

# CRIMINAL CODE

## CHAPTER 96

### HOUSE BILL NO. 1204

(Representatives Delmore, Hawken, Maragos, Sanford)  
(Senators Lyson, Nelson)

AN ACT to amend and reenact subsection 6 of section 12.1-17-07.1 of the North Dakota Century Code, relating to stalking and previous convictions.

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

**SECTION 1. 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, 12.1-17-02, 12.1-17-04, 12.1-17-05, or 12.1-17-07, or a similar offense ~~in another state~~ 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.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 97

### HOUSE BILL NO. 1249

(Representatives Koppelman, Beadle, Kingsbury, Steiner, Delmore)  
(Senator J. Lee)

AN ACT to amend and reenact section 12.1-20-12.2 of the North Dakota Century Code, relating to surreptitious intrusion.

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

**SECTION 1. AMENDMENT.** Section 12.1-20-12.2 of the North Dakota Century Code is amended and reenacted as follows:

##### **12.1-20-12.2. Surreptitious intrusion.**

1. An individual, with the intent to arouse, appeal to, or gratify that individual's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that individual does any of the following:
  - a. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously gazes, stares, or peeps ~~in the window or any other aperture of~~into a house or place of dwelling of another.
  - b. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events ~~through the window or any other aperture of~~from a house or place of dwelling of another.
  - c. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously gazes, stares, or peeps ~~in the window or other aperture of~~into a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.
  - d. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events ~~through the window or other aperture of~~from a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.
2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.1, or after being required to register under section 12.1-32-15.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 98

### SENATE BILL NO. 2241

(Senators Lyson, Berry, Sitte)  
(Representatives Dahl, Heller, Louser)

AN ACT to amend and reenact subsection 2 of section 12.1-23-05 of the North Dakota Century Code, relating to the grading of theft offenses for theft of a prescription drug; to provide a penalty; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 12.1-23-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Theft under this chapter is a class C felony if:
  - a. The property or services stolen exceed five hundred dollars in value;
  - b. The property or services stolen are acquired or retained by threat and (1) are acquired or retained by a public servant by a threat to take or withhold official action, or (2) exceed fifty dollars in value;
  - c. The property or services stolen exceed fifty dollars in value and are acquired or retained by a public servant in the course of official duties;
  - d. The property stolen is a firearm, ammunition, explosive or destructive device, or an automobile, aircraft, or other motor-propelled vehicle;
  - e. The property consists of any government file, record, document, or other government paper stolen from any government office or from any public servant;
  - f. 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;
  - g. The property stolen consists of any implement, paper, or other thing uniquely associated with the preparation of any money, stamp, bond, or other document, instrument, or obligation of this state;
  - h. The property stolen consists of livestock taken from the premises of the owner;
  - i. The property stolen 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~~
  - j. The property stolen is a card, plate, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit, or is a debit card, electronic fund transfer card, code, or other means of access to an account for the purposes of initiating electronic fund transfers; or

k. The property stolen is a prescription drug as defined in section 43-15.3-01.

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

Approved April 26, 2011

Filed April 26, 2011

## CHAPTER 99

### HOUSE BILL NO. 1371

(Representatives Delmore, Koppelman, Sanford)  
(Senators Olafson, Nelson, Lyson)

AN ACT to amend and reenact subsection 1 of section 12.1-27.1-03.3 of the North Dakota Century Code, relating to the creation, possession, or dissemination of sexually expressive images.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-27.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

1. A person is guilty of a class A misdemeanor if, knowing of its character and content, that person:
  - a. Without written consent from each individual who has a reasonable expectation of privacy in the image, surreptitiously creates or willfully possesses a sexually expressive image that was surreptitiously created; or
  - b. Distributes or publishes, electronically or otherwise, a sexually expressive image with the intent to cause emotional harm or humiliation to any individual depicted in the sexually expressive image who has a reasonable expectation of privacy in the image, or after being given notice by an individual or parent or guardian of the individual who is depicted in a sexually expressive image that the individual, parent, or guardian does not consent to the distribution or publication of the sexually expressive image.

Approved April 4, 2011  
Filed April 4, 2011

## CHAPTER 100

### HOUSE BILL NO. 1224

(Representative Weiler)

AN ACT to create and enact a new subdivision to subsection 1 of section 12.1-31-01 and a new section to chapter 12.1-31 of the North Dakota Century Code, relating to disorderly conduct and surreptitious intrusion or interference with privacy; to amend and reenact subsection 2 of section 12.1-31-01.1 of the North Dakota Century Code, relating to disorderly conduct at a funeral; and to provide a penalty.

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

**SECTION 1.** A new subdivision to subsection 1 of section 12.1-31-01 of the North Dakota Century Code is created and enacted as follows:

Uses a fixed optical device that enhances or records a visual occurrence to view through any window of another person's property; or uses a surveillance camera to capture an image from the dwelling or accessory structure of another person; however, an individual using a surveillance camera has seven days from notice by a law enforcement officer to direct or shield the camera so as to not capture an image from another person's dwelling or accessory structure before there is an offense.

**SECTION 2. AMENDMENT.** Subsection 2 of section 12.1-31-01.1 of the North Dakota Century Code is amended and reenacted as follows:

2. An individual is guilty of disorderly conduct at a funeral if the individual:
  - a. Engages, with knowledge of the existence of a funeral site, in any loud singing, playing of music, chanting, whistling, yelling, or noisemaking within ~~three hundred~~one thousand feet [~~91.44300.48~~ meters] of any ingress or egress of that funeral site if the volume of the singing, music, chanting, whistling, yelling, or noisemaking is likely to be audible at and disturbing to the funeral site; or
  - b. Displays, with knowledge of the existence of a funeral site and within ~~three hundred~~one thousand feet [~~91.44300.48~~ meters] of any ingress or egress of that funeral site, any visual images that convey fighting words or actual or veiled threats against any other individual.

**SECTION 3.** A new section to chapter 12.1-31 of the North Dakota Century Code is created and enacted as follows:

#### **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.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 101

### HOUSE BILL NO. 1028

(Legislative Management)  
(Commission on Alternatives to Incarceration)

AN ACT to amend and reenact sections 12-48.1-02, 12.1-32-02.1, and 12.1-32-09.1 of the North Dakota Century Code, relating to offender eligibility for release programs.

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

**SECTION 1. AMENDMENT.** Section 12-48.1-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **12-48.1-02. Conditions of eligibility for release programs.**

1. An offender, except an offender sentenced to a penalty of life imprisonment without the opportunity for parole as the result of conviction of a class AA felony under section 12.1-20-03 or of murder under section 12.1-16-01, may be eligible for programs outside facilities under the control of the department of corrections and rehabilitation when the department determines the offender is not a high security risk, not likely to commit a crime of violence, and is likely to be rehabilitated by such program. An offender may apply to the director of the department for permission to participate in such programs.
2. The director of the department may authorize participation in outside programs for an offender who has been committed to ten years or less to the legal and physical custody of the department. The parole board, with the approval of the director of the department, may authorize participation in outside programs for offenders who have been committed to the legal and physical custody of the department for more than ten years.
3. The offender shall submit a signed application which must include a statement that the offender agrees to abide by all terms and conditions of the particular plan adopted for the offender, and must include such other information as the parole board or the director of the department may require.
4. The parole board may approve, disapprove, or defer action on an application approved by the director of the department. The director of the department or the parole board may revoke approval of the application at any time after granting the application. The department shall prescribe rules of conduct and treatment for all offenders on release programs.
5. The director of the department may grant short leaves, not to exceed seventy-two hours, to offenders who have been committed to the legal and physical custody of the department for ten years or less. The parole board, upon the approval of the director of the department, may grant short leaves, not to exceed seventy-two hours, to offenders committed to the legal and physical custody of the department for more than ten years.

6. All rules adopted by the parole board and the director of the department relating to release programs and short leaves must conform, to the extent allowable by law, with executive order no. 11755 issued by the President of the United States.

**SECTION 2. AMENDMENT.** Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-02.1. Mandatory prison terms for armed offenders.**

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when, in the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm, or possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing an offense under subsection 1, 2, or, except for the simple possession of marijuana, 6 of section 19-03.1-23. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:
  4. a. If the offense for which the offender is convicted is a class A or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
  2. b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.
2. This section applies even when being armed is an element of the offense for which the offender is convicted.
3. An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence.

**SECTION 3. 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.**

AnyExcept 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, 12.1-17-02, 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. 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. 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.

Approved March 28, 2011

Filed March 28, 2011

## CHAPTER 102

### SENATE BILL NO. 2231

(Senators Dever, Heckaman, Uglem)  
(Representatives Delmore, Devlin, L. Meier)

AN ACT to amend and reenact subsections 1 and 7 of section 12.1-32-15 of the North Dakota Century Code, relating to the registration of sexual offenders.

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

<sup>39</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

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 subdivision a of subsection 1 or subsection 2 of section 14-09-22, labor trafficking in violation of chapter 12.1-40, 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. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.
  - d. "Predatory" means an act directed at a stranger or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.
  - e. "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, 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, sex trafficking in violation of chapter 12.1-40, 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.

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<sup>39</sup> Section 12.1-32-15 was also amended by section 1 of House Bill No. 1435, chapter 103.

- f. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.
- g. "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.

**SECTION 2. AMENDMENT.** Subsection 7 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

7. Registration consists of a written statement signed by the individual, giving the information required by the attorney general, and the fingerprints 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 data base 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, fingerprints, 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 inform in writing, within three days after the change, 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 inform in writing, at least ten days before the change, the law enforcement agency with whom 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 shall inform in writing within five days of the termination the law enforcement agency with whom 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 fingerprint portion of the registration if that agency has a set of fingerprints on file for that individual and is personally familiar with and can

visually identify the offender. These provisions also apply in any other state that requires registration.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 103

### HOUSE BILL NO. 1435

(Representatives Koppelman, Hunskor, Kingsbury)  
(Senators Miller, Robinson, Sorvaag)

AN ACT to create and enact a new subsection to section 12.1-32-15 of the North Dakota Century Code, relating to sexual offender and felony crimes against children registration requirements; and to declare an emergency.

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

<sup>40</sup> **SECTION 1.** A new subsection to section 12.1-32-15 of the North Dakota Century Code is created and enacted as follows:

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

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

Approved April 25, 2011  
Filed April 25, 2011

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<sup>40</sup> Section 12.1-32-15 was also amended by section 1 of Senate Bill No. 2231, chapter 102.

## CHAPTER 104

### HOUSE BILL NO. 1230

(Representatives Delmore, DeKrey, Hawken, Kretschmar)  
(Senators Nething, Heckaman)

AN ACT to amend and reenact section 12.1-34-03 of the North Dakota Century Code, relating to fair treatment of victims and witnesses and confidential records.

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

**SECTION 1. AMENDMENT.** Section 12.1-34-03 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-34-03. (Contingent expiration date - See note) Responsibilities of victims and witnesses.**

Victims and witnesses have all of the following responsibilities to aid in the prosecution of crime:

1. To make a timely report of the crime.
2. To cooperate with law enforcement authorities throughout the investigation, prosecution, and trial.
3. To testify at trial.
4. To notify law enforcement authorities, prosecuting attorney, custodial authority, parole board, pardon clerk, and court, where appropriate, of any change of address. The Except for release to a domestic violence sexual assault organization as defined in section 14-07.1-01, the address information provided to these persons must be kept confidential.

**(Contingent effective date - See note) Responsibilities of victims and witnesses.** Victims and witnesses have all of the following responsibilities to aid in the prosecution of crime:

1. To make a timely report of the crime.
2. To cooperate with law enforcement authorities throughout the investigation, prosecution, and trial.
3. To testify at trial.
4. To notify the system, law enforcement authorities, prosecuting attorney, custodial authority, parole board, pardon clerk, and court, where appropriate, of any change of contact information. All Except for release to a domestic violence sexual assault organization as defined in section 14-07.1-01, all contact information provided must be kept confidential.