new section to chapter 12.1-33 of the North Dakota Century Code, relating to limitations on public employer consideration of criminal background.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-33 of the North Dakota Century Code is created and enacted as follows:

Public employment - Consideration of criminal record.

1. A public employer may not inquire into or consider the criminal record or criminal history of an applicant for public employment until the applicant has been selected for an interview by the employer.
2. This section does not apply to the department of corrections and rehabilitation or to a public employer that has a statutory duty to conduct a criminal history background check or otherwise take into consideration a potential employee's criminal history during the hiring process.
3. This section does not prohibit a public employer from notifying an applicant that law or the employer's policy will disqualify an individual with a particular criminal history background from employment in particular positions.
4. As used in this section, the term "public employer" means the state or a county or city government, or an instrumentality or agency of the state or of a county or city government. The term includes a park district but does not include a school district.

Approved March 12, 2019

Filed March 13, 2019

CHAPTER 122

SENATE BILL NO. 2222

(Senators Myrdal, Heckaman)
(Representatives P. Anderson, Jones, K. Koppelman)

AN ACT to amend and reenact section 12.1-36-01 of the North Dakota Century Code, relating to female genital mutilation; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-36-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-36-01. 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.
3. Any parent, adult family or household member, guardian, or other custodian of any child who willfully allows a child to be surgically altered under this section is guilty of child abuse under subsection 1 of section 14-09-22.
4. A custom, ritual, religious practice, or the consent of the parent or guardian of a minor is not a defense against a violation under this section.
5. Notwithstanding the limitations of section 29-04-02, prosecution for a violation of subsection 3 must be commenced within three years of the date of the offense or within three years after the offense is reported to law enforcement, whichever is later.

Approved April 10, 2019

Filed April 11, 2019