

Sixty-third  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2303

Introduced by

Senators Larsen, Sitte, Unruh

Representatives Meier, Ruby, Toman

1 A BILL for an Act to create and enact a new section to chapter 12.1-17 of the North Dakota  
2 Century Code, relating to the application of sections in chapter 12.1-17 to certain medical  
3 procedures; ~~and~~ to amend and reenact sections 12.1-01-04 and 12.1-16-06 of the North Dakota  
4 Century Code, relating to the definition of human being and the application of sections in  
5 chapter 12.1-16 to certain medical procedures; and to provide an appropriation.

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

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

9 **12.1-01-04. General definitions.**

10 As used in this title, unless a different meaning plainly is required:

- 11 1. "Act" or "action" means a bodily movement, whether voluntary or involuntary.
- 12 2. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions  
13 to act".
- 14 3. "Actor" includes, where relevant, a person guilty of an omission.
- 15 4. "Bodily injury" means any impairment of physical condition, including physical pain.
- 16 5. "Court" means any of the following courts: the supreme court, a district court, and  
17 where relevant, a municipal court.
- 18 6. "Dangerous weapon" means, but is not limited to, any switchblade or gravity knife,  
19 machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon,  
20 cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or  
21 spear; any weapon which will expel, or is readily capable of expelling, a projectile by  
22 the action of a spring, compressed air, or compressed gas including any such weapon,  
23 loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO<sub>2</sub> gun; and any

- 1 projector of a bomb or any object containing or capable of producing and emitting any  
2 noxious liquid, gas, or substance.
- 3 7. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade,  
4 mine, rocket, missile, or similar device.
- 5 8. "Explosive" means gunpowders, powders used for blasting, all forms of high  
6 explosives, blasting materials, fuses (other than electric circuit breakers), detonators  
7 and other detonating agents, smokeless powders, and any chemical compounds,  
8 mechanical mixture, or other ingredients in such proportions, quantities, or packing  
9 that ignition by fire, by friction, by concussion, by percussion, or by detonation of the  
10 compound, or material, or any part thereof may cause an explosion.
- 11 9. Repealed by S.L. 1975, ch. 116, § 33.
- 12 10. "Firearm" means any weapon which will expel, or is readily capable of expelling, a  
13 projectile by the action of an explosive and includes any such weapon, loaded or  
14 unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun,  
15 bazooka, or cannon.
- 16 11. "Force" means physical action.
- 17 12. "Government" means:
- 18 a. The government of this state or any political subdivision of this state;  
19 b. Any agency, subdivision, or department of the foregoing, including the executive,  
20 legislative, and judicial branches;  
21 c. Any corporation or other entity established by law to carry on any governmental  
22 function; and  
23 d. Any commission, corporation, or agency established by statute, compact, or  
24 contract between or among governments for the execution of intergovernmental  
25 programs.
- 26 13. "Governmental function" includes any activity which one or more public servants are  
27 legally authorized to undertake on behalf of government.
- 28 14. "Harm" means loss, disadvantage, or injury to the person affected, and includes loss,  
29 disadvantage, or injury to any other person in whose welfare the person affected is  
30 interested.

- 1        15.    "Human being" means an individual member of the species homo sapiens at every  
2            stage of development.
- 3        16.    "Included offense" means an offense:
- 4            a.    Which is established by proof of the same or less than all the facts required to  
5            establish commission of the offense charged;
- 6            b.    Which consists of criminal facilitation of or an attempt or solicitation to commit the  
7            offense charged; or
- 8            c.    Which differed from the offense charged only in that it constitutes a less serious  
9            harm or risk of harm to the same person, property, or public interest, or because  
10           a lesser degree of culpability suffices to establish its commission.
- 11    ~~16.~~17.    "Includes" should be read as if the phrase "but is not limited to" were also set forth.
- 12    ~~17.~~18.    "Law enforcement officer" or "peace officer" means a public servant authorized by law  
13           or by a government agency or branch to enforce the law and to conduct or engage in  
14           investigations or prosecutions for violations of law.
- 15    ~~18.~~19.    "Local" means of or pertaining to any political subdivision of the state.
- 16    ~~19.~~20.    Repealed by S.L. 1975, ch. 116, § 33.
- 17    ~~20.~~21.    "Offense" means conduct for which a term of imprisonment or a fine is authorized by  
18           statute after conviction.
- 19    ~~21.~~22.    "Official action" includes a decision, opinion, recommendation, vote, or other exercise  
20           of discretion by any government agency.
- 21    ~~22.~~23.    "Official proceeding" means a proceeding heard or which may be heard before any  
22           government agency or branch or public servant authorized to take evidence under  
23           oath, including any referee, hearing examiner, commissioner, notary, or other person  
24           taking testimony or a deposition in connection with any such proceeding.
- 25    ~~23.~~24.    "Omission" means a failure to act.
- 26    ~~24.~~25.    As used in this title and in sections outside this title which define offenses, "person"  
27           includes, where relevant, a corporation, limited liability company, partnership,  
28           unincorporated association, or other legal entity. When used to designate a party  
29           whose property may be the subject of action constituting an offense, the word "person"  
30           includes a government which may lawfully own property in this state. Person includes  
31           all human beings.

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- 1 ~~25-26.~~ "Political subdivision" as used in this title and in any statute outside this title which  
2 defines an offense means a county, city, school district, township, and any other local  
3 governmental entity created by law.
- 4 ~~26-27.~~ "Property" includes both real and personal property.
- 5 ~~27-28.~~ "Public servant" as used in this title and in any statute outside this title which defines  
6 an offense means any officer or employee of government, including law enforcement  
7 officers, whether elected or appointed, and any person participating in the  
8 performance of a governmental function, but the term does not include witnesses.
- 9 ~~28-29.~~ "Risk assessment" means an initial phase with a secondary process approved by the  
10 department of human services for the evaluation of the likelihood that a person who  
11 committed an offense will commit another similar offense. The initial phase is an  
12 assessment tool that is administered by a trained probation and parole officer. A  
13 predetermined score on the initial phase initiates the secondary process that includes  
14 a clinical interview, psychological testing, and verification through collateral information  
15 or psychophysiological testing, or both. The department of human services shall  
16 perform the secondary process of the risk assessment.
- 17 ~~29-30.~~ "Serious bodily injury" means bodily injury that creates a substantial risk of death or  
18 which causes serious permanent disfigurement, unconsciousness, extreme pain,  
19 permanent loss or impairment of the function of any bodily member or organ, a bone  
20 fracture, or impediment of air flow or blood flow to the brain or lungs.
- 21 ~~30-31.~~ "Signature" includes any name, mark, or sign written or affixed with intent to  
22 authenticate any instrument or writing.
- 23 ~~31-32.~~ "Substantial bodily injury" means a substantial temporary disfigurement, loss, or  
24 impairment of the function of any bodily member or organ.
- 25 ~~32-33.~~ "Thing of value" or "thing of pecuniary value" means a thing of value in the form of  
26 money, tangible or intangible property, commercial interests, or anything else the  
27 primary significance of which is economic gain to the recipient.
- 28 ~~33-34.~~ "Writing" includes printing, typewriting, and copying.
- 29 Words used in the singular include the plural, and the plural the singular. Words in the  
30 masculine gender include the feminine and neuter genders. Words used in the present tense  
31 include the future tense, but exclude the past tense.

1       **SECTION 2. AMENDMENT.** Section 12.1-16-06 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **12.1-16-06. Construction.**

4       1. Sections 12.1-16-04 through 12.1-16-06 do not preclude the use of medications or  
5 procedures necessary to relieve a person's pain or discomfort if the use of the  
6 medications or procedures is not intentionally or knowingly prescribed or administered  
7 to cause the death of ~~that~~ a person. In addition, sections 12.1-16-04 through  
8 12.1-16-06 do not preclude the withholding or withdrawal of life-prolonging treatment  
9 pursuant to state or federal law.

10       2. Sections 12.1-16-01 through 12.1-16-03 do not apply to:

- 11       a. Medical treatment for life-threatening conditions provided to a person by a  
12       physician licensed to practice medicine under chapter 43-17 which results in the  
13       accidental or unintentional injury or death of another person.  
14       b. Medical treatment for life-threatening conditions of pregnancy.  
15       c. The screening, collecting, preparing, transferring, or cryopreserving of a human  
16       being created through in vitro fertilization for the purpose of being transferred to a  
17       human uterus.  
18       d. The disposal or destruction of a fertilized human ovum, zygote, or embryo,  
19       created through in vitro fertilization, which has been subject to medical testing  
20       and analysis, and in the reasonable judgment of a medical professional, if  
21       transferred to a human uterus, would not produce a live birth.  
22       e. The disposal or destruction of a fertilized human ovum, zygote, or embryo,  
23       created through in vitro fertilization which has not progressed in development for  
24       thirty-six hours in culture.  
25       f. Contraception administered before a clinically diagnosable pregnancy of a  
26       woman.

27       3. Sections 12.1-16-01 through 12.1-16-03 apply only to the principal actor, other than  
28       the pregnant woman, with respect to criminal conduct upon a person who has not yet  
29       been born.

30       **SECTION 3.** A new section to chapter 12.1-17 of the North Dakota Century Code is created  
31 and enacted as follows:

1        **Construction.**

2        1. Sections 12.1-17-01 through 12.1-17-03 do not apply to:

- 3            a. Medical treatment for life-threatening conditions provided to a person by a  
4                    physician licensed to practice medicine under chapter 43-17 which results in the  
5                    accidental or unintentional injury or death of another person.  
6            b. Medical treatment for life-threatening conditions of pregnancy.  
7            c. The screening, collecting, preparing, transferring, or cryopreserving of a human  
8                    being created through in vitro fertilization for the purpose of being transferred to a  
9                    human uterus.  
10           d. The disposal or destruction of a fertilized human ovum, zygote, or embryo,  
11                    created through in vitro fertilization, which has been subject to medical testing  
12                    and analysis, and in the reasonable judgment of a medical professional, if  
13                    transferred to a human uterus, would not produce a live birth.  
14           e. The disposal or destruction of a fertilized human ovum, zygote, or embryo,  
15                    created through in vitro fertilization which has not progressed in development for  
16                    thirty-six hours in culture.  
17           f. Contraception administered before a clinically diagnosable pregnancy of a  
18                    woman.

19        2. Sections 12.1-17-01 through 12.1-17-03 apply only to the principal actor, other than  
20                    the pregnant woman, with respect to criminal conduct upon a person who has not yet  
21                    been born.

22        **SECTION 4. APPROPRIATION.** There is appropriated out of any moneys in the general  
23 fund in the state treasury, not otherwise appropriated, the sum of \$1,000,000, or so much of the  
24 sum as may be necessary, to the attorney general for the purpose of defraying legal expenses  
25 incurred in defending sections 1 through 3 of this Act, for the biennium beginning July 1, 2013,  
26 and ending June 30, 2015.