

CRIMINAL OFFENSES AND PENALTIES STUDY - BACKGROUND MEMORANDUM

Section 7 of 2009 House Bill No. 1003 ([Appendix A](#)) directs the Legislative Management to study whether penalties for felonies are suitable to the felonious behavior. House Concurrent Resolution No. 3023 (2009) ([Appendix B](#)) directs the Legislative Management to study the criminal offenses in the North Dakota Century Code for which a monetary amount triggers the grading of the offense, with particular emphasis on the grading of theft offenses contained in Chapter 12.1-23. Because of the similarity in the studies directed by House Bill No. 1003 and House Concurrent Resolution No. 3023, the two studies will be combined into one comprehensive study.

BACKGROUND

Criminal offenses are addressed in the Constitution of North Dakota. Article I, Section 7, provides that "[e]very citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor." Article I, Section 10, refers to the term "felony" and provides that no person shall be proceeded against for a felony except by indictment until another procedure is provided by law. Article XI, Section 11, provides that "[a]ll officers not liable to impeachment shall be subject to removal for misconduct, malfeasance, crime or misdemeanor in office, or for habitual drunkenness or gross incompetency in such manner as may be provided by law." Article I, Section 11, dealing with bail for criminal offenses, refers to "capital offenses" which need not be bailable where proof of commission "is evident or the presumption great."

The statutory classification of crimes in North Dakota is primarily contained in Title 12.1; however, felonies, misdemeanors, and infractions can be found throughout the Century Code.

PREVIOUS STUDIES

During the 1971-72 interim, the Judiciary "B" Committee was assigned to review and revise the substantive criminal statutes of North Dakota, or so much thereof as may reasonably be revised during the 1971-72 interim. The committee consisted of both legislative and citizen members. The committee's work was funded in part by a federal grant obtained through the Combined Law Enforcement Council. The committee recommended 1973 Senate Bill No. 2045, which created a new criminal code defining and classifying criminal offenses, providing defenses to criminal charges, and delineating sentencing

criteria. The bill abolished the death penalty, eliminated mandatory minimum sentences, restricted the use of deadly force in apprehending alleged criminals, and consolidated theft laws. The bill was enacted by the Legislative Assembly in 1973.

The 1973-74 interim Judiciary "A" Committee continued the substantive and formal study and revision of the criminal statutes. As a result of this study, the committee recommended 1975 Senate Bill No. 2040. The bill amended the criminal code enacted in 1973, created an offense classification known as an infraction, clarified certain offense definitions, expanded the instances wherein the use of force by peace officers is justified, and created a separate fine schedule for business organizations. The bill also made several changes in the sentencing code. The bill was enacted by the Legislative Assembly in 1975.

During the 1987-88 interim, the Judiciary Committee studied the criminal sentencing statutes in misdemeanor and felony cases. The committee recommended 1989 House Bill No. 1052 to consolidate Chapter 12-53 relating to suspended execution of sentences with Chapter 12.1-32, which provides for the classification of offenses, penalties, and a broad array of sentencing alternatives available to the court. According to the Judiciary Committee's final report, the bill was intended to clarify a court's authority to impose a sentence if conditions of probation are violated following the suspended execution of a sentence and to clarify the status of a person receiving a deferred imposition of sentence. The bill was also intended to address conflicts and inconsistencies existing in the sentencing statutes. The bill was enacted by the Legislative Assembly in 1989.

The 1997-98 interim Criminal Justice Committee was directed to study the feasibility and desirability of revising the sections of the Century Code which relate to sexual offenses. The committee recommended a bill that would have required a mark on the driver's license of a felonious sexual offender and an individual who has committed a felony against a child. The bill failed to pass the House.

The 1999-2000 interim Criminal Justice Committee was directed to study the classification of criminal offenses throughout the Century Code. The committee received testimony from several state's attorneys who indicated that there were not any gross inequities in the punishment of criminal offenders which would require a codewide comparison of offenses. The testimony indicated that extreme caution must be taken before reclassifying any criminal offense because well-meaning amendments may have unintended consequences, consume valuable resources, and lead to more problems. The

committee made several recommendations regarding the sexual offender statutes, including changes to the state's civil commitment of sexual predators. The committee also recommended a bill that provided for the creation of the crime of luring minors by computer. The two bills recommended by the committee--Senate Bill No. 2034 and Senate Bill No. 2035--were both enacted by the Legislative Assembly in 2001.

2009 LEGISLATION

The 2009 legislation relating to the criminal offenses may be classified in these areas--new offenses or changes in penalties, sexual offenses and offenders, and sentencing.

New Offenses or Changes in Penalties

House Bill No. 1186 made it a Class A misdemeanor to surreptitiously create or willfully possess a sexually expressive image that was surreptitiously created or to distribute or publish a sexually expressive image with the intent to cause emotional harm or humiliation to an individual depicted in the sexually expressive image. The bill made it a Class B misdemeanor to acquire and knowingly distribute a sexually expressive image that was created without the consent of the subject of the image.

House Bill No. 1244 made it a Class A misdemeanor if a person knowingly possesses, distributes, or assists in the use of a device, chemical, or real or artificial urine advertised or intended to be used to alter the outcome of a urine test.

House Bill No. 1365 made it a Class B misdemeanor for a recycler, scrap metal dealer, or scrap yard operator to purchase a metal beer keg from anyone other than a brewer if the keg is clearly marked as the property of a brewery manufacturer or the keg's identification markings have been made illegible.

Senate Bill No. 2209 provided that a person is guilty of human trafficking if the person benefits financially or receives anything of value from knowing participation in human trafficking or the person promotes, recruits, entices, harbors, transports, provides, or obtains another person knowing that the person is subject to human trafficking. The bill provided that the crime of human trafficking is a Class A felony unless the person subject to human trafficking is under the age of 18 in which case the offense is a Class AA felony.

Senate Bill No. 2210 increased the penalty for willfully and unjustifiably killing or injuring a law enforcement support animal from a Class A misdemeanor to a Class C felony. The bill also provided that a person is guilty of a Class A misdemeanor and is subject to a civil penalty of up to \$5,000 if that person willfully harasses, taunts, or provokes a law enforcement support animal or otherwise interferes with the law enforcement support animal while the animal is working or while the animal is working with its handler.

Senate Bill No. 2293 provided that it is a Class C felony for an individual to assault an employee of the State Hospital who is acting in the course and scope of employment and the actor is committed to or detained at the State Hospital under Chapter 25-03.3.

Sexual Offenses and Offenders

House Bill No. 1272 provided that a person who engages in sexual contact with another is guilty of an offense if that person knows or has reasonable cause to believe the victim is unaware that sexual contact is being committed on the victim. The bill also provided that a person is guilty of a Class B misdemeanor if the person compels another person to submit to any threat or coercion that would render the victim reasonably incapable of resisting.

House Bill No. 1416 included the conspiracy to commit an offense in the definition of sexual offender.

Senate Bill No. 2216 provided that when a child forensic medical examination is performed on an alleged child victim of criminal sexual conduct, the costs incurred by a health care facility or health care professional for performing the examination may not be charged, either directly or through a third-party payer, to the alleged child victim or the child's parent, guardian, or custodian. The bill appropriated \$410,000 to the Attorney General for the purpose of reimbursing health care facilities and health care professionals for the cost of the examinations.

Sentencing

House Bill No. 1306 authorized a court to order, as a condition of probation, the participation of the defendant in the 24/7 sobriety program.

Senate Bill No. 2115 provided that a person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment and a term of probation imposed as part of the sentence.

NORTH DAKOTA CENTURY CODE CRIMINAL OFFENSES

Statutory provisions governing criminal offenses are primarily contained in Title 12.1 with sentencing in misdemeanor and felony cases primarily contained in Chapter 12.1-32; however, criminal offenses can be found throughout the Century Code.

Classification of Offenses

North Dakota law regarding the classification of offenses is contained in Section 12.1-32-01. The offenses are divided into seven classes, each of which is subject to maximum penalties. This penalty structure has undergone several changes since initially enacted in 1973. In 1975 this section was amended to include the classification of infraction to this section. The penalty for an infraction, a maximum

fine of \$500, has not changed since enactment in 1975.

In 1979 a new classification of felony was added to Section 12.1-32-01. This change provided for the classification of Class AA felony, the penalty for which was a maximum of life imprisonment. This change also provided that a person found guilty of a Class AA felony could not be considered eligible for parole for 30 years less sentence reduction earned for good conduct. The Class AA felony classification was amended again in 1995. The 1995 change provided that the maximum penalty for a Class AA felony is life imprisonment without parole. This change also required the court to designate whether the life imprisonment sentence imposed is with or without an opportunity for parole.

The most recent change to Section 12.1-32-01 occurred in 1997. This change increased the maximum fine for a Class A misdemeanor from \$1,000 to \$2,000 and the maximum fine for a Class B misdemeanor from \$500 to \$1,000. The following is the classification of offenses contained in Section 12.1-32-01:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.
2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of five thousand dollars, or both, may be imposed.
5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of two thousand dollars, or both, may be imposed.
6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand dollars, or both, may be imposed.
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 the person 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.

Criminal Offense Grading Based Upon Monetary Amounts

As discussed previously, 2009 House Concurrent Resolution No. 3023 directs a study of the criminal offenses in the Century Code for which a monetary amount triggers the grading of the offense. This section provides a description of those offenses as well as the monetary amount that triggers the particular grade of the offense.

Section 6-08-16 (Issuing Check or Draft Without Sufficient Funds or Credit)

Section 6-08-16 prohibits a person from making, drawing, uttering, or delivering a check, draft, or order, or an authorization for an electronic funds transfer for the payment of money upon a bank or other institution if at the time of presentation for payment there are not sufficient funds in the person's account to meet the check, draft, electronic funds transfer, or order. This section provides that a violation of this section is:

- An infraction if the amount of insufficient funds or credit is not more than \$50;
- A Class B misdemeanor if the amount of insufficient funds or credit is more than \$50 but not more than \$250, or if the individual has pled guilty or been found guilty of a violation of this section within three years of issuing an insufficient funds check, draft, or order;
- A Class A misdemeanor if the amount of insufficient funds or credit is more than \$250 but not more than \$500, or if the individual has pled guilty or been found guilty of two violations of this section within three years of issuing an insufficient funds check, draft, or order; or
- A Class C felony if the amount of insufficient funds or credit is more than \$500, or an individual has pled guilty or been found guilty of three or more violations of this section within five years of willfully issuing an insufficient funds check, draft, or order.

Section 6-08-16.2 (Issuing Check Without Account)

Section 6-08-16.2 provides that it is a Class C felony if a person issues any instrument for at least \$500, or more than one instrument wherein the aggregate total of all instruments issued exceeds \$500, and the drawer does not have an account with the bank or depository on which the instrument was drawn.

Section 12.1-21-02 (Endangering by Fire or Explosion)

Section 12.1-21-02 provides that it is a Class C felony if a person intentionally starts or maintains a fire or causes an explosion and recklessly causes damage to property of another in excess of \$2,000. The crime is a Class B felony if the actor places another person in danger of death under circumstances manifesting an extreme indifference to human life. This section was last amended in 1977.

Section 12.1-21-04 (Release of Destructive Forces)

Section 12.1-21-04 provides that it is a Class B felony to intentionally cause a catastrophe or a Class C felony to willfully cause a catastrophe. Under this section "catastrophe" means serious bodily injury to 10 or more people or substantial damage to 10 or more separate habitations or structures or property loss in excess of \$500,000. This section has not been amended since enactment in 1973.

Section 12.1-21-05 (Criminal Mischief)

Section 12.1-21-05 provides that a person is guilty of an offense if that person willfully tampers with tangible property of another so as to endanger person or property or willfully damages tangible property of another. This section provides that the penalty for a violation of this section is a Class B misdemeanor except as follows:

- A Class B felony if the actor intentionally causes pecuniary loss in excess of \$10,000;
- A Class C felony if the actor intentionally causes pecuniary loss in excess of \$2,000 but not in excess of \$10,000 or the damage was done by means of an explosive device; and
- A Class A misdemeanor if the actor recklessly causes pecuniary loss of \$2,000 or if the actor intentionally causes pecuniary loss of from \$100 through \$2,000.

This section was last amended in 1997 at which time the monetary amount that triggered a Class C felony was increased from in excess of \$2,000 to an amount in excess of \$2,000 but not exceeding \$10,000, and the penalty of Class B felony was established for monetary amounts in excess of \$10,000.

Section 12.1-21.1-04 (Penalty for Damage to Animal Facility)

Section 12.1-21.1-04, which relates to the penalty for damage to an animal facility, provides that the penalty is a Class B felony if the damage is \$10,000 or more, a Class C felony if the damage is at least \$500 but less than \$10,000, and a Class A misdemeanor if the damage is at less than \$500. This section has not been amended since enactment in 1991.

Section 12.1-23-05 (Grading of Theft Offenses)

Subsection 1 provides that, except as provided in subsection 2, a theft under Chapter 12.1-23 is a Class B felony if the property or services stolen exceed \$10,000 in value, are acquired or retained by a threat to commit a Class A or Class B felony, or acquired or retained by a threat to inflict serious bodily injury.

Subsection 2 provides that theft under Chapter 12.1-23 is a Class C felony if:

- The property or services stolen exceed \$500 in value;
- The property or services stolen are acquired or retained by threat and are acquired or retained by a public servant by a threat to take or withhold official action, or exceed \$50 in value;
- The property or services stolen exceed \$50 in value and are acquired or retained by a public servant in the course of official duties;
- The property stolen is a firearm, ammunition, explosive or destructive device, or an automobile, aircraft, or other motor-propelled vehicle;
- The property consists of any government paper stolen from any government office or from any public servant;
- The defendant is in the business of buying or selling stolen property and the defendant receives, retains, or disposes of the property in the course of that business;
- The property stolen consists of any item uniquely associated with the preparation of any money, stamp, bond, or other instrument of the state;
- The property consists of a key or other implement uniquely suited to provide access to property the theft of which would be a felony and it was stolen to gain such access; or
- The property is a device, such as a credit or debit card, or a code or other means of access to an account.

Subsection 3 provides that all other theft under Chapter 12.1-23 is a Class A misdemeanor unless the requirements of subsection 4 are met.

Subsection 4 provides that theft under this chapter of property or services not exceeding \$250 in value is a Class B misdemeanor if the theft was not committed by threat, the theft was not committed by deception, and the defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of official duties.

Section 12.1-23-05, which was initially enacted in 1973, was most recently amended in 1995. The 1995 revision provided for the inclusion of the credit or debit card language contained in subsection 4. Other amendments to Section 12.1-23-05 occurred in 1975, 1981, and 1989. Only the legislation in 1981 affected the monetary amounts used for the grading of the offenses. The 1981 legislation changed from \$100 to

\$500 the amount under subsection 2 that triggers the grading of a Class C felony and changed from \$50 to \$250 the amount under subsection 4 that triggers the grading of a Class B misdemeanor.

Section 12.1-23-06 (Unauthorized Use of a Vehicle)

Section 12.1-23-06 provides that a person is guilty of a Class C felony if, knowing that the person does not have the consent of the owner, the person takes, operates, or exercises control over a vehicle. This section provides that the offense is a class C felony if the vehicle is an aircraft or if the value of the use of the vehicle and the cost of retrieval and restoration exceeds \$500. Otherwise the offense is a Class A misdemeanor. This section was last amended in 1975.

Section 12.1-23-07 (Misapplication of Entrusted Property)

Section 12.1-23-07 provides for the crime of misapplication of entrusted property. This section was last amended in 1989 at which time the following monetary amounts were set to trigger the various offenses. This section provides that the misapplication of entrusted property is:

- A Class B felony if the value of the property misapplied exceeds \$10,000;
- A Class C felony if the value of the property misapplied exceeds \$500 but does not exceed \$10,000;
- A Class A misdemeanor if the value of the property misapplied exceeds \$250 but does not exceed \$500; and
- A Class B misdemeanor in all other cases.

Section 12.1-23-08.1 (Removal of Identification Marks)

Section 12.1-23-08.1 prohibits a person from removing the identification marks or serial number placed or inscribed on any personal property by the manufacturer or owner for the purpose of identifying the property or its component parts. This section provides that a person who commits this offense is guilty of a Class A misdemeanor if the value of the property or component parts exceeds \$100. This section has not been amended since enactment in 1977.

Section 12.1-23-08.2 (Possession of Altered Property)

Enacted as a companion section to Section 12.1-23-08.1, Section 12.1-23-08.2 provides that a person who commits the offense of possession of altered property is guilty of a Class A misdemeanor if the value of the altered property or its component parts exceeds \$100 in value. This section also has not been amended since enactment in 1977.

Section 12.1-23-11 (Unauthorized Use of Personal Identifying Information)

Section 12.1-23-11 provides that a person is guilty of an offense under this section if the person uses or attempts to use any personal identifying information of an individual to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the individual to whom the information belongs. This section, which was enacted in 1999, provides that the offense is a Class B felony if the credit, money, goods, services, or anything else of value exceeds \$1,000 in value, otherwise the offense is a Class C felony. A second or subsequent offense is a Class A felony.

Section 12.1-24-01 (Forgery or Counterfeiting)

Section 12.1-24-01 provides that forgery or counterfeiting is a Class B felony if the actor forges or counterfeits an obligation or other security of the government or the offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of \$10,000. The offense is a Class C felony if the offense is committed pursuant to scheme to defraud another or others of money or property of a value in excess of \$1,000. The offense is a Class A misdemeanor in all other cases. This section has not been amended since enactment in 1973.

Section 12.1-24-03 (Deceptive Writings)

Section 12.1-24-03 provides that a person is guilty of an offense if, with intent to deceive or harm the government or another person, or with knowledge that the person is facilitating a deception or harm by another person, that person knowingly issues a writing without authority to issue it or knowingly utters or possesses a deceptive writing. Under this section, the offense is a Class B felony if it is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of \$10,000. The offense is a Class C felony if the offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of \$100. Otherwise the offense is a Class A misdemeanor. The section has not been amended since enactment in 1973.

Section 12.1-24-05 (Making or Uttering Slugs)

Section 12.1-24-05 provides that a person is guilty of an offense if that person makes or utters a slug with intent to deprive a supplier of property or service sold or offered by means of a coin machine. The offense is a Class A misdemeanor if it involves slugs which exceed \$50 in value. Otherwise it is a Class B misdemeanor. This section has not been amended since enactment in 1973.

Section 12.1-28-02 (Gambling-Related Offenses)

Section 12.1-28-02 provides that, except as permitted by law, it is an infraction to engage in gambling on private premises where the total amount

wagered by an individual player exceeds \$25 per individual hand, game, or event. This section provides that it is a Class A misdemeanor to engage in gambling on private premises where the total amount wagered by an individual player exceeds \$500 per individual hand, game, or event. This section was last amended in 1993.

Section 12.1-31-07.1 (Exploitation of a Vulnerable Adult)

Section 12.1-31-07.1 provides that exploitation of a disabled adult or vulnerable elderly adult is a Class A felony if the value of the exploited funds, assets, or property exceeds \$100,000; a Class B felony if the value of the exploited funds, assets, or property exceeds \$20,000 but does not exceed \$100,000; and a Class C felony if the value of the exploited funds, assets, or property is in excess of \$1,000 but does not exceed \$20,000. This section has remained unchanged since enactment in 1997.

Section 12.1-37-01 (Willful Failure to Pay Child Support)

Section 12.1-37-01 provides that a person is guilty of an offense if the person willfully fails to pay child support in an amount ordered by a court or other governmental agency having authority to issue the orders. This section provides that if the unpaid amount is greater than the greater of \$2,000 or six times the monthly child support obligation the offense is a Class C felony. If the unpaid amount is greater than the greater of \$1,000 or three times the monthly child support obligation but less than the amount required under subdivision a the offense is a Class A misdemeanor. If the unpaid amount is less than the amount required for the Class C felony, the offense is a Class B misdemeanor. The monetary amount that triggers the offense under this section has not been amended since enactment in 1995.

Section 26.1-02.1-05 (Insurance Fraud)

Section 26.1-02.1-05, which relates to fraudulent insurance acts, provides that the offense is a Class C felony if the value of any property or services retained exceeds \$5,000 and a Class A misdemeanor in all other cases. The monetary amount that triggers the offense under this section has not been amended since enactment in 1993.

Classification of North Dakota Century Code Felony Offenses

The following is a list, by felony classification, title, section, and caption, of the felony offenses contained in the Century Code. For some crimes, the type of felony an offender is guilty of is dependent upon the circumstances of the crime; therefore, some sections may be listed under several felony classifications.

Class AA Felonies

Title 12.1 - Criminal Code

- 12.1-16-01. Murder.

- 12.1-16-04. Assisting the commission of suicide - Causing death by suicide - Penalties.
- 12.1-17.1-02. Murder of an unborn child.
- 12.1-20-03. Gross sexual imposition - Penalty.
- 12.1-20-03.1. Continuous sexual abuse of a child (if actor is at least 22 years of age).

Title 14 - Domestic Relations and Persons

- 14-02.6-02. Prohibition - Penalty - Exception (partial birth abortion).

Title 19 - Foods, Drugs, Oils, and Compounds

- 19-03.1-23.1. Increased penalties for aggravating factors in drug offenses (a Class AA felony if the violation of Section 19-03.1-23 is designated as a Class A felony).

Class A Felonies

Titles 12 and 12.1 - Corrections, Parole, and Probation; and Criminal Code

- 12-44.1-21. Prohibited acts (within a correctional facility).
- 12-46-24. Prohibition on delivery or possession of alcoholic beverages or controlled substances to or by students - Penalties.
- 12-47-21. Alcoholic beverages and controlled substances prohibited - Physician's orders - Use of tobacco - Weapons and firearms - Penalty.
- 12.1-06-01. Criminal attempt.
- 12.1-07-01. Treason.
- 12.1-16-01. Murder.
- 12.1-17-12. Assault or homicide while fleeing peace officer.
- 12.1-17.1-02. Murder of an unborn child.
- 12.1-18-01. Kidnapping.
- 12.1-20-03. Gross sexual imposition - Penalty.
- 12.1-20-03.1. Continuous sexual abuse of a child.
- 12.1-20-17. Transfer of body fluid that may contain the human immunodeficiency virus - Definitions - Defenses - Penalty.
- 12.1-22-01. Robbery.
- 12.1-23-05. Grading of theft offenses.
- 12.1-23-11. Unauthorized use of personal identifying information - Penalty (second or subsequent offense).
- 12.1-31-07.1. Exploitation of a vulnerable adult - Penalty.

Title 14 - Domestic Relations and Persons

- 14-02.2-01. Live fetal experimentation - Penalty.

Title 19 - Foods, Drugs, Oils, and Compounds

- 19-03.1-22.2. Endangerment of child or vulnerable adult.
- 19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties.
- 19-03.1-23.1. Increased penalties for aggravating factors in drug offenses.

Class B Felonies**Title 6 - Banks and Banking**

- 6-07-06. Insolvent bank or officer receiving deposit - Penalty.
- 6-07-08. Directors participating in fraudulent insolvency - Penalty.

Title 10 - Corporations

- 10-04-18. Penalties (issue and sale of securities).

Titles 12 and 12.1 - Corrections, Parole, and Probation; and Criminal Code

- 12-44.1-21. Prohibited acts (within Penitentiary).
- 12-46-24. Prohibition on delivery or possession of alcoholic beverages or controlled substances to or by students - Penalties.
- 12-47-21. Alcoholic beverages and controlled substances prohibited - Physician's orders - Use of tobacco - Weapons and firearms - Penalty.
- 12.1-06.1-02. Leading a criminal association - Classification.
- 12.1-06.1-03. Illegal control of an enterprise - Illegally conducting an enterprise.
- 12.1-08-03. Hindering law enforcement.
- 12.1-08-04. Aiding consummation of crime.
- 12.1-08-06. Escape.
- 12.1-08-09. Introducing or possessing contraband useful for escape.
- 12.1-16-02. Manslaughter.
- 12.1-17-02. Aggravated assault.
- 12.1-17-12. Assault or homicide while fleeing peace officer.
- 12.1-17.1-03. Manslaughter of an unborn child.
- 12.1-18-01. Kidnapping.
- 12.1-20-04. Sexual imposition.
- 12.1-20-05.1. Luring minors by computer or other electronic means.
- 12.1-20-12.1. Indecent exposure.
- 12.1-21-01. Arson.
- 12.1-21-02. Endangering by fire or explosion.
- 12.1-21-04. Release of destructive forces.
- 12.1-21-05. Criminal mischief.
- 12.1-21.1-04. Penalty (animal research facility damage).
- 12.1-22-01. Robbery.
- 12.1-22-02. Burglary.
- 12.1-22-04. Unlawful entry into or concealment within a vehicle.
- 12.1-23-05. Grading of theft offenses.
- 12.1-23-07. Misapplication of entrusted property.
- 12.1-23-08.3. Dealing in stolen property.
- 12.1-23-11. Unauthorized use of personal identifying information - Penalty.
- 12.1-24-01. Forgery or counterfeiting.
- 12.1-24-02. Facilitation of counterfeiting.
- 12.1-24-03. Deceptive writings.

- 12.1-27.2-02. Use of a minor in a sexual performance.
- 12.1-27.2-03. Promoting or directing an obscene sexual performance by a minor.
- 12.1-31-07. Endangering a vulnerable adult - Penalty.

Title 14 - Domestic Relations and Persons

- 14-02.1-04. Limitations on the performance of abortions - Penalty.
- 14-09-22. Abuse or neglect of child - Penalty.

Title 19 - Foods, Drugs, Oils, and Compounds

- 19-03.1-22.2. Endangerment of child or vulnerable adult.
- 19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties.
- 19-03.1-23.1. Increased penalties for aggravating factors in drug offenses.
- 19-04-08. Distribution of anabolic steroids prohibited - Exception - Penalty.

Title 23 - Health and Safety

- 23-06-27. Protection of human burial sites, human remains, and burial goods - Unlawful acts - Penalties - Exceptions.

Title 36 - Livestock

- 36-09-20.2 - Proof of ownership - Alteration or falsification - Penalty (livestock ownership).

Title 39 - Motor Vehicles

- 39-30-02. Violations and penalties (motor vehicle chop shops).

Title 43 - Occupations and Professions

- 43-10.1-08. Penalties (pre-need funeral services).

Title 51 - Sales and Exchanges

- 51-19-14. Criminal penalties (franchise investment law).
- 51-23-14. Criminal penalties (commodity transactions).

Class C Felonies**Title 5 - Alcoholic Beverages**

- 5-01-16. Direct sale from out-of-state seller to consumer - Penalty.
- 5-03-06. Examination by tax commissioner - Penalty for improper returns (beer and liquor wholesalers).

Title 6 - Banks and Banking

- 6-01-29. Obstructing or misleading examiner - Penalty.
- 6-08-16. Issuing check or draft without sufficient funds or credit - Notice - Time limitation - Financial liability - Penalty.
- 6-08-16.2. Issuing check without account - Financial liability - Penalty - Exceptions.

Title 12.1 - Criminal Code

- 12.1-06-02. Criminal facilitation.
- 12.1-06.1-08. Computer fraud - Computer crime - Classification - Penalty.
- 12.1-06.2-02. Criminal street gang crime - Penalty.

- 12.1-06.2-03. Encouraging minors to participate in criminal street gang - Penalty.
- 12.1-08-02. Preventing arrest or discharge of other duties.
- 12.1-08-03. Hindering law enforcement.
- 12.1-08-04. Aiding consummation of crime.
- 12.1-08-05. Failure to appear after release - Bail jumping.
- 12.1-08-06. Escape.
- 12.1-08-08. Inciting or leading riot in detention facilities.
- 12.1-08-09. Introducing or possessing contraband useful for escape.
- 12.1-09-01. Tampering with witnesses and informants in proceedings.
- 12.1-09-02. Tampering with informants in criminal investigations.
- 12.1-09-03. Tampering with physical evidence.
- 12.1-11-01. Perjury.
- 12.1-11-05. Tampering with public records.
- 12.1-12-01. Bribery.
- 12.1-12-02. Illegal influence between legislators or between legislators and governor.
- 12.1-12-06. Threatening public servants.
- 12.1-12-07. Sports bribery.
- 12.1-12-08. Commercial bribery.
- 12.1-13-01. Disclosure of confidential information provided to government.
- 12.1-15-02. Interception of wire or oral communications - Eavesdropping.
- 12.1-15-03. Traffic in intercepting devices.
- 12.1-16-03. Negligent homicide.
- 12.1-16-04. Assisting the commission of suicide - Causing death by suicide - Penalties.
- 12.1-17-01. Simple assault.
- 12.1-17-01.1. Assault.
- 12.1-17-02. Aggravated assault.
- 12.1-17-03. Reckless endangerment.
- 12.1-17-04. Terrorizing.
- 12.1-17-07.1. Stalking.
- 12.1-17-11. Contact by bodily fluids or excrement.
- 12.1-17.1-04. Negligent homicide of an unborn child.
- 12.1-17.1-05. Aggravated assault of an unborn child.
- 12.1-18-02. Felonious restraint.
- 12.1-20-05. Corruption or solicitation of minors.
- 12.1-20-05.1. Luring minors by computer or other electronic means.
- 12.1-20-06. Sexual abuse of wards.
- 12.1-20-06.1. Sexual exploitation by therapist - Definitions - Penalty.
- 12.1-20-07. Sexual assault.
- 12.1-20-11. Incest.
- 12.1-20-12.1. Indecent exposure.
- 12.1-20-12.2. Surreptitious intrusion.
- 12.1-20-13. Bigamy.
- 12.1-21-02. Endangering by fire or explosion.
- 12.1-21-04. Release of destructive forces.
- 12.1-21-05. Criminal mischief.
- 12.1-21-06. Tampering with or damaging a public service.
- 12.1-21-06.1. Interference with telephone during emergency call.
- 12.1-21.1-04. Penalty (animal research facility damage).
- 12.1-22-01. Robbery.
- 12.1-22-02. Burglary.
- 12.1-22-03. Criminal trespass.
- 12.1-22-04. Unlawful entry into or concealment within a vehicle.
- 12.1-23-02.1. Disarming or attempting to disarm a law enforcement officer.
- 12.1-23-05. Grading of theft offenses.
- 12.1-23-06. Unauthorized use of a vehicle.
- 12.1-23-07. Misapplication of entrusted property.
- 12.1-23-08. Defrauding secured creditors.
- 12.1-23-08.3. Dealing in stolen property.
- 12.1-23-11. Unauthorized use of personal identifying information - Penalty.
- 12.1-23-13. Distribution and use of theft detection shielding devices.
- 12.1-24-01. Forgery or counterfeiting.
- 12.1-24-02. Facilitation of counterfeiting.
- 12.1-24-03. Deceptive writings.
- 12.1-25-01. Inciting riot.
- 12.1-25-02. Arming rioters.
- 12.1-27.1-01. Obscenity - Definitions - Dissemination - Classification of offenses.
- 12.1-27.1-03. Promoting obscenity to minors - Minor performing in obscene performance - Classification of offenses.
- 12.1-27.2-04. Promoting a sexual performance by a minor.
- 12.1-27.2-04.1. Possession of certain materials prohibited.
- 12.1-28-02. Gambling - Related offenses - Classification of offenses.
- 12.1-29-01. Promoting prostitution.
- 12.1-29-02. Facilitating prostitution.
- 12.1-31-02. Engaging in or financing criminal usury business.
- 12.1-31-05. Child procurement - Penalty.
- 12.1-31-07.1. Exploitation of a vulnerable adult - Penalty.
- 12.1-31-09. Fraudulent use of receipts and universal product code labels prohibited - Penalty.
- 12.1-31-12. Abortion - Affirmative defenses (contingent effective date).
- 12.1-32-15. Offenders against children and sexual offenders - Sexually violent predators - Registration requirement - Penalty.
- 12.1-36-01. Surgical alteration of the genitals of female minor - Penalty - Exception.

- 12.1-37-01. Willful failure to pay child support - Classification of offenses - Affirmative defense - Penalty.
- 12.1-39-02. Human cloning - Prohibition - Penalty.

Title 13 - Debtor and Creditor Relationship

- 13-04.1-13. Penalty (money brokers).
- 13-05-10. Penalty (collection agencies).
- 13-08-15. Violations - Cease and desist orders - Penalties (deferred presentment services providers).
- 13-09-22. Criminal penalties (money transmitters).

Title 14 - Domestic Relations and Persons

- 14-02.1-05. Preserving life of a viable child - Penalty.
- 14-02.1-08. Protection of viable fetus born alive - Penalty.
- 14-02.2-02. Experimentation on dead fetus - Use of fetal organs or tissue for transplantation or experimentation - Sale of fetus or fetal organs or tissue - Penalty.
- 14-07-15. Abandonment or nonsupport of child - Penalty.
- 14-07-16. Abandonment or nonsupport of spouse - Penalty.
- 14-07.1-06. Penalty for violation of a protection order.
- 14-07.4-07. Penalty (Uniform Interstate Enforcement of Domestic Violence Protection Orders Act).
- 14-09-22. Abuse or neglect of child - Penalty.
- 14-10-06. Unlawful to encourage or contribute to the deprivation or delinquency of minor - Penalty.
- 14-10-08. Person to whom child confided substituting other child - Penalty.

Title 15 - Education

- 15-05-08. Penalty for mining and prospecting in violation of requirements governing.
- 15-20.4-15. Unlawful to issue, manufacture, or use false academic degrees - Penalty.

Title 16.1 - Elections

- 16.1-01-12. Election offenses - Penalty.

Title 19 - Foods, Drugs, Oils, and Compounds

- 19-03.1-22.2. Endangerment of child or vulnerable adult.
- 19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties (drug offenses).
- 19-03.1-23.1. Increased penalties for aggravating factors in drug offenses.
- 19-03.1-24. Prohibited acts B - Penalties (drug offenses).
- 19-03.1-25. Prohibited acts C - Penalties (drug offenses).
- 19-03.2-03. Prohibited acts - Penalties - Exception (drug offenses).

- 19-03.4-03. Unlawful possession of drug paraphernalia - Penalty.
- 19-03.4-04. Unlawful manufacture or delivery of drug paraphernalia - Penalty.
- 19-03.4-05. Unlawful delivery of drug paraphernalia to a minor - Penalty.

Title 20.1 - Game, Fish, Predators, and Boating

- 20.1-06-02. Fish protected - Penalty.

Title 23 - Health and Safety

- 23-02.1-32. Penalties (Health Statistics Act).
- 23-06-24. Unlawful removal of dead body - Penalty.
- 23-06-26. Purchasing body forbidden - Penalty.
- 23-06-27. Protection of human burial sites, human remains, and burial goods - Unlawful acts - Penalties - Exceptions.
- 23-06.5-18. Penalties (durable power of attorney for health care).
- 23-07-21. Penalties (reportable diseases).
- 23-07.5-02. Informed consent for testing or disclosure - Exception (bloodborne pathogen testing).
- 23-07.5-08. Penalty (bloodborne pathogen testing).
- 23-07.7-02. Testing procedures - Results of test - Penalty (court-ordered testing for sexually transmitted diseases).

Title 25 - Mental and Physical Illness or Disability

- 25-03.3-24. Postcommitment community placement - Penalty (violation of court order).

Title 26.1 - Insurance

- 26.1-02-25. Penalty (violation of general provisions of insurance chapter).
- 26.1-02.1-05. Penalties - Restitution (insurance fraud).
- 26.1-15.1-36. Penalties (fraternal benefit societies).
- 26.1-26-03. License required - Acting as insurance producer or consultant without license prohibited - Penalty.
- 26.1-27-03. Certificate of authority required - Penalty (administrators of life or health insurance annuities).

Title 31 - Judicial Proof

- 31-13-04. DNA testing - Procedure - Immunity - Penalty.

Title 32 - Judicial Remedies

- 32-22-38. Removing or concealing prisoner to avoid writ.

Title 36 - Livestock

- 36-09-23. Transportation of livestock from state - Brand inspection - Penalty.
- 36-21.1-07. Cockfights, dogfights, and other exhibitions prohibited - Penalties.

Title 37 - Military

- 37-01-20. Penalty for resisting when state of insurrection exists.

Title 38 - Mining and Gas and Oil Production

- 38-08-16. Civil and criminal penalties (control of gas and oil resources).
- 38-08.1-07. Civil and criminal penalties (geophysical exploration requirements).
- 38-19-07. Penalties (geothermal resource development regulation).

Title 39 - Motor Vehicles

- 39-04-56. Altering or forging registration card - Penalty.
- 39-05-11. Altering or forging certificate of title - Penalty.
- 39-05-28. Penalty for defacing, destroying, removing, or altering engine, serial, or identification numbers.
- 39-08-01. Persons under the influence of intoxicating liquor or any other drugs or substances not to operate vehicle - Penalty.
- 39-08-04. Accidents involving death or personal injuries - Penalty.
- 39-10-71. Fleeing or attempting to elude a peace officer - Penalty.
- 39-21-51. Alteration of odometers or other mileage recorders, hour meters on tachometers or other hour recorders - Penalty.

Title 41 - Uniform Commercial Code

- 41-10-02. Criminal penalty (fraudulent financing statement records).

Title 43 - Occupations and Professions

- 43-15.1-02. Prohibited drug purchase or receipt - Penalty (wholesale drug distributors).
- 43-15.1-04. Wholesale drug distributor and pharmacy distributor licensing requirements - Penalty.
- 43-15.1-05. Out-of-state wholesale drug distributor and pharmacy distributor licensing requirements - Penalty.
- 43-15.1-09. Inspection powers and access to wholesale drug distributor records - Penalty.
- 43-15.3-09. Penalties (wholesale drug pedigree).
- 43-23.1-23. Penalties (Subdivided Lands Disposition Act).

Title 47 - Property

- 47-21.1-06. Penalty (sound recordings).

Title 49 - Public Utilities

- 49-03.1-09. Registration of telecommunications companies that are not incumbent telecommunications companies - Penalty.
- 49-10.1-08. Tampering, altering, or damaging railroad property - Penalty.

Title 50 - Public Welfare

- 50-12-17. Licensure requirement - Registration requirement - Penalty (child-placing agency).
- 50-22-05. Enforcement - Penalties - Remedies (charitable organizations soliciting contributions).

Title 51 - Sales and Exchanges

- 51-07-04.1. Defacing, destroying, or altering serial numbers on farm machinery - Penalty.

- 51-16.1-04. Penalty - Civil remedies (pyramid promotional and referral sales schemes).
- 51-27-10. Fraudulent or misleading communications - Penalty.
- 51-32-07. Penalties (remote sales of tobacco products).
- 51-34-02. Unauthorized or fraudulent procurement, sale, or receipt of telephone records prohibited - Criminal penalties - Restitution.

Title 52 - Social Security

- 52-04-08.2 - Transfers of unemployment insurance experience - Recalculation of rates - Definitions - Civil and criminal penalties.

Title 53 - Sports and Amusements

- 53-06.1-16. Violation of law or rule - Fraudulent scheme or technique to cheat or skim unlawful - Penalty.
- 53-06.2-16. Prohibited acts - Penalties (pari-mutuel horse racing).
- 53-11-05. Penalty - Remedies (contest prize notices).
- 53-12.1-08. Purchase of ticket or payment of prize to certain persons prohibited - Price of a ticket - Sale by retailer only - Second chance drawings - Price to be paid to owner of a winning ticket - Price subject to taxation - Discharge of liability - Penalty.

Title 54 - State Government

- 54-06-12. Publishing false statements - Penalty.
- 54-10-23. Obstructing or misleading auditor - Penalty.

Title 57 - Taxation

- 57-01-14. Tax information furnished by United States secretary of the treasury - Penalty for disclosure.

Title 62.1 - Weapons

- 62.1-02-01. Persons who are not to possess firearms - Penalty.
- 62.1-02-03. Possession or sale of short-barreled rifle or shotgun - Penalty - Application.
- 62.1-02-08. Illegal firearms, ammunition, or explosive materials business.
- 62.1-02-09. Possession of explosive and destructive device in government building - Penalty.
- 62.1-02-11. Possessing explosive prohibited - Exception - Penalty.
- 62.1-05-01. Possession and sale of machine guns, automatic rifles, silencers, and bombs - Penalty - Forfeiture.

Title 65 - Workforce Safety and Insurance

- 65-04-33. Failure to secure coverage - Noncompliance - Failure to submit necessary reports - Penalty.
- 65-05-33. Filing false claim or false statement - Penalty.

Misdemeanors and Infractions

A search of the Century Code indicates that there are 378 offenses classified as Class A misdemeanors, 397 classified as Class B misdemeanors, and 157 classified as infractions.

SUGGESTED STUDY APPROACH

The committee, in its study of whether penalties for felonies are suitable to the felonious behavior and the criminal offenses in the Century Code for which a monetary amount triggers the grading of the offense, may wish to approach this study as follows:

1. Review the penalties for felonies and the offenses for which a monetary amount triggers the grading of the offense, select those sections in need of review, and prioritize the order in which the selected sections should be reviewed.

2. Seek recommendations from the Attorney General, the judicial branch, the Department of Corrections and Rehabilitation, state's attorneys, law enforcement, the State Bar Association of North Dakota, and other interested parties regarding recommended revisions of existing statutes and suggestions for new statutes.
3. Prepare bill drafts based upon the recommendations and conduct public hearings on those drafts to receive testimony from those individuals and agencies that would be impacted by the changes.
4. Develop final recommendations and prepare legislation necessary to implement the recommendations.

ATTACH:2

SECTION 7. LEGISLATIVE COUNCIL STUDY - FELONY PENALTIES. During the 2009-10 interim, the legislative council shall consider studying whether penalties for felonies are suitable to the felonious behavior. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE CONCURRENT RESOLUTION NO. 3023
(Representatives Griffin, Koppelman)

A concurrent resolution directing the Legislative Council to study the criminal offenses in the North Dakota Century Code for which a monetary amount triggers the grading of the offense, with particular emphasis on the grading of theft offenses contained in North Dakota Century Code Chapter 12.1-23.

WHEREAS, the last major revisions to the monetary amounts that trigger the grading of theft offenses occurred in 1973; and

WHEREAS, the proper grading of offenses provides for equitable punishment based upon the severity of the offense committed; and

WHEREAS, the appropriate grading of offenses may result in more efficient use of state resources in determining levels of punishment, rehabilitation, and the appropriate alternatives to incarceration;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the criminal offenses in the North Dakota Century Code for which a monetary amount triggers the grading of the offense, with particular emphasis on the grading of theft offenses contained in North Dakota Century Code Chapter 12.1-23; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.