

CRIMINAL CODE

CHAPTER 177

SENATE BILL NO. 2054
(Legislative Council)
(Interim Committee on Criminal Justice System)

MURDER A CLASS AA FELONY

AN ACT to amend and reenact sections 12.1-16-01 and 12.1-32-01 of the North Dakota Century Code, relating to murder and the classification of criminal offenses, and making murder a class AA felony with a maximum penalty of life imprisonment.

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

SECTION 1. AMENDMENT.) Section 12.1-16-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-16-01. MURDER.) A person is guilty of murder, a class A AA felony, if he:

1. Intentionally or knowingly causes the death of another human being;
2. Causes the death of another human being under circumstances manifesting extreme indifference to the value of human life; or
3. Acting either alone or with one or more other persons, commits or attempts to commit treason, robbery, burglary, kidnapping, felonious restraint, arson, gross sexual imposition, or escape and, in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of any person; except that in any prosecution under this subsection in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:
 - a. Did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid the commission thereof; and

- b. Was not armed with a firearm, destructive device, dangerous weapon, or other weapon which under the circumstances indicated a readiness to inflict serious bodily injury; and
- c. Reasonably believed that no other participant was armed with such a weapon; and
- d. Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

Subsections 1 and 2 shall be inapplicable in the circumstances covered by subsection 2 of section 12.1-16-02.

SECTION 2. AMENDMENT.) Section 12.1-32-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-32-01. CLASSIFICATION OF OFFENSES - PENALTIES.) Offenses are divided into ~~six~~ seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment may be imposed. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony shall not be eligible to have his sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after his admission to the penitentiary.
- 1- 2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
- 2- 3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
- 3- 4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of five thousand dollars, or both, may be imposed.
- 4- 5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of one thousand dollars, or both, may be imposed.
- 5- 6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of five hundred dollars, or both, may be imposed.
- 6- 7. Infraction, for which a maximum fine of five hundred dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of

the infraction of which he was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

Approved April 7, 1979

CHAPTER 178

HOUSE BILL NO. 1053
(Legislative Council)
(Interim Committee on Criminal Justice System)

SIMPLE ASSAULT PENALTIES

AN ACT to amend and reenact section 12.1-17-01 of the North Dakota Century Code, relating to simple assault and increasing the punishment.

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

SECTION 1. AMENDMENT.) Section 12.1-17-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-17-01. SIMPLE ASSAULT.)

1. A person is guilty of an offense if he:
 - 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. Simple assault is a class B misdemeanor except when the victim is a peace officer or correctional institution employee acting in an official capacity, and the actor knows that to be a fact, in which case the offense is a class C felony.

Approved March 8, 1979

CHAPTER 179

HOUSE BILL NO. 1450
(Wald, Lee, Olson)

INDECENT EXPOSURE AND SOLICITATION OF MINORS

AN ACT to create and enact a new section to chapter 12.1-20 of the North Dakota Century Code, relating to indecent exposure; and to amend and reenact section 12.1-20-05 of the North Dakota Century Code, relating to the corruption or solicitation of minors.

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

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

INDECENT EXPOSURE.) A person shall be guilty of a class B misdemeanor for:

1. Knowingly exposing one's penis, vulva, or anus in a public place with the intent to annoy or harass another person.
2. Masturbating in a public place.

SECTION 2. AMENDMENT.) Section 12.1-20-05 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-20-05. CORRUPTION OR SOLICITATION OF MINORS.)

1. An adult who engages in a sexual act with another person or who causes another person to engage in a sexual act, is guilty of a class A misdemeanor if the other person is a minor, fifteen years of age or older.
2. An adult who solicits a person under the age of fifteen years to engage in a sexual act or sexual contact is guilty of a class A misdemeanor.

Approved March 19, 1979

CHAPTER 180

HOUSE BILL NO. 1446
(Stenehjem, Swiontek)

ARSON

AN ACT to amend and reenact section 12.1-21-01 of the North Dakota Century Code, relating to the crime of arson.

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

SECTION 1. AMENDMENT.) Section 12.1-21-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-21-01. ARSON.) A person is guilty of arson, a class B felony, if he starts or maintains a fire or causes an explosion with intent to destroy an entire or any part of a building or inhabited structure of another or a vital public facility, or if he starts or maintains a fire or causes an explosion with intent to destroy or damage his own real or personal property for the purpose of collecting insurance for the loss.

Approved March 15, 1979

CHAPTER 181

SENATE BILL NO. 2302
(Lashkowitz)

DUPLICATION OF CERTAIN KEYS PROHIBITED

AN ACT to prohibit duplication of keys marked with "Do Not Duplicate", "Do Not Copy", or words of similar intent; and providing a penalty.

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

SECTION 1. DUPLICATION OF KEYS.) Except as provided in section 2, no person shall duplicate or make a key from another key marked with the words "Do Not Duplicate", "Do Not Copy", or words of similar intent.

SECTION 2. DEFENSES.) It shall be an affirmative defense to prosecution under section 1 that:

1. The person made or duplicated the key for his employer, solely for use within the employer's place of business.
2. The person for whom the key was made or duplicated owns the lock which the key fits.

SECTION 3. PENALTY.) Any person who violates any provision of this Act is guilty of a class B misdemeanor.

Approved March 18, 1979

CHAPTER 182

SENATE BILL NO. 2433
(Wright)

CARRYING LOADED FIREARM IN VEHICLE

AN ACT to create and enact a new section to chapter 12.1-26 of the North Dakota Century Code, relating to the carrying of loaded firearms in motor vehicles and providing a penalty.

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

SECTION 1.) A new section to chapter 12.1-26 of the North Dakota Century Code is hereby created and enacted to read as follows:

CARRYING LOADED FIREARM IN VEHICLE - PENALTY.) No person, other than a law enforcement officer as defined in section 12.1-01-04, shall be permitted to keep or carry a rifle or shotgun with cartridge in the chamber in the passenger compartment of any motor vehicle within any city in this state. Any person violating the provisions of this section shall be guilty of a class B misdemeanor.

Approved March 23, 1979

CHAPTER 183

HOUSE BILL NO. 1092
(Lardy)

X-RATED PICTURES IN OUTDOOR THEATERS

AN ACT to create and enact a new section to chapter 12.1-27.1 of the North Dakota Century Code, relating to exhibiting obscene motion pictures at outdoor theaters; and to amend and reenact section 12.1-27.1-02 of the North Dakota Century Code, relating to promoting obscenity to minors.

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

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

EXHIBITION OF OBSCENE MOTION PICTURE IN UNSCREENED OUTDOOR THEATERS - PENALTY.) Any person who, knowing of its character, exhibits any motion picture rated X by the Motion Picture Association of America in any outdoor theater where the screen is visible beyond the limits of theater audience area, so that the motion picture may be seen and its content or character distinguished by normal unaided vision by a minor viewing it from beyond the limits of the theater audience area, is guilty of a class B misdemeanor.

SECTION 2. AMENDMENT.) Section 12.1-27.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.1-02. PROMOTING OBSCENITY TO MINORS - DEFINITIONS.)
As used in this section and in section 12.1-27.1-03:

1. "Promote" means to produce, direct, manufacture, issue, sell, lend, mail, publish, distribute, exhibit, or advertise.
2. "Harmful to minors" means that quality of any description or representation, in whatever form of sexual conduct or sexual excitement, when such description or representation:

- a. Considered as a whole, appeals to the prurient sexual interest of minors;
 - b. Is patently offensive to prevailing standards in the adult community in North Dakota as a whole with respect to what is suitable material for minors; and
 - c. Considered as a whole, lacks serious literary, artistic, political, or scientific value for minors.
3. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

Approved March 18, 1979

CHAPTER 184

SENATE BILL NO. 2100
(Lodoen)

LOCAL CONTROL OF ENTERTAINMENT IN BARS

AN ACT to amend and reenact section 12.1-27.1-12 of the North Dakota Century Code, relating to local control of entertainment in liquor establishments.

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

SECTION 1. AMENDMENT.) Section 12.1-27.1-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.1-12. STATE PREEMPTION OF LOCAL LAWS REGULATING OBSCENITY.) This chapter shall be applicable and uniform throughout the state, and no political subdivision shall enact new, or enforce existing, ordinances or resolutions regulating or prohibiting the dissemination of obscene materials, or controlling obscene performances, except ordinances authorized by section 5-02-09.

Approved January 29, 1979

CHAPTER 185

SENATE BILL NO. 2316
(Miller Heinrich, Christensen)

DRUG PARAPHERNALIA

AN ACT to create and enact a new section to title 12.1 of the North Dakota Century Code, relating to the manufacture, sale, or delivery of marijuana, hashish, and cocaine paraphernalia; to the definition of paraphernalia and other terms; and providing a penalty.

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

SECTION 1.) A new section to title 12.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

MANUFACTURE, SALE, OR DELIVERY OF PARAPHERNALIA - DEFINITIONS
- PENALTY.)

1. Any person who knowingly manufactures, sells, or delivers paraphernalia to another or who possesses with intent to manufacture, sell, or deliver paraphernalia to another shall be guilty of a class A misdemeanor.
2. As used in this section:
 - a. "Deliver" means the actual, constructive, or attempted transfer from one person to another of paraphernalia whether or not there is an agency relationship.
 - b. "Intent" means when a person engages in the conduct, it is that person's purpose to do so.
 - c. "Knowingly" means when a person engages in the conduct, the person knows or has a firm belief, unaccompanied by substantial doubt, that the person is doing so, whether or not it is the person's purpose to do so.
 - d. "Manufacture" means the production, preparation, construction, or processing of paraphernalia, and includes any packaging or repackaging of the

paraphernalia, or the labeling or relabeling of it or its container.

- e. "Paraphernalia" means any instrument, device, article, or contrivance used, designed for use, or intended for use in ingesting, smoking, administering, or preparing marijuana, hashish, hashish oil, or cocaine. "Paraphernalia" excludes cigarette papers and tobacco pipes but includes, and is not limited to:
 - (1) Metal, wooden, acrylic, glass, stone, plastic, or ceramic marijuana or hashish pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.
 - (2) Water pipes designed for use or intended for use with marijuana, hashish, hashish oil, or cocaine.
 - (3) Carburetion tubes and devices.
 - (4) Smoking and carburetion masks.
 - (5) Roach clips.
 - (6) Separation gins designed for use or intended for use in cleaning marijuana.
 - (7) Cocaine spoons and vials.
 - (8) Chamber pipes.
 - (9) Carburetor pipes.
 - (10) Electric pipes.
 - (11) Air-driven pipes.
 - (12) Chilams.
 - (13) Bongs.
 - (14) Ice pipes or chillers.
3. In determining whether an instrument, device, article, or contrivance is paraphernalia used, designed for use, or intended for use in ingesting, smoking, administering, or preparing marijuana, hashish, hashish oil, or cocaine, a court shall consider the following:
 - a. Whether a person or business establishment charged with violating this Act is a licensed distributor or dealer of tobacco products under chapter 57-36.

- b. Expert testimony as to the principal use of the instruments, devices, articles, or contrivances claimed to be paraphernalia.
- c. Circumstantial evidence concerning the total business of a person or business establishment and the type of instruments, devices, articles, contrivances or items involved in the business.
- d. National and local advertising concerning the use of the instruments, devices, articles, or contrivances claimed to be paraphernalia.

Approved March 27, 1979

CHAPTER 186

HOUSE BILL NO. 1630
(Conmy, Winkjer)

RIGHTS OF CONVICTED FELONS

AN ACT to amend and reenact subsection 1 of section 12.1-33-01 and subsections 1 and 2 of section 12.1-33-03 of the North Dakota Century Code, relating to the right of a person who has been convicted of a felony to vote and hold public office, except during the term of actual incarceration.

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

SECTION 1. AMENDMENT.) Subsection 1 of section 12.1-33-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A person sentenced for a felony to a term of imprisonment, from the time of his sentence until his final discharge during the term of actual incarceration under such sentence, may not:
 - a. Vote in an election, but if he is paroled after commitment to imprisonment, he may vote during the period of the parole; or
 - b. Become a candidate for or hold public office.

SECTION 2. AMENDMENT.) Subsections 1 and 2 of section 12.1-33-03 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. If the sentence were in this state, the order, certificate, or other instrument of discharge, given to a person sentenced for a felony upon his discharge after completion of service of his sentence or after service under probation or parole, the sentence shall state that the defendant's rights to vote and to hold any future public office are thereby restored not lost except during the term of any actual incarceration and that he suffers no other disability by virtue of his conviction and sentence except as otherwise provided in such sentence or

by law. ~~The parole board, or its designated agent, shall issue the certificate of discharge upon completion of the sentence. A copy of the order or other instrument of discharge shall be filed with the clerk of the court of conviction.~~

2. If the sentence were in another state or in a federal court and, the convicted person has ~~similarly~~ been discharged ~~by the appropriate authorities, the parole board of this state, upon application and proof of the discharge in such form as the parole board may require, shall issue a certificate stating that such rights have been restored to him under the laws of this state~~ shall lose the rights to vote and to hold public office only during the term of actual incarceration. Any person who has been sentenced in another state or in a federal court to a term of imprisonment and who is present in this state shall be presumed to have had such rights restored.

Approved March 13, 1979