

# CRIMINAL CODE

## CHAPTER 102

### HOUSE BILL NO. 1116

(Judiciary Committee)  
(At the request of the Department of Human Services)

AN ACT to amend and reenact section 12.1-04-06 of the North Dakota Century Code, relating to an evaluation to determine a defendant's fitness to proceed.

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

<sup>35</sup> **SECTION 1. AMENDMENT.** Section 12.1-04-06 of the North Dakota Century Code is amended and reenacted as follows:

#### **12.1-04-06. Examination - Temporary commitment.**

Whenever there is reason to doubt the defendant's fitness to proceed, the court may order the detention of the defendant for the purpose of an examination by a psychiatrist or a licensed psychologist. The detention must be in the least restrictive appropriate setting, including the state hospital, the developmental center at westwood park, Grafton, or other suitable facility for a reasonable period, not to exceed thirty days, for such examination. In lieu of detention, the court may allow the defendant to remain in the defendant's present residential setting or other suitable residential setting for the purpose of evaluation by a ~~human service center or other~~ suitable facility or personnel, subject to any reasonable limitation the court may impose. A human service center may not be considered a suitable facility and may not be considered suitable personnel under this section unless the court is aware that an inquiry has been made prior to the court ordering the evaluation to ensure that appropriate resources exist at the human service center being ordered to conduct the evaluation. The court, by subsequent order and for good cause shown, may extend the detention for a period not to exceed thirty additional days. While the defendant is detained, the defendant's legal counsel, family, and others necessary to assist in the defendant's case shall have reasonable opportunity to examine and confer with the defendant.

Approved April 8, 2013  
Filed April 8, 2013

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<sup>35</sup> Section 12.1-04-06 was also amended by section 1 of Senate Bill No. 2069, chapter 226.

## CHAPTER 103

### HOUSE BILL NO. 1320

(Representatives Kreun, Delmore, Hatlestad, N. Johnson)  
(Senators Hogue, Laffen, Sorvaag)

AN ACT to amend and reenact section 12.1-17-07 of the North Dakota Century Code, relating to harassment offenses through electronic communications.

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

**SECTION 1. AMENDMENT.** Section 12.1-17-07 of the North Dakota Century Code is amended and reenacted as follows:

##### **12.1-17-07. Harassment.**

1. A person is guilty of an offense if, with intent to frighten or harass another, the person:
  - a. Communicates in writing or by ~~telephone~~electronic communication a threat to inflict injury on any person, to any person's reputation, or to any property;
  - b. Makes a telephone call anonymously or in offensively coarse language;
  - c. Makes repeated telephone calls ~~or other electronic communication~~, whether or not a conversation ensues, with no purpose of legitimate communication; or
  - d. Communicates a falsehood in writing or by ~~telephone~~electronic communication and causes mental anguish.
2. The offense is a class A misdemeanor if it is under subdivision a of subsection 1 or subsection 4. Otherwise it is a class B misdemeanor.
3. Any offense defined herein and committed by use of a ~~telephone~~electronic communication may be deemed to have been committed at either the place at which the ~~telephone call or calls were~~electronic communication was made or at the place where the telephone call or calls wereelectronic communication was received.
4. A person ~~who telephones~~is guilty of an offense if the person initiates communication with a 911 emergency line, public safety answering point, or an emergency responder communication system with the intent to annoy or harass another person ~~or a public safety agency or who makes a false 911 report~~is guilty of a class A misdemeanor to a public safety agency.
  - a. Intent to annoy or harass is established by proof of one or more calls with no legitimate ~~911~~emergency purpose.
  - b. Upon conviction of a violation of this subsection, a person is also liable for all costs incurred by any unnecessary emergency response.

5. Any offense defined herein is deemed communicated in writing if it is transmitted electronically, by electronic mail, facsimile, or other similar means. Electronic communication means transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic, or photo-optical system.

Approved April 12, 2013

Filed April 12, 2013

## CHAPTER 104

### SENATE BILL NO. 2251

(Senators Armstrong, Schaible, Nelson)  
(Representatives Steiner, Thoreson, Oversen)

AN ACT to amend and reenact subsection 1 of section 6-08-16, subsection 3 of section 6-08-16.2, sections 12.1-23-02.1, 12.1-23-05, 12.1-23-06, 12.1-23-07, and 12.1-23-08, subsection 1 of section 12.1-23-09, and sections 12.1-24-01, 12.1-24-03, 12.1-32-01, 12.1-32-01.1, 26.1-02.1-05, and 29-03-22 of the North Dakota Century Code, relating to the penalties for crimes for which a monetary amount triggers the level of penalty; and to provide a penalty.

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

<sup>36</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 6-08-16 of the North Dakota Century Code is amended and reenacted as follows:

1. A person may not, for that person, as the agent or representative of another, or as an officer or member of a firm, company, copartnership, or corporation, make, draw, utter, or deliver any check, draft, or order, or authorize an electronic funds transfer, for the payment of money upon a bank, banker, or depository, if at the time of the making, drawing, uttering, electronically authorizing, or delivery, or at the time of presentation for payment, if the presentation for payment is made within fourteen days after the original delivery thereof, there are not sufficient funds in or credit with the bank, banker, or depository to meet the check, draft, electronic funds transfer, or order in full upon its authorized presentation. Violation of this subsection is:
  - a. An infraction if the amount of insufficient funds or credit is not more than fiftyone hundred dollars;
  - b. A class B misdemeanor if the amount of insufficient funds or credit is more than fiftyone hundred dollars but not more than twofive hundred fifty dollars, 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;
  - c. A class A misdemeanor if the amount of insufficient funds or credit is more than twofive hundred fifty dollars but not more than five hundredone thousand dollars, 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
  - d. A class C felony if the amount of insufficient funds or credit is more than five hundredone thousand dollars, 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.

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<sup>36</sup> Section 6-08-16 was also amended by section 1 of House Bill No. 1243, chapter 79.

<sup>37</sup> **SECTION 2. AMENDMENT.** Subsection 3 of section 6-08-16.2 of the North Dakota Century Code is amended and reenacted as follows:

3. A person who, for that person or an agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if the instrument was for at least five hundred one thousand dollars or that person, agent, or representative of another, issues more than one instrument wherein the aggregate total of all instruments issued exceeds five hundred one thousand dollars, and at the time of issuing the instrument, the drawer does not have an account with the bank or depository on which the instrument is drawn.

**SECTION 3. AMENDMENT.** Section 12.1-23-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-23-02.1. Disarming or attempting to disarm a law enforcement officer.**

Notwithstanding subdivision d of subsection ~~23~~ of section 12.1-23-05, a person is guilty of a class C felony if, without the consent of the law enforcement officer, the person willfully takes or removes, or attempts to take or remove, a firearm from a law enforcement officer engaged in the performance of official duties.

**SECTION 4. AMENDMENT.** Section 12.1-23-05 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-23-05. Grading of theft offenses.**

1. Notwithstanding subsection 3, theft under this chapter is a class A felony if the property or services stolen exceed fifty thousand dollars in value.
  2. Notwithstanding the provisions of subsection 23, theft under this chapter is a class B felony if the property or services stolen exceed ten thousand dollars in value but do not exceed fifty thousand dollars or are acquired or retained by a threat to commit a class A or class B felony or to inflict serious bodily injury on the person threatened or on any other person.
- ~~2-3.~~ Theft under this chapter is a class C felony if:
- a. The property or services stolen exceed five hundred one thousand 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 one hundred dollars in value;
  - c. The property or services stolen exceed fifty one hundred 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;

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<sup>37</sup> Section 6-08-16.2 was also amended by section 2 of House Bill No. 1243, chapter 79.

- 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;
  - 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.
- ~~3-4.~~ All other theft under this chapter is a class A misdemeanor, unless the requirements of subsection ~~45~~ are met.
- ~~4-5.~~ Theft under this chapter of property or services of a value not exceeding ~~two~~five hundred fifty dollars ~~shall be~~is a class B misdemeanor if:
- a. The theft was not committed by threat;
  - b. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft; and
  - c. 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.
- The special classification provided in this subsection ~~shall apply~~applies if the offense is classified under this subsection in the charge or if, at sentencing, the required factors are established by a preponderance of the evidence.
- ~~5-6.~~ Notwithstanding the ~~provisions of~~ subsection 3 of section 12.1-06-01, an attempt to commit a theft under this chapter is punishable equally with the completed offense when the actor has completed all of the conduct which the actor believes necessary on the actor's part to complete the theft except receipt of the property.
- ~~6-7.~~ For purposes of grading, the amount involved in a theft under this chapter ~~shall be~~is the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that the actor was stealing, or which the actor could reasonably have anticipated to have been the property or

services involved. Thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be charged as one offense and the amounts proved to have been stolen may be aggregated in determining the grade of the offense.

**SECTION 5. AMENDMENT.** Section 12.1-23-06 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-23-06. Unauthorized use of a vehicle.**

1. A person is guilty of an offense if, knowing that ~~he~~the person does not have the consent of the owner, ~~he~~the person takes, operates, or exercises control over an automobile, train, aircraft, motorcycle, motorboat, or other motor-propelled vehicle of another.
2. It is a defense to a prosecution under this section that the actor reasonably believed that the owner would have consented had ~~he~~the owner known of the conduct on which the prosecution was based.
3. 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 ~~five hundred one thousand~~ one thousand dollars. Otherwise the offense is a class A misdemeanor.

**SECTION 6. AMENDMENT.** Section 12.1-23-07 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-23-07. Misapplication of entrusted property.**

1. A person is guilty of misapplication of entrusted property if the person disposes of, uses, or transfers any interest in property that has been entrusted to the person as a fiduciary, or in the person's capacity as a public servant or an officer, director, agent, employee of, or a person controlling a financial institution, in a manner that the person knows is not authorized and that the person knows to involve a risk of loss or detriment to the owner of the property or to the government or other person for whose benefit the property was entrusted.
2. Misapplication of entrusted property is:
  - a. A class A felony if the value of the property misapplied exceeds fifty thousand dollars.
  - b. A class B felony if the value of the property misapplied exceeds ten thousand dollars but does not exceed fifty thousand dollars.
  - b-c. A class C felony if the value of the property misapplied exceeds five hundred one thousand dollars but does not exceed ten thousand dollars.
  - e-d. A class A misdemeanor if the value of the property misapplied exceeds ~~two~~five hundred ~~fifty~~ fifty dollars but does not exceed ~~five hundred one thousand~~ one thousand dollars.
  - d-e. A class B misdemeanor in all other cases.

**SECTION 7. AMENDMENT.** Section 12.1-23-08 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-23-08. Defrauding secured creditors.**

1. An owner of property who creates a security interest in such property may not intentionally alter, conceal, destroy, damage, encumber, transfer, remove, or otherwise deal with property that is subject to the security interest without the prior consent of the secured party if that action has the effect of hindering the enforcement of the security interest.
2. A person may not destroy, remove, damage, conceal, encumber, transfer, or otherwise deal with property that is subject to a security interest with the intent to prevent collection of the debt represented by the security interest.
3. A person may not, at the time of sale of property that is subject to a security interest, or is described in a certificate provided for under section 41-09-28, make false statements as to the existence of security interests in the property, or as to the ownership or location of the property.
4. A violation of subsection 2 or 3 must be prosecuted as theft under section 12.1-23-02 or 12.1-23-04. Violation of subsection 2 or 3 is a class C felony if the property has a value of more than ~~five hundred~~ one thousand dollars, as determined under subsection ~~67~~ of section 12.1-23-05. In all other cases, violation of this section is a class A misdemeanor.

**SECTION 8. AMENDMENT.** Subsection 1 of section 12.1-23-09 of the North Dakota Century Code is amended and reenacted as follows:

1. It is a defense to a prosecution under this chapter that:
  - a. The actor ~~honestly~~reasonably believed that ~~he~~the actor had a claim to the property or services involved which ~~he~~the actor was entitled to assert in the manner which forms the basis for the charge against ~~him~~the actor; or
  - b. The victim is the actor's spouse, but only when the property involved constitutes household or personal effects or other property normally accessible to both spouses and the parties involved are living together. The term "spouse", as used in this section, includes persons living together as husband and wife.

**SECTION 9. AMENDMENT.** Section 12.1-24-01 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-24-01. Forgery or counterfeiting.**

1. A person is guilty of forgery or counterfeiting if, with intent to deceive or harm the government or another person, or with knowledge that ~~he~~the person is facilitating such deception or harm by another person, ~~he~~the person:
  - a. Knowingly and falsely makes, completes, or alters any writing; or
  - b. Knowingly utters or possesses a forged or counterfeited writing.
2. Forgery or counterfeiting is:
  - a. A class B felony if:
    - (1) The actor forges or counterfeits an obligation or other security of the government; or

- (2) The offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of ten thousand dollars, but not in excess of fifty thousand dollars. If the value of the property exceeds fifty thousand dollars, the offense is a class A felony.
- b. A class C felony if:
- (1) The actor is a public servant or an officer or employee of a financial institution and the offense is committed under color of office or is made possible by ~~his~~the actor's office;
  - (2) The actor forges or counterfeits foreign money or other legal tender, or utters or possesses any forged or counterfeited obligation or security of the government or foreign money or legal tender;
  - (3) The actor forges or counterfeits any writing from plates, dies, molds, photographs, or other similar instruments designed for multiple reproduction;
  - (4) The actor forges or counterfeits a writing which purports to have been made by the government; or
  - (5) The offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of one ~~hundred~~thousand dollars.
- c. A class A misdemeanor in all other cases.

**SECTION 10. AMENDMENT.** Section 12.1-24-03 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-24-03. Deceptive writings.**

1. A person is guilty of an offense if, with intent to deceive or harm the government or another person, or with knowledge that ~~he~~the person is facilitating such a deception or harm by another person, ~~he~~the person knowingly issues a writing without authority to issue it or knowingly utters or possesses a deceptive writing.
2. The offense is a:
  - a. 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 ten thousand dollars. ~~The offense is a~~
  - b. A class C felony if:
    - a. (1) The actor is a public servant or an officer or employee of a financial institution and the offense is committed under color of office or is made possible by ~~his~~the actor's office; or
    - b. (2) The offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of one ~~hundred~~thousand dollars.

Otherwise it is a
  - c. A class A misdemeanor in all other cases.

**SECTION 11. AMENDMENT.** Section 12.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-01. Classification of offenses - Penalties.**

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

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~~twenty thousand dollars, or both, may be imposed.
3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of ~~ten~~twenty thousand dollars, or both, may be imposed.
4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of ~~five~~ten 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~~three 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 five hundred dollars, or both, may be imposed.
7. Infraction, for which a maximum fine of ~~five hundred~~one thousand 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.

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

**SECTION 12. AMENDMENT.** Section 12.1-32-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-01.1. Organizational fines.**

Any organization, as defined in section 12.1-03-04, shall, upon conviction, be subject to a maximum fine in accordance with the following classification:

1. For a class A felony, a maximum fine of ~~fifty~~one hundred thousand dollars.
2. For a class B felony, a maximum fine of ~~thirty-five~~seventy thousand dollars.
3. For a class C felony, a maximum fine of ~~twenty-five~~fifty thousand dollars.

4. For a class A misdemeanor, a maximum fine of ~~fifteen~~thirty thousand dollars.
5. For a class B misdemeanor, a maximum fine of ~~ten~~twenty thousand dollars.

Nothing in this section shall be construed as preventing the imposition of the sanction provided for in section 12.1-32-03, nor as preventing the prosecution of agents of the organization under section 12.1-03-03.

<sup>38</sup> **SECTION 13. AMENDMENT.** Section 26.1-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-02.1-05. Penalties - Restitution.**

1. A violation of section 26.1-02.1-02.1 is a class C felony if the value of any property or services retained exceeds five thousand dollars and a class A misdemeanor in all other cases. For purposes of this section, the value of any property and services must be determined in accordance with subsection ~~6~~7 of section 12.1-23-05.
2. In the event that a practitioner is adjudicated guilty of a violation of section 26.1-02.1-02.1, the court shall notify the appropriate licensing authority of this state of the adjudication. The appropriate licensing authority shall hold an administrative hearing to consider the imposition of administrative sanctions as provided by law against the practitioner.
3. In addition to any other punishment, a person who violates section 26.1-02.1-02.1 must be ordered to make restitution to the insurer or to any other person for any financial loss sustained as a result of the violation of section 26.1-02.1-02.1. The court shall determine the extent and method of restitution.

**SECTION 14. AMENDMENT.** Section 29-03-22 of the North Dakota Century Code is amended and reenacted as follows:

**29-03-22. Venue of multiple theft offenses involving credit cards.**

If any of a series of thefts can be charged as one offense for purposes of grading under subsection ~~6~~7 of section 12.1-23-05, if each of those thefts involved the use of a credit card, and if the total value of the property or services stolen is at least fifty dollars, venue for the criminal action, in which the series of thefts is charged as one offense, is in any county where any of the thefts was committed.

Approved April 15, 2013  
Filed April 16, 2013

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<sup>38</sup> Section 26.1-02.1-05 was also amended by section 1 of Senate Bill No. 2074, chapter 229.

## CHAPTER 105

### HOUSE BILL NO. 1197

(Representatives Delmore, Dockter, Thoreson)  
(Senators Dever, Holmberg, Triplett)

AN ACT to amend and reenact section 12.1-23-11 of the North Dakota Century Code, relating to identity theft; and to provide a penalty.

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

<sup>39</sup> **SECTION 1. AMENDMENT.** Section 12.1-23-11 of the North Dakota Century Code is amended and reenacted as follows:

#### **12.1-23-11. Unauthorized use of personal identifying information - Penalty.**

1. As used in this section, "personal identifying information" means any of the following information:
  - a. An individual's name;
  - b. An individual's address;
  - c. An individual's telephone number;
  - d. The distinguishing operator's license number assigned to an individual by the department of transportation under section 39-06-14;
  - e. An individual's social security number;
  - f. An individual's employer or place of employment;
  - g. An identification number assigned to the individual by the individual's employer;
  - h. The maiden name of the individual's mother;
  - i. The identifying number of a depository account in a financial institution; or
  - j. An individual's birth, death, or marriage certificate;:
  - k. An individual's photograph or computerized image;
  - l. An individual's e-mail address; or
  - m. An individual's username and password of any digital service or computer system.

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<sup>39</sup> Section 12.1-23-11 was also amended by section 1 of House Bill No. 1280, chapter 107, and section 1 of House Bill No. 1435, chapter 106.

2. ~~A person~~An individual is guilty of an offense if the ~~person~~individual uses or attempts to use any personal identifying information of ~~an~~another individual, living or deceased, to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the other individual ~~and by representing that person is the individual or is acting with the authorization or consent of the individual.~~ The offense is a class B felony if the credit, money, goods, services, or anything else of value exceeds one thousand dollars in value, otherwise the offense is a class C felony. A second or subsequent offense is a class A felony.
3. A violation of this section, of a law of another state, or of federal law that is equivalent to this section and which resulted in a plea or finding of guilt must be considered a prior offense. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.
4. A prosecution for a violation of this section must be commenced within six years after discovery by the victim of the offense of the facts constituting the violation.
5. When a person commits violations of this section in more than one county involving either one or more victims or the commission of acts constituting an element of the offense, the multiple offenses may be consolidated for commencement of prosecution in any county where one of the offenses was committed.

Approved April 10, 2013  
Filed April 10, 2013

## CHAPTER 106

### HOUSE BILL NO. 1435

(Representatives Mock, Karls, Sanford)  
(Senators Berry, Mathern, Schneider, Sorvaag)

AN ACT to amend and reenact sections 12.1-23-11, 51-30-01, and 51-30-06 of the North Dakota Century Code, relating to medical information identity theft.

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

<sup>40</sup> **SECTION 1. AMENDMENT.** Section 12.1-23-11 of the North Dakota Century Code is amended and reenacted as follows:

#### **12.1-23-11. Unauthorized use of personal identifying information - Penalty.**

1. As used in this section, "personal identifying information" means any of the following information:
  - a. An individual's name;
  - b. An individual's address;
  - c. An individual's telephone number;
  - d. The ~~distinguishing operator's license number~~ information assigned to an individual by the department of transportation under section 39-06-14;
  - e. An individual's social security number;
  - f. An individual's employer or place of employment;
  - g. An identification number assigned to the individual by the individual's employer;
  - h. The maiden name of the individual's mother;
  - i. ~~The identifying number of a depository account in a~~ An individual's financial institution account number, credit card number, or debit card number; or
  - j. An individual's birth, death, or marriage certificate.;
  - k. An individual's health insurance policy number or subscriber identification number or any unique identifier used by a health insurer to identify the individual;
  - l. The nondriver color photo identification card information assigned to the individual by the department of transportation under section 39-06-03.1; or

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<sup>40</sup> Section 12.1-23-11 was also amended by section 1 of House Bill No. 1197, chapter 105, and section 1 of House Bill No. 1280, chapter 107.

m. An individual's digitized or other electronic signature.

2. A person is guilty of an offense if the person uses or attempts to use any personal identifying information of an individual, living or deceased, to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the individual and by representing that person is the individual or is acting with the authorization or consent of the individual. The offense is a class B felony if the credit, money, goods, services, or anything else of value exceeds one thousand dollars in value, otherwise the offense is a class C felony. A second or subsequent offense is a class A felony.
3. A violation of this section, of a law of another state, or of federal law that is equivalent to this section and which resulted in a plea or finding of guilt must be considered a prior offense. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.
4. A prosecution for a violation of this section must be commenced within six years after discovery by the victim of the offense of the facts constituting the violation.
5. When a person commits violations of this section in more than one county involving either one or more victims or the commission of acts constituting an element of the offense, the multiple offenses may be consolidated for commencement of prosecution in any county where one of the offenses was committed.

**SECTION 2. AMENDMENT.** Section 51-30-01 of the North Dakota Century Code is amended and reenacted as follows:

**51-30-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Breach of the security system" means unauthorized acquisition of computerized data when access to personal information has not been secured by encryption or by any other method or technology that renders the electronic files, media, or databases unreadable or unusable. Good-faith acquisition of personal information by an employee or agent of the person is not a breach of the security of the system, if the personal information is not used or subject to further unauthorized disclosure.
2. "Health insurance information" means an individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual.
3. "Medical information" means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.
4. a. "Personal information" means an individual's first name or first initial and last name in combination with any of the following data elements, when the name and the data elements are not encrypted:

- (1) The individual's social security number;
  - (2) The operator's license number assigned to an individual by the department of transportation under section 39-06-14;
  - (3) A nondriver color photo identification card number assigned to the individual by the department of transportation under section 39-06-03.1;
  - (4) The individual's financial institution account number, credit card number, or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial accounts;
  - (5) The individual's date of birth;
  - (6) The maiden name of the individual's mother;
  - (7) Medical information;
  - (8) Health insurance information;
  - (9) An identification number assigned to the individual by the individual's employer; or
  - ~~(8)~~(10) The individual's digitized or other electronic signature.
- b. "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

**SECTION 3. AMENDMENT.** Section 51-30-06 of the North Dakota Century Code is amended and reenacted as follows:

**51-30-06. Alternate compliance.**

Notwithstanding section 51-30-05, a person that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this chapter is deemed to be in compliance with the notification requirements of this chapter if the person notifies subject individuals in accordance with its policies in the event of a breach of security of the system. A financial institution, trust company, or credit union that is subject to, examined for, and in compliance with the federal interagency guidance on response programs for unauthorized access to customer information and customer notice is deemed to be in compliance with this chapter. A covered entity, business associate, or subcontractor subject to breach notification requirements under title 45, Code of Federal Regulations, subpart D, part 164, is considered to be in compliance with this chapter.

Approved April 18, 2013  
Filed April 18, 2013

## CHAPTER 107

### HOUSE BILL NO. 1280

(Representatives K. Koppelman, Paur, Wall)  
(Senators Andrist, Hogue, Laffen)

AN ACT to amend and reenact section 12.1-23-11 of the North Dakota Century Code, relating to the unauthorized use of personal identifying information; and to provide a penalty.

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

<sup>41</sup> **SECTION 1. AMENDMENT.** Section 12.1-23-11 of the North Dakota Century Code is amended and reenacted as follows:

#### **12.1-23-11. Unauthorized use of personal identifying information - Penalty.**

1. As used in this section, "personal identifying information" means any of the following information:
  - a. An individual's name;
  - b. An individual's address;
  - c. An individual's telephone number;
  - d. The distinguishing operator's license number assigned to an individual by the department of transportation under section 39-06-14;
  - e. An individual's social security number;
  - f. An individual's employer or place of employment;
  - g. An identification number assigned to the individual by the individual's employer;
  - h. The maiden name of the individual's mother;
  - i. The identifying number of a depository account in a financial institution; or
  - j. An individual's birth, death, or marriage certificate.
2. A person is guilty of an offense if the person uses or attempts to use any personal identifying information of an individual, living or deceased, to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the individual and by representing that person is the individual or is acting with the authorization or consent of the individual. The offense is a class B felony if the credit, money, goods, services, or anything else of value exceeds one thousand dollars in value, otherwise the

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<sup>41</sup> Section 12.1-23-11 was also amended by section 1 of House Bill No. 1197, chapter 105, and section 1 of House Bill No. 1435, chapter 106.

offense is a class C felony. A second or subsequent offense is a class A felony.

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

Approved March 27, 2013

Filed March 27, 2013

## CHAPTER 108

### SENATE BILL NO. 2126

(Senators Cook, Campbell, Dotzenrod)  
(Representatives Belter, Headland, Meier)

AN ACT to create and enact sections 12.1-23-16 and 12.1-23-17 and a new subsection to section 57-39.2-14 of the North Dakota Century Code, relating to the prohibition of automated sales suppression devices and skimming devices used for a fraudulent purpose; and to provide a penalty.

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

**SECTION 1.** Section 12.1-23-16 of the North Dakota Century Code is created and enacted as follows:

#### **12.1-23-16. Automated sales suppression device, zapper, or phantom-ware - Prohibition - Penalties.**

1. For purposes of this section:

- a. "Automated sales suppression device" or "zapper" means a software program accessed through any method which falsifies the electronic records, transaction data, or transaction reports of electronic cash registers and other point-of-sale systems.
- b. "Electronic cash register" means a device that keeps a register or supporting documents through the use of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data or transaction reports.
- c. "Phantom-ware" means a hidden, preinstalled or installed at a later time, programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register, which can be used to create a virtual second cash register or that can eliminate or manipulate transaction records that may be preserved in digital formats to represent the true or manipulated transaction data or reports in the electronic cash register and is intended to falsify the electronic records of an electronic cash register or other point-of-sale system.
- d. "Transaction data" means items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.
- e. "Transaction report" means a report documenting sales, the tax collected, methods of payment, voided sales, or other information at an electronic cash register which is printed on cash register tape at the end of a day or

- shift, or a report documenting every transaction at an electronic cash register that is stored electronically.
2. It is unlawful to willfully sell, purchase, possess, install, transfer, manufacture, own, or use in this state, an automated sales suppression device, zapper, or phantom-ware.
  3. Any person convicted of a violation under subsection 2 is guilty of a class B felony. Any person convicted of a second or subsequent violation of subsection 2 is guilty of a class A felony and also is subject to a civil penalty of not more than one hundred thousand dollars.
  4. It is a defense to prosecution under this section that the person purchased, possessed, installed, transferred, owned, or used in this state, an automated sales suppression device, zapper, or phantom-ware for a legitimate purpose.
  5. Any person violating subsection 2 is liable for all sales and use tax, income tax, or other tax under title 57, and any county or city sales and use tax imposed under sections 11-09.2-05 and 40-05.1-06, and associated penalties and interest due the state as the result of the fraudulent use of an automated sales suppression device, zapper, or phantom-ware. Any tax found to be due must be assessed at double the amount so determined.
  6. The person shall forfeit all proceeds associated with the sale or use of an automated sales suppression device, zapper, or phantom-ware. The proceeds forfeited under this section must be deposited with the state treasurer for deposit in the state general fund.
  7. An automated sales suppression device, zapper, or phantom-ware, and the cash register or other device containing the device or the software, is contraband and subject to forfeiture in accordance with chapter 29-31.1.

**SECTION 2.** Section 12.1-23-17 of the North Dakota Century Code is created and enacted as follows:

**12.1-23-17. Unlawful skimming of credit, debit, or other electronic payment cards - Penalty.**

1. For purposes of this section:
  - a. "Authorized card user" means any person with the empowerment, permission, or competence to use an electronic payment card.
  - b. "Electronic payment card" means a credit card, charge card, debit card, hotel key card, stored value card, or any other card that is issued to an authorized card user which allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.
  - c. "Merchant" means an owner or operator of a retail mercantile establishment or an agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of a retail mercantile establishment who receives from an authorized user or someone believed to be an authorized user, an electronic payment card or information from an electronic payment card, or what is believed to be an electronic payment card or information from an electronic payment card, as the instrument for

- obtaining, purchasing, or receiving goods, services, money, or anything else of value from the retail mercantile establishment.
- d. "Re-encoder" means an electronic device that places encoded information from the magnetic strip or stripe of an electronic payment card onto the magnetic strip or stripe of a different electronic payment card.
- e. "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of an electronic payment card.
2. A person is guilty of unlawful skimming if the person uses:
- a. A scanning device to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of an electronic payment card without the permission of the authorized user of the electronic payment card, with the intent to defraud the authorized user of the electronic payment card, the issuer of the electronic payment card, or a merchant; or
- b. A re-encoder to place information encoded on the magnetic strip or stripe of an electronic payment card onto the magnetic strip or stripe of a different electronic payment card without the permission of the authorized user of the card from which the information is being re-encoded, with the intent to defraud the authorized user of the electronic payment card, the issuer of the electronic payment card, or a merchant.
3. Any person convicted of a violation under subsection 2 is guilty of a class B felony. Any person convicted of a second or subsequent violation of subsection 2 is guilty of a class A felony and also is subject to a civil penalty of not more than one hundred thousand dollars.

**SECTION 3.** A new subsection to section 57-39.2-14 of the North Dakota Century Code is created and enacted as follows:

Whenever the holder of a permit is convicted of violating section 12.1-23-16, the commissioner shall revoke the permit and the holder is not eligible to receive another permit for a period of ten years from the date of conviction. Any person convicted of violating section 12.1-23-16 who is not a holder of a permit at the time of conviction is not eligible to receive a permit for a period of ten years from the date of conviction.

Approved April 24, 2013  
Filed April 24, 2013

## CHAPTER 109

### SENATE BILL NO. 2265

(Senators Schneider, Armstrong, Lyson)  
(Representatives Kretschmar, Meier, Mock)

AN ACT to amend and reenact section 12.1-27.2-05 of the North Dakota Century Code, relating to sexual performance by a minor.

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

**SECTION 1. AMENDMENT.** Section 12.1-27.2-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **12.1-27.2-05. Sexual performance by a minor - Affirmative defenses.**

It is an affirmative defense to a prosecution under this chapter that:

1. The defendant in good faith reasonably believed the person appearing in the performance was eighteen years of age or older; or
2. The material or performance involved was disseminated or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other appropriate purpose by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a similar interest in the material or performance; ~~or~~
3. ~~The defendant had no financial interest in promoting a sexual performance by a minor, other than employment in a theater, which employment does not include compensation based upon any proportion of the receipts arising from promotion of the sexual performance, and that person was in no way responsible for acquiring the material for sale, rental, or exhibition.~~

Approved April 3, 2013  
Filed April 3, 2013

## CHAPTER 110

### SENATE BILL NO. 2345

(Senators Schneider, Armstrong)  
(Representatives Guggisberg, Larson, Maragos)

AN ACT to amend and reenact section 12.1-31-07.1 of the North Dakota Century Code, relating to the penalty for the exploitation of a disabled adult or vulnerable elderly adult.

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

**SECTION 1. AMENDMENT.** Section 12.1-31-07.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **12.1-31-07.1. Exploitation of a vulnerable adult - Penalty.**

1. A person is guilty of exploitation of a disabled adult or vulnerable elderly adult if:
  - a. The person stands in a position of trust and confidence or has a business relationship with the disabled adult or vulnerable elderly adult and knowingly, by deception or intimidation, obtains or uses, or attempts to obtain or use, the disabled adult's or vulnerable elderly adult's funds, assets, or property with the intent to temporarily or permanently deprive the disabled adult or vulnerable elderly adult of the use, benefit, or possession of the property, for the benefit of someone other than the disabled adult or vulnerable elderly adult; or
  - b. The person knows that the disabled adult or vulnerable elderly adult lacks the capacity to consent, and obtains or uses, or attempts to obtain or use, or assists another in obtaining or using or attempting to obtain or use, the disabled adult's or vulnerable elderly adult's funds, assets, or property with the intent to temporarily or permanently deprive the disabled adult or vulnerable elderly adult of the use, benefit, or possession of the property for the benefit of someone other than the disabled adult or vulnerable elderly adult.
2. Exploitation of a disabled adult or vulnerable elderly adult is:
  - a. A class A felony if the value of the exploited funds, assets, or property exceeds ~~one hundred fifty~~ thousand dollars.
  - b. A class B felony if the value of the exploited funds, assets, or property exceeds ~~twenty ten~~ thousand dollars but does not exceed ~~one hundred fifty~~ thousand dollars.
  - c. A class C felony if the value of the exploited funds, assets, or property is in excess of one thousand dollars but does not exceed ~~twenty ten~~ thousand dollars.

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- d. A class A misdemeanor if the value of the exploited funds, assets, or property does not exceed one thousand dollars.
3. It is not a defense to a prosecution of a violation of this section that the accused did not know the age of the victim.
  4. This section does not impose criminal liability on a person who has:
    - a. Managed the disabled adult's or vulnerable elderly adult's funds, assets, or property in a manner that clearly gives primacy to the needs and welfare of that person or is consistent with any explicit written authorization; or
    - b. Made a good-faith effort to assist in the management of the disabled adult's or vulnerable elderly adult's funds, assets, or property.

Approved April 16, 2013

Filed April 16, 2013

## CHAPTER 111

### SENATE BILL NO. 2181

(Senators J. Lee, Armstrong, Miller, Poolman, Heckaman)  
(Representative Thoreson)

AN ACT to amend and reenact subsection 1 of section 12.1-32-07 of the North Dakota Century Code, relating to supervision of defendants for domestic violence offenses.

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

<sup>42</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

1. When the court imposes probation upon conviction for a felony, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, ~~except for a violation of subdivision b of subsection 2 of section 12.1-17-01,~~ the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.

Approved April 3, 2013  
Filed April 3, 2013

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<sup>42</sup> Section 12.1-32-07 was also amended by section 7 of Senate Bill No. 2015, chapter 46, and section 1 of Senate Bill No. 2141, chapter 112.

## CHAPTER 112

### SENATE BILL NO. 2141

(Senators Hogue, Burckhard, Krebsbach)  
(Representatives Klemin, Louser)

AN ACT to amend and reenact subsection 4 of section 12.1-32-07 of the North Dakota Century Code, relating to the supervision of probationers.

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

<sup>43</sup> **SECTION 1. AMENDMENT.** Subsection 4 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate and may include any one or more of the following:
  - a. Work faithfully at a suitable employment or faithfully pursue a course of study or of career and technical education training that will equip the defendant for suitable employment.
  - b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
  - c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
  - d. Support the defendant's dependents and meet other family responsibilities.
  - e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.
  - f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05, ~~except when imposition of sentence is deferred.~~
  - g. Refrain from excessive use of alcohol or any use of narcotics or of another dangerous or abusable drug without a prescription.
  - h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.
  - i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.

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<sup>43</sup> Section 12.1-32-07 was also amended by section 7 of Senate Bill No. 2015, chapter 46, and section 1 of Senate Bill No. 2181, chapter 111.

- j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
- k. Report to a probation officer at reasonable times as directed by the court or the probation officer.
- l. Submit to a medical examination or other reasonable testing for the purpose of determining the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
- m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
- n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
- o. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted ~~or one year, whichever is less.~~
- p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed or provided at public expense for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 4 of section 12.1-32-08.
- q. Provide community service for the number of hours designated by the court.
- r. Refrain from any subscription to, access to, or use of the internet.

Approved March 21, 2013

Filed March 21, 2013

## CHAPTER 113

### SENATE BILL NO. 2320

(Senators Poolman, Armstrong)  
(Representatives Delmore, Heilman, Larson)

AN ACT to amend and reenact subsection 15 of section 12.1-32-15 of the North Dakota Century Code, relating to the release of juvenile records and other information to schools.

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

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

15. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual offender or as an offender against a child under this section, the juvenile shall comply with the registration requirements in this section. Notwithstanding any other provision of law, a law enforcement agency shall register a juvenile offender in the same manner as adult offenders and may release any relevant and necessary information on file to other law enforcement agencies, the department of human services, ~~the superintendent or principal of the school the juvenile attends,~~ or the public if disclosure is necessary to protect public health or safety. The law enforcement agency shall release any relevant and necessary information on file to the superintendent or principal of the school the juvenile attends. The school administration ~~may~~shall notify others in similar positions if the juvenile transfers to another learning institution in or outside the state.

Approved April 1, 2013

Filed April 1, 2013

## CHAPTER 114

### SENATE BILL NO. 2056

(Political Subdivisions Committee)  
(At the request of the Information Technology Department)

AN ACT to amend and reenact subsection 1 of section 12.1-34-02 and section 12.1-34-06 of the North Dakota Century Code, relating to the statewide automated victim information and notification system.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-34-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Informed by those entities that have contact with the victim or witness as to the availability of and the methods available for registration with the statewide automated victim information and notification system. Those entities include law enforcement, prosecuting attorneys, the courts, and custodial authorities. A victim or witness who clearly objects to registration may not be required to register with the system or must be able to opt out of the system.

**SECTION 2. AMENDMENT.** Section 12.1-34-06 of the North Dakota Century Code is amended and reenacted as follows:

#### **12.1-34-06. Statewide automated victim information and notification system.**

1. The information technology department may establish a statewide automated victim information and notification system that must:
  - a. Permit a victim to register or update the victim's registration information for the system by calling a toll-free telephone number or accessing a public website.
  - b. Notify a registered victim by telephone, mail, or e-mail in accordance with this chapter.
  - c. Notify a registered victim by telephone, mail, or e-mail when the offender has a scheduled court proceeding, a parole ~~or pardon~~ review, or a change in the status of the offender's parole or probation status, including a change in the offender's address.
  - d. ~~Notify a registered victim by telephone, mail, or e-mail when a registered sexual offender has updated the offender's registration information or failed to comply with any registration requirement.~~
  - e. Notify a registered victim by telephone, mail, or e-mail when a protective order requested by the victim has been served upon the respondent.
  - f.e. Permit a victim to receive a status report for an offender under the supervision or in the custody of the department of corrections and rehabilitation or other correctional facility ~~or for a registered sexual~~

offender by calling the system on a toll-free telephone number or by accessing the system through a public website.

2. ~~If a statewide automated victim information and notification system is established, the~~The provision of offender and case data on a timely basis to the automated victim information and notification system satisfies any obligation under this chapter to notify a registered victim of an offender's custody and the status of the offender's scheduled court proceedings.
3. ~~If a statewide automated victim information and notification system is established, the~~The user agency shall ensure that an offender's information contained in the system is updated to timely notify a victim that an offender has been released or discharged or has escaped. The failure of the system to provide notice to the victim does not establish a cause of action by the victim against the state or any custodial authority.
4. All affected entities, including custodial authorities, prosecuting attorneys, law enforcement agencies, courts, the attorney general's office, ~~the pardon board,~~ and the parole clerk, shall cooperate with the system operator in establishing and maintaining the statewide automated victim information and notification system.

Approved March 18, 2013

Filed March 18, 2013