

CRIMINAL CODE

CHAPTER 101

HOUSE BILL NO. 1304

(Representatives K. Koppelman, Brabandt, Klemin, Olson, Paur)
(Senator Armstrong)

AN ACT create and enact a new section to chapter 12.1-01, a new section to chapter 14-10, and a new section to chapter 27-20 of the North Dakota Century Code, relating to the presumption of an individual's legal date of birth.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Presumption of age.

1. In determining an individual's age for purposes of this title, the individual's date of birth as provided by any of the following is presumed to be the individual's legal date of birth:
 - a. A state government in the form of a birth certificate, other state-issued identification, or a certified copy of a birth certificate that includes the individual's date of birth;
 - b. The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth; or
 - c. A foreign government in the form of a passport, driver's license, or other foreign government-issued identity document that includes the individual's date of birth. If there is a conflict between government issued forms, a government issued birth certificate or a certified copy of a birth certificate takes precedence.
2. The presumption in subsection 1 may be rebutted by clear and convincing evidence to the contrary.

SECTION 2. A new section to chapter 14-10 of the North Dakota Century Code is created and enacted as follows:

Presumption of age.

1. In determining an individual's age for purposes of this chapter, the individual's date of birth as provided by any of the following is presumed to be the individual's legal date of birth:

- a. A state government in the form of a birth certificate, other state-issued identification, or a certified copy of a birth certificate that includes the individual's date of birth;
 - b. The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth; or
 - c. A foreign government in the form of a passport, driver's license, or other foreign government-issued identity document that includes the individual's date of birth. If there is a conflict between government issued forms, a government issued birth certificate or a certified copy of a birth certificate takes precedence.
2. The presumption in subsection 1 may be rebutted by clear and convincing evidence to the contrary.

SECTION 3. A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Presumption of age.

1. In determining an individual's age for purposes of this chapter, the individual's date of birth as provided by any of the following is presumed to be the individual's legal date of birth:
 - a. A state government in the form of a birth certificate, other state-issued identification, or a certified copy of a birth certificate that includes the individual's date of birth;
 - b. The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth; or
 - c. A foreign government in the form of a passport, driver's license, or other foreign government-issued identity document that includes the individual's date of birth. If there is a conflict between government issued forms, a government issued birth certificate or a certified copy of a birth certificate takes precedence.
2. The presumption in subsection 1 may be rebutted by clear and convincing evidence to the contrary.

Approved April 15, 2015
Filed April 15, 2015

CHAPTER 102**SENATE BILL NO. 2204**

(Senators Hogue, Armstrong, Nelson)
(Representatives Klemin, Larson, Wallman)

AN ACT to create and enact a new subsection to section 12.1-08-03 of the North Dakota Century Code, relating to the jurisdiction and venue of the crime of hindering law enforcement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-08-03 of the North Dakota Century Code is created and enacted as follows:

A person who commits the crime of hindering law enforcement is subject to prosecution in this state if the conduct interferes with or hinders an investigation of a crime occurring within this state. The venue of a criminal action involving the crime of hindering law enforcement is in any county in which the conduct of hindering is committed or in any county in which a criminal offense is being investigated which is hindered by the false information or other interfering conduct.

Approved March 25, 2015
Filed March 25, 2015

CHAPTER 103

HOUSE BILL NO. 1307

(Representatives K. Koppelman, Delmore, M. Johnson)
(Senator Luick)

AN ACT to amend and reenact section 12.1-12-06 of the North Dakota Century Code, relating to threatening of public servants; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-12-06 of the North Dakota Century Code is amended and reenacted as follows:

12.1-12-06. Threatening public servants.

1. A person is guilty of a class C felony if ~~he~~that person threatens harm to ~~another~~a public servant with intent to influence ~~his~~the public servant's official action as a public servant in a pending or prospective judicial or administrative proceeding held before ~~him~~the public servant, or with intent to influence ~~him~~the public servant to violate ~~his~~the public servant's duty as a public servant.
2. A person is guilty of a class C felony if, with intent to influence another's official action as a public servant, ~~he~~the person threatens:
 - a. To commit any crime or to do anything unlawful;
 - b. To accuse anyone of a crime; or
 - c. To expose a secret or publicize an asserted fact, whether true or false, tending to subject any ~~person~~individual, living or deceased, to hatred, contempt, or ridicule, or to impair another's credit or business repute.
3. a. A person is guilty of an offense if the person files any lien or encumbrance against real or personal property of a public servant if that person knows or has reason to know the lien or encumbrance is false or contains any materially false or fraudulent statement or representation.
 - b. An offense under this subsection is a class A misdemeanor, unless the person previously pled guilty or had been convicted under this subsection on two or more occasions, in which event the offense is a class C felony.
4. It is ~~not~~a defense to a prosecution under this section that ~~a person~~an individual whom the actor sought to influence was not qualified to act in the desired way whether because ~~he~~the individual had not yet assumed office, or lacked jurisdiction, or for any other reason.

Approved March 25, 2015
Filed March 25, 2015

CHAPTER 104

SENATE BILL NO. 2192

(Senators Armstrong, Hogue)
(Representatives Delmore, Maragos)

AN ACT to amend and reenact sections 12.1-17-02 and 12.1-32-09.1 of the North Dakota Century Code, relating to the sentencing of offenders for aggravated assault.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-17-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-02. Aggravated assault.

1. ~~Except as provided in subsection 2, a person is guilty of a class C felony, except if the victim is under the age of twelve years or the victim suffers permanent loss or impairment of the function of a bodily member or organ in which case the offense is a class B felony, if that person:~~
 1. a. Willfully causes serious bodily injury to another human being;
 2. b. Knowingly causes bodily injury or substantial bodily injury to another human being with a dangerous weapon or other weapon, the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury;
 3. c. Causes bodily injury or substantial bodily injury to another human being while attempting to inflict serious bodily injury on any human being; or
 4. d. Fires a firearm or hurls a destructive device at another human being.
2. ~~The person is guilty of a class B felony if the person violates subsection 1 and the victim is under the age of twelve years or the victim suffers permanent loss or impairment of the function of a bodily member or organ.~~

SECTION 2. 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.

1. ~~Except 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, subsection 2 of section 12.1-17-02, section 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.

2. 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.
3. 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 25, 2015
Filed March 25, 2015

CHAPTER 105

HOUSE BILL NO. 1321

(Representatives Haak, Brabandt, Delmore, M. Johnson, Klemin)
(Senators Armstrong, Grabinger)

AN ACT to amend and reenact section 12.1-17-07.1 of the North Dakota Century Code, relating to stalking and the use of electronic communication.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-17-07.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-07.1. Stalking.

1. As used in this section:

- a. "Course of conduct" means a pattern of conduct consisting of two or more acts evidencing a continuity of purpose. The term does not include constitutionally protected activity.
- b. "Immediate family" means a spouse, parent, child, or sibling. The term also includes any other individual who regularly resides in the household or who within the prior six months regularly resided in the household.
- c. "Stalk" means ~~to engage~~:

(1) ~~To engage~~ in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person; and ~~that which~~ serves no legitimate purpose. The course of conduct may be directed toward that person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment; ~~or~~

(2) The unauthorized tracking of the person's movements or location through the use of a global positioning system or other electronic means that would cause a reasonable person to be frightened, intimidated, or harassed and which serves no legitimate purpose.

2. ~~No~~ person may not intentionally stalk another person.
3. In any prosecution under this section, it is not a defense that the actor was not given actual notice that the person did not want the actor to contact or follow the person; nor is it a defense that the actor did not intend to frighten, intimidate, or harass the person. An attempt to contact or follow a person after being given actual notice that the person does not want to be contacted or followed is prima facie evidence that the actor intends to stalk that person.
4. In any prosecution under this section, it is a defense that a private investigator licensed under chapter 43-30 or a peace officer licensed under chapter 12-63 was acting within the scope of employment.

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5. If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.
 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 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 23, 2015
Filed April 23, 2015

CHAPTER 106

SENATE BILL NO. 2357

(Senators Schneider, Armstrong, Casper)
(Representatives Hanson, Kretschmar, Maragos)

AN ACT to create and enact section 12.1-17-07.2 and a new section to chapter 32-03 of the North Dakota Century Code, relating to the distribution of graphic or intimate images of someone without consent; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 12.1-17-07.2 of the North Dakota Century Code is created and enacted as follows:

12.1-17-07.2. Distribution of intimate images without or against consent - Penalty.

1. As used in this section:

- a. "Distribute" means selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, providing access to, or otherwise transferring or presenting an image to another individual, with or without consideration.
- b. "Hosting company" means a person that provides services or facilities for storing or distributing content over the internet without editorial or creative alteration of the content.
- c. "Intimate image" means any visual depiction, photograph, film, video, recording, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, that depicts:
 - (1) Exposed human male or female genitals or pubic area, with less than an opaque covering;
 - (2) A female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or
 - (3) The individual engaged in any sexually explicit conduct.
- d. "Service provider" means an internet service provider, including a person who leases or rents a wire or cable for the transmission of data.
- e. "Sexually explicit conduct" means actual or simulated:
 - (1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
 - (2) Masturbation;

- (3) Bestiality;
 - (4) Sadistic or masochistic activities;
 - (5) Exhibition of the genitals, pubic region, buttocks, or female breast of any individual;
 - (6) Visual depiction of nudity or partial nudity;
 - (7) Fondling or touching of the genitals, pubic region, buttocks, or female breast; or
 - (8) Explicit representation of the defecation or urination functions.
- f. "Simulated sexually explicit conduct" means a feigned or pretended act of sexually explicit conduct that duplicates, within the perception of an average person, the appearance of an actual act of sexually explicit conduct.
2. A person commits the offense of distribution of intimate images if the person knowingly or intentionally distributes to any third party any intimate image of an individual eighteen years of age or older, if:
- a. The person knows that the depicted individual has not given consent to the person to distribute the intimate image;
 - b. The intimate image was created by or provided to the person under circumstances in which the individual has a reasonable expectation of privacy; and
 - c. Actual emotional distress or harm is caused to the individual as a result of the distribution under this section.
3. This section does not apply to:
- a. Lawful practices of law enforcement agencies;
 - b. Prosecutorial agency functions;
 - c. The reporting of a criminal offense;
 - d. Court proceedings or any other judicial proceeding;
 - e. Lawful and generally accepted medical practices and procedures;
 - f. An intimate image if the individual portrayed in the image voluntarily allows public exposure of the image; or
 - g. An intimate image that is portrayed in a lawful commercial setting.
4. This section also does not apply to:
- a. An internet service provider or interactive computer service, as defined in 47 U.S.C. 230(f)(2);

- b. A provider of an electronic communications service, as defined in 18 U.S.C. 2510;
 - c. A telecommunications service, information service, or mobile service, as defined in 47 U.S.C. 153, including a commercial mobile service, as defined in 47 U.S.C. 332(d);
 - d. A cable operator, as defined in 47 U.S.C. 552, if:
 - (1) The distribution of an intimate image by the cable operator occurs only incidentally through the operator's function of:
 - (a) Transmitting or routing data from one person to another person; or
 - (b) Providing a connection between one person and another person;
 - (2) The operator does not intentionally aid or abet in the distribution of the intimate image; and
 - (3) The operator does not knowingly receive from or through a person who distributes the intimate image a fee greater than the fee generally charged by the operator, as a specific condition for permitting the person to distribute the intimate image; or
 - e. A hosting company, if:
 - (1) The distribution of an intimate image by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;
 - (2) The hosting company does not intentionally engage, aid, or abet in the distribution of the intimate image; and
 - (3) The hosting company does not knowingly receive from or through a person who distributes the intimate image a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the intimate image.
5. Distribution of an intimate image is a class A misdemeanor.

SECTION 2. A new section to chapter 32-03 of the North Dakota Century Code is created and enacted as follows:

Distribution of intimate images without or against consent - Remedies.

An individual whose intimate image is distributed in violation of section 1 of this Act may maintain a private right of action against each person who has distributed that image in violation of section 1 of this Act, without regard to whether the defendant has been charged with, found guilty of, or pleaded guilty to that offense. An individual whose intimate image is distributed in violation of section 1 of this Act is entitled to pursue all of the economic, noneconomic, and exemplary or punitive damages and other remedies available by law and to obtain a temporary restraining order or a preliminary or permanent injunction ordering the person to cease distribution of the intimate image.

Approved April 8, 2015
Filed April 8, 2015

CHAPTER 107

HOUSE BILL NO. 1368

(Representatives Delmore, Keiser, Kretschmar, Oversen)
(Senators Carlisle, Casper, Grabinger, Poolman)

AN ACT to amend and reenact section 12.1-17-13 of the North Dakota Century Code, relating to mandated treatment of domestic violence offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-17-13 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-13. Mandated treatment of domestic violence offenders.

The sentence for an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-02, 12.1-17-03, 12.1-17-04, or 12.1-17-05 against an actor's family or household member, as defined in subsection 4 of section 14-07.1-01, must include an order to complete a domestic violence offender treatment program. A court may not order the offender to attend anger management classes or individual counseling unless a domestic violence offender treatment program is not reasonably available to the defendant and the court makes written findings for the record explaining why such an order to complete a domestic violence offender treatment program would be inappropriate.

Approved April 22, 2015
Filed April 22, 2015

CHAPTER 108

SENATE BILL NO. 2266

(Senators Unruh, Campbell, Oban)
(Representatives Delmore, Kempenich, Rohr)

AN ACT to amend and reenact sections 12.1-27.2-01, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, and 12.1-27.2-05 of the North Dakota Century Code, relating to the use of minors in sexual performances; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-27.2-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-27.2-01. Definitions.

As used in this chapter:

1. "Obscene sexual performance" means any performance which includes sexual conduct by a minor in any obscene material or obscene performance, as defined in section 12.1-27.1-01.
2. "Performance" means any play, motion picture, photograph, dance, or other visual representation, or any part of a performance.
3. "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, ship, transport, publish, distribute, circulate, disseminate, present, exhibit, or advertise.
4. "Sexual conduct" means actual or simulated sexual intercourse, sodomy, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the buttocks, breasts, or genitals, including the further definitions of sodomy and sadomasochistic abuse under section 12.1-27.1-01.
5. "Sexual performance" means any performance which includes sexual conduct by a minor.
6. "Simulated" means the explicit depiction of any of the conduct set forth in subsection 4 which creates the appearance of actual sexual conduct and which exhibits any nude or partially denuded human figure, as defined in section 12.1-27.1-03.1.

SECTION 2. AMENDMENT. Section 12.1-27.2-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-27.2-02. Use of a minor in a sexual performance.

1. A person is guilty of a class BA felony if, knowing the character and content of a performance, that person employs, authorizes, or induces a minor to engage in sexual conduct during a performance or, if being a parent, legal guardian, or

custodian of a minor, that person consents to the participation by the minor in sexual conduct during a performance.

2. An adult is guilty of a class A felony if, with the intent to persuade, induce, entice, or coerce a minor to engage in a sexual performance, the adult portrays the adult to be a minor.

SECTION 3. AMENDMENT. Section 12.1-27.2-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-27.2-03. Promoting or directing an obscene sexual performance by a minor.

A person is guilty of a class ~~BA~~ felony if, knowing the character and content of a performance, that person produces, directs, or promotes any obscene performance which includes sexual conduct by a person who was a minor at the time of the performance.

SECTION 4. AMENDMENT. Section 12.1-27.2-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-27.2-04. Promoting a sexual performance by a minor.

A person is guilty of a class ~~GB~~ felony if, knowing the character and content of a performance, that person produces, directs, or promotes any performance which includes sexual conduct by a person who was a minor at the time of the performance.

SECTION 5. 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, if the minor was in fact fifteen 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.

Approved April 8, 2015
Filed April 8, 2015

CHAPTER 109

SENATE BILL NO. 2250

(Senators J. Lee, Bowman, Robinson)
(Representatives Dockter, Haak, M. Johnson)

AN ACT to amend and reenact sections 12.1-29-02 and 12.1-29-03 of the North Dakota Century Code, relating to facilitating prostitution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-29-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-29-02. Facilitating prostitution.

1. A person is guilty of an offense if ~~he~~the person:
 - a. Knowingly solicits a person to patronize a prostitute;
 - b. Knowingly procures a prostitute for a patron;
 - c. Knowingly leases or otherwise permits a place controlled by the actor, alone or in association with others, to be regularly used for prostitution, promoting prostitution, or facilitating prostitution, or fails to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or taking other legally available means; or
 - d. Knowingly induces or otherwise intentionally causes another to remain a prostitute. A person who is supported in whole or substantial part by the proceeds of prostitution, other than the prostitute or the prostitute's minor child or a person whom the prostitute is required by law to support, is presumed to be knowingly inducing or intentionally causing another to remain a prostitute.
2. The offense is a class ~~GA~~ felony if the actor intentionally causes another to remain a prostitute by force, coercion, or threat, or deception, or the prostitute is the actor's spouse, child, or ward, or a person for whose care, protection, or support ~~he~~the actor is responsible, ~~or the prostitute is, in fact, less than sixteen years old.~~ Otherwise it is a class A misdemeanor C felony.

SECTION 2. AMENDMENT. Section 12.1-29-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-29-03. Prostitution.

An ~~individual~~adult is guilty of prostitution, a class B misdemeanor, if the ~~individual~~adult:

1. Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business;

2. Solicits another person with the intention of being hired to engage in sexual activity; or
3. Agrees to engage in sexual activity with another for money or other items of pecuniary value.

Approved April 13, 2015
Filed April 13, 2015

CHAPTER 110

SENATE BILL NO. 2332

(Senators Schneider, Oban, Oehlke)
(Representatives Klemin, Larson, Maragos)

AN ACT to create and enact section 12.1-29-07 of the North Dakota Century Code, relating to an offender education program; to amend and reenact section 12.1-29-06 of the North Dakota Century Code, relating to hiring an individual to engage in sexual activity; to provide a penalty; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-29-06 of the North Dakota Century Code is amended and reenacted as follows:

12.1-29-06. Hiring an individual to engage in sexual activity.

An individual who hires or offers or agrees to hire another individual with the intention of engaging in sexual activity is guilty of a:

1. A class B misdemeanor for a first offense; and
2. A class A misdemeanor for a second or subsequent offense within ten years.

SECTION 2. Section 12.1-29-07 of the North Dakota Century Code is created and enacted as follows:

12.1-29-07. (Effective January 1, 2016 through July 31, 2017) Offender education program.

A sentence for an offense under section 12.1-29-06 may include an order for the offender to participate in an offender education program on the negative consequences of the commercial sex industry, including health and legal consequences and the impact on communities, survivors, spouses, and children. The court may order the offender to pay the cost of the offender education program.

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. Section 2 of this Act is effective from January 1, 2016, through July 31, 2017, and is thereafter ineffective.

Approved April 23, 2015
Filed April 23, 2015

CHAPTER 111

HOUSE BILL NO. 1186

(Representatives K. Koppelman, Delmore, Hogan, Kasper, Mock, Nathe, Sukut,
Thoreson)
(Senators Armstrong, Hogue, Nelson)

AN ACT to create and enact section 12.1-31-03.2 of the North Dakota Century Code, relating to child-resistant packaging for liquid nicotine containers; to amend and reenact sections 12.1-31-03, 12.1-31-03.1, subsection 19 of section 27-20-02, and section 51-32-01 of the North Dakota Century Code, relating to the sale to minors and use by minors of electronic smoking devices or alternative nicotine products; to provide a penalty; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-31-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-03. Sale of tobacco, electronic smoking devices, or alternative nicotine products to minors and use by minors prohibited.

1. a. It is an infraction for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products. As used in this ~~subsection~~subdivision, "sell" includes dispensing from a vending machine under the control of the actor.
 - b. It is an infraction for any person to display or offer for sale cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through a self-service display. This subdivision does not apply to a.
 - (1) Vending machine or other coin-operated machine that is permitted under section 12.1-31-03.1; or
 - (2) Self-service display that is located in a tobacco specialty store.
2. It is a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products. However, an individual under eighteen years of age may purchase and possess tobacco, electronic smoking devices, or alternative nicotine products as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco, electronic smoking devices, or alternative nicotine products retailer, or association of tobacco, electronic smoking devices, or alternative nicotine products retailers may also conduct

compliance surveys, after coordination with the appropriate local law enforcement authority.

3. It is a noncriminal offense for a minor to present or offer to another individual a purported proof of age which is false, fraudulent, or not actually the minor's own proof of age, for the purpose of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products.
4. A city or county may adopt an ordinance or resolution regarding the sale of tobacco, electronic smoking devices, or alternative nicotine products to minors and use of tobacco, electronic smoking devices, or alternative nicotine products by minors which includes prohibitions in addition to those in subsection 1, 2, or 3. Any ordinance or resolution adopted must include provisions deeming a violation of subsection 2 or 3 a noncriminal violation and must provide for a fee of not less than twenty-five dollars for a minor fourteen years of age or older who has been charged with an offense under subsection 2 or 3. The failure to post a required bond or pay an assessed fee by an individual found to have violated the ordinance or resolution is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.
5. A minor fourteen years of age or older found to have violated subsection 2 or 3 must pay a fee of twenty-five dollars.
 - a. Any individual who has been cited for a violation of subsection 2 or 3 may appear before a court of competent jurisdiction and pay the fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the fee or bond, or both. If the individual cited follows the procedures of this subdivision, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court must be identical to the fee. This subdivision does not allow a citing officer to receive the fee or bond.
 - b. If an individual cited for a violation of subsection 2 or 3 does not choose to follow the procedures provided under subdivision a, that individual may request a hearing on the issue of the commission of the violation cited. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance. At the time of a request for a hearing on the issue on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.
 - c. The failure to post bond or to pay an assessed fee is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.
6. The prosecution must prove the commission of a cited violation under subsection 2 or 3 by a preponderance of the evidence.

7. A law enforcement officer that cites a minor for violation of this section shall mail a notice of the violation to the parent or legal guardian of the minor within ten days of the citation.
8. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or to an alternative sentence or sanction including community service.
9. As used in this section:
 - a. "Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. The term does not include any cigarette, cigar, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, any electronic smoking device, or any product regulated as a drug or device by the United States Food and Drug Administration under chapter V of the federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.].
 - b. "Electronic smoking device" means any electronic product that delivers nicotine or other substances to the individual inhaling from the device, including, an electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic smoking device does not include drugs, devices, or combination products approved for sale by the United States food and drug administration, as those terms are defined in the federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].
 - c. "Self-service display" means a display that contains cigarettes, cigarette papers, cigars, snuff, tobacco in any other form which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products and is located in an area that is openly accessible to the retailer's customers, and from which customers can readily access those products without the assistance of a salesperson. A display case that holds those products behind locked doors does not constitute a self-service display.
 - d. "Tobacco specialty store" means a retail store that:
 - (1) Derives at least seventy-five percent of its revenue from the sale of cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products; and
 - (2) Does not permit minors to enter the premises unless accompanied by a parent or legal guardian.
 - e. "Vending machine" means a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or other means of payment that is designed or used for vending purposes, including machines or devices that use remote control locking mechanisms.

SECTION 2. AMENDMENT. Section 12.1-31-03.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-03.1. Vending machines prohibited - Penalty.

1. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through a vending machine, except as provided in subsection 2.
2. Subsection 1 does not apply to:
 - a. A vending machine that is located in an area in which minors are not permitted access; or
 - b. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through the operation of a device that requires a salesperson to control the dispensation of such product.
3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through any vending machine, if those products are placed together with any nontobacco product, other than matches, in the vending machine.
4. As used in this section, "electronic smoking devices" and "alternative nicotine products" have the same meaning as in section 12.1-31-03.

SECTION 3. Section 12.1-31-03.2 of the North Dakota Century Code is created and enacted as follows:

12.1-31-03.2. (Contingent expiration date - See note) Child-resistant packaging for liquid nicotine containers.

1. Any nicotine liquid container that is sold at retail in this state must satisfy the child-resistant effectiveness standards set forth in title 16, CFR, part 1700, section 15(b)(1), when tested in accordance with the method described in title 16, CFR, part 1700, section 20.
2. As used in this section, "nicotine liquid container" means a bottle or other container of a liquid or other substance containing nicotine in which the liquid or substance is sold, marketed, or intended for use in an electronic smoking device. The term does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in an electronic smoking device, provided that the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.
3. Any person that engages in retail sales of liquid nicotine containers in violation of this section is subject to a civil penalty of not more than five hundred dollars for each separate violation of this section, to be recovered by any enforcement authority designated by the city or political subdivision in which the violation occurred.

⁹⁴ **SECTION 4. AMENDMENT.** Subsection 19 of section 27-20-02 of the North Dakota Century Code is amended and reenacted as follows:

19. "Unruly child" means a child who:
 - a. Is habitually and without justification truant from school;
 - b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian and is ungovernable or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;
 - c. Has committed an offense applicable only to a child, except for an offense committed by a minor fourteen years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution;
 - d. Has committed an offense in violation of section 5-01-08; or
 - e. Is under the age of fourteen years and has purchased, possessed, smoked, or used tobacco or tobacco-related products, electronic smoking devices, or alternative nicotine products in violation of subsection 2 of section 12.1-31-03; and
 - f. In any of the foregoing instances is in need of treatment or rehabilitation.
 - g. As used in this subsection, "electronic smoking devices" and "alternative nicotine products" have the same meaning as in section 12.1-31-03.

SECTION 5. AMENDMENT. Section 51-32-01 of the North Dakota Century Code is amended and reenacted as follows:

51-32-01. Prohibited acts regarding sale of tobacco products, electronic smoking devices, or alternative nicotine products to minors.

1. It is unlawful for any person in the business of selling tobacco products to take an order for a tobacco product, other than from a person who is in the business of selling tobacco products, through the mail or through any telecommunications means, including by telephone, facsimile, or the internet, if in providing for the sale or delivery of the product pursuant to the order, the person mails the product or ships the product by carrier, and the person fails to comply with each of the following procedures:
 4. a. Before mailing or shipping the product, the person receives from the individual who places the order the following:
 - a- (1) A copy of a valid government-issued document that provides the name, address, and date of birth of the individual; and
 - b- (2) A signed statement from the individual providing a certification that the individual:
 - (4) (a) Is a smoker of legal minimum purchase age in the state;

⁹⁴ Section 27-20-02 was also amended by section 4 of House Bill No. 1029, chapter 127, section 2 of House Bill No. 1347, chapter 112, and section 1 of Senate Bill No. 2064, chapter 229.

- (2) (b) Has selected an option on the statement as to whether the individual wants to receive mailings from a tobacco company; and
 - (3) (c) Understands that providing false information may constitute a violation of law.
2. b. Before mailing or shipping the product, the person:
 - a. (1) Verifies the date of birth or age of the individual against a commercially available database; or
 - b. (2) Obtains a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the individual placing the order.
 3. c. Before mailing or shipping the product, the person provides to the prospective purchaser, by electronic mail or other means, a notice that meets the requirements of section ~~54-30-0451-32-04~~.
 4. d. In the case of an order for a product pursuant to an advertisement on the internet, the person receives payment by credit card, debit card, or check for the order before mailing or shipping the product.
 - 5.a.e. (1) The person employs a method of mailing or shipping the product requiring that the individual purchasing the product:
 - (1) (a) Be the addressee;
 - (2) (b) Have an individual of legal minimum purchase age sign for delivery of the package; and
 - (3) (c) If the individual appears to the carrier making the delivery to be under twenty-seven years of age, take delivery of the package only after producing valid government-issued identification that bears a photograph of the individual, indicates that the individual is not under the legal age to purchase cigarettes, and indicates that the individual is not younger than the age indicated on the government-issued document.
 - b. (2) The bill of lading clearly states the requirements in subdivision a and specifies that state law requires compliance with the requirements.
 6. f. The person notifies the carrier for the mailing or shipping, in writing, of the age of the addressee as indicated by the government-issued document.
2. It is unlawful for any person in the business of selling electronic smoking devices or alternative nicotine products to take an order for an electronic smoking device or alternative nicotine product, other than from a person who is in the business of selling electronic smoking devices or alternative nicotine products through the mail or through any telecommunications means, including by telephone, facsimile, or the internet, if in providing for the sale or delivery of the product pursuant to the order, the person mails the product or ships the product by carrier, and the person fails to comply with each of the following procedures:

- a. Before the sale of the electronic smoking device or alternative nicotine product verifies the purchaser is at least eighteen years of age through a commercially available database that is regularly used by business or governmental entities for the purpose of age and identity verification; and
 - b. Uses a method of mailing, shipping, or delivery which requires an individual of legal minimum purchase age to sign for delivery before the electronic smoking device or alternative nicotine product is released to the purchaser.
3. As used in subsection 2, "electronic smoking devices" and "alternative nicotine products" have the same meaning as in section 12.1-31-03.

SECTION 6. EXPIRATION DATE. Section 3 of this Act is effective until the date the attorney general certifies to the legislative council that final regulations issued by the United States food and drug administration or another federal agency are in effect which mandate child-resistant effectiveness standards for liquid nicotine containers, and after that date is ineffective.

Approved April 8, 2015
Filed April 8, 2015

CHAPTER 112

HOUSE BILL NO. 1347

(Representatives Meier, P. Anderson, Hawken)
(Senators Davison, Heckaman, Krebsbach)

AN ACT to amend and reenact subsection 1 of section 12.1-31.2-01 and subsection 8 of section 27-20-02 of the North Dakota Century Code, relating to the inclusion of human trafficking in the definition of disorderly conduct and the definition of a deprived child.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-31.2-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Disorderly conduct" means intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person. For the purposes of this section, disorderly conduct includes human trafficking or attempted human trafficking as defined in this title. Disorderly conduct does not include constitutionally protected activity.

⁹⁵ **SECTION 2. AMENDMENT.** Subsection 8 of section 27-20-02 of the North Dakota Century Code is amended and reenacted as follows:

8. "Deprived child" means a child who:
 - a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;
 - b. Has been placed for care or adoption in violation of law;
 - c. Has been abandoned by the child's parents, guardian, or other custodian;
 - d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;
 - e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;

⁹⁵ Section 27-20-02 was also amended by section 4 of House Bill No. 1029, chapter 127, section 4 of House Bill No. 1186, chapter 111, and section 1 of Senate Bill No. 2064, chapter 229.

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- f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner; or
 - g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2; or
 - h. Is a victim of human trafficking as defined in title 12.1.

Approved April 1, 2015
Filed April 1, 2015

CHAPTER 113

SENATE BILL NO. 2156

(Senators Armstrong, Casper)
(Representatives Delmore, Larson, Maragos)

AN ACT to amend and reenact section 12.1-32-02.1 of the North Dakota Century Code, relating to mandatory sentences for armed offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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:
 - a. 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
 - b. The offender possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing any felony offense under subsection 1, 2, or ~~except for the simple possession of marijuana~~, 7 of section 19-03.1-23.
2. 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:
 - a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
 - 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.
- ~~2.3.~~ This section applies even when being armed is an element of the offense for which the offender is convicted.
- ~~3.4.~~ 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.

Approved March 25, 2015
Filed March 25, 2015

CHAPTER 114

HOUSE BILL NO. 1367

(Representatives Brabandt, K. Koppelman, Louser)
(Senator Burckhard)

AN ACT to amend and reenact section 12.1-32-06.1, subsections 1 and 3 of section 12.1-32-07, subsection 2 of section 19-03.4-03, and section 29-01-20 of the North Dakota Century Code, relating to drug paraphernalia, custody and return of stolen property, and court authority to impose supervision, conditions, and additional periods of probation; to provide for a legislative management study; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-32-06.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-06.1. Length and termination of probation - Additional probation for violation of conditions - Penalty.

1. Except as provided in this section, the length of ~~the period of unsupervised~~ probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony and two years for a misdemeanor or infraction from the later of the date of:
 - a. The order imposing probation;
 - b. The defendant's release from incarceration; or
 - c. Termination of the defendant's parole.
2. Except as provided in this section, the length of supervised probation imposed in conjunction with a sentence of probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, or a violation of section 14-09-22; three years for any other felony offense; two years for a class A misdemeanor; and three hundred sixty days for a class B misdemeanor offense from the later of the date of:
 - a. The order imposing probation;
 - b. The defendant's release from incarceration; or
 - c. Termination of the defendant's parole.
- 2-3. If the defendant has pled or been found guilty of an offense for which the court imposes a sentence of restitution or reparation for damages resulting from the

commission of the offense, the court may, following a restitution hearing pursuant to section 12.1-32-08, impose an additional ~~period~~periods of unsupervised probation not to exceed five years for each additional period imposed.

- ~~3-4.~~ If the defendant has pled or been found guilty of a felony sexual offense in violation of chapter 12.1-20, the court shall impose at least five years but not more than ten years of supervised probation to be served after sentencing or incarceration. If the defendant has pled or been found guilty of a class AA felony sexual offense in violation of section 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime supervised probation on the defendant. If the defendant has pled or been found guilty of a misdemeanor sexual offense in violation of chapter 12.1-20, the court may impose an additional ~~period~~periods of probation not to exceed two years for each additional period imposed. If the unserved portion of the defendant's maximum period of incarceration is less than one year, a violation of the probation imposed under this subsection is a class A misdemeanor.
- ~~4-5.~~ If the defendant has pled or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility for support continues.
- ~~5-6.~~ In felony and misdemeanor cases, in consequence of violation of probation conditions, the court may impose an additional ~~period of~~ probation not to exceed five years. ~~The additional period of probation may follow a period of incarceration if the defendant has not served the maximum period of incarceration available at the time of initial sentencing or deferment.~~if the defendant has not served the maximum sentence of imprisonment available to the court at the time of initial sentencing or deferment or the total time on probation authorized under this section.
- a. For class B and greater felony offenses, an offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, or a violation of section 14-09-22, the total time on probation may not exceed ten years.
 - b. For all other felony offenses, the total time on probation may not exceed five years.
 - c. For misdemeanor cases, the total time on probation may not exceed three years.
 - d. The court shall allow the defendant credit for a sentence of probation from the date the defendant began probation until the date a petition to revoke probation was filed with the court. If the defendant is on supervised probation, the defendant is not entitled to credit for a sentence of probation for any period the defendant has absconded from supervision. The total amount of credit a defendant is entitled to for time spent on probation must be stated in the criminal judgment or order of revocation of probation.

- 6-7. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
- 7-8. Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes.

SECTION 2. AMENDMENT. Subsections 1 and 3 of section 12.1-32-07 of the North Dakota Century Code are amended and reenacted as follows:

1. When the court imposes probation upon conviction for a felony offense subject to section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. When the court imposes probation upon conviction or order of disposition in all other felony cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, 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.~~
3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
- b. Day reporting;
- c. Curfew;
- d. Home confinement;
- e. House arrest;
- f. Electronic monitoring;
- g. Residential halfway house;
- h. Intensive supervision program; or
- i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or
- j. Participation in the twenty-four seven sobriety program.

⁹⁶ **SECTION 3. AMENDMENT.** Subsection 2 of section 19-03.4-03 of the North Dakota Century Code, as amended in section 1 of Senate Bill No. 2030, as approved by the sixty-fourth legislative assembly, is amended and reenacted as follows:

2. A person may not use or possess with the intent to use drug paraphernalia to inject, ingest, inhale, or otherwise induce into the human body a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. A person violating this subsection is guilty of a class A misdemeanor. If a person previously has been convicted of an offense under this ~~chapter title~~, other than an offense related to marijuana, or an equivalent offense from another court in the United States, a violation of this subsection is a class C felony.

SECTION 4. AMENDMENT. Section 29-01-20 of the North Dakota Century Code is amended and reenacted as follows:

29-01-20. Stolen property to be held by peace officer.

1. ~~When~~Except as provided in subsection 2, whenever property alleged to have been stolen or embezzled comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by section 29-01-21 to direct the disposal thereof.
2. Subsection 1 does not apply to:
 - a. Consumer goods, as defined in section 41-09-02; and
 - b. Goods covered by a certificate of title if proof of certificate of title is presented to the peace officer.

SECTION 5. LEGISLATIVE MANAGEMENT STUDY - SEIZED PROPERTY. During the 2015-16 interim, the legislative management shall consider studying the

⁹⁶ Section 19-03.4-03 was also amended by section 1 of Senate Bill No. 2030, chapter 173.

return of property that comes into the custody of or is seized by peace officers across North Dakota. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly.

Approved April 23, 2015

Filed April 23, 2015

CHAPTER 115

HOUSE BILL NO. 1407

(Representatives Thoreson, Dockter, Kading, Kasper)
(Senators Carlisle, Flakoll, Poolman)

AN ACT to amend and reenact section 12.1-32-15 of the North Dakota Century Code, relating to the registration of sex offenders and offenders against children who are homeless; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁹⁷ **SECTION 1. AMENDMENT.** Section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-15. Offenders against children and sexual offenders - Sexually violent predators - Registration requirement - Penalty.

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. "Homeless" means an individual who is physically present in this state, but is living in a park, under a bridge, on the streets, in a vehicle or camper, or is otherwise without a traditional dwelling, and also one who resides in this state but does not maintain a permanent address. The term does not include individuals who are temporarily domiciled or individuals residing in public or private shelters that provide temporary living accommodations.
- d. "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-e. "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.

⁹⁷ Section 12.1-32-15 was also amended by section 1 of House Bill No. 1029, chapter 127, section 1 of Senate Bill No. 2107, chapter 117, and section 7 of Senate Bill No. 2215, chapter 96.

- e.f. "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.
- f.g. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.
- g.h. "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.
2. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within three days of coming into a county in which the individual resides, is homeless, or within the period identified in this section that the individual becomes temporarily domiciled. The individual must register with the chief of police of the city or the sheriff of the county if the individual resides, attends school, or is employed in an area other than a city. A homeless individual shall register every three days with the sheriff or chief of police of the jurisdiction in which the individual is physically present. The court shall require an individual to register by stating this requirement on the court records, if that individual:
- Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender, including juvenile delinquent adjudications of equivalent offenses unless the offense is listed in subdivision c.
 - Has pled guilty or nolo contendere to, or been found guilty as a sexual offender for, a misdemeanor or attempted misdemeanor. The court may deviate from requiring an individual to register if the court first finds the individual is no more than three years older than the victim if the victim is a minor, the individual has not previously been convicted as a sexual offender or of a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - Is a juvenile found delinquent under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual offender for a misdemeanor. The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a crime against a child, and the juvenile did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - Has pled guilty or nolo contendere to, or been found guilty of, a crime against a child or an attempted crime against a child, including juvenile delinquent adjudications of equivalent offenses. Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and

- the person is not the parent of the victim, the court may deviate from requiring an individual to register if the court first finds the individual has not previously been convicted as a sexual offender or for a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
- e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated delinquent of any crime against another individual which is not otherwise specified in this section if the court determines that registration is warranted by the nature of the crime and therefore orders registration for the individual. If the court orders an individual to register as an offender under this section, the individual shall comply with all of the registration requirements in this chapter.
3. If a court has not ordered an individual to register in this state, an individual who resides is homeless, or is temporarily domiciled in this state shall register if the individual:
 - a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime against a child described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 if the individual was not the parent of the victim, or as a sexual offender;
 - b. Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of, an offense in a court of this state for which registration is mandatory under this section or an offense from another court in the United States, a tribal court, or court of another country equivalent to those offenses set forth in this section; or
 - c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against a child or as a sexual offender for which registration is mandatory under this section if the conviction occurred after July 31, 1985.
 4. In its consideration of mental abnormality or predatory conduct, the court shall consider the age of the offender, the age of the victim, the difference in ages of the victim and offender, the circumstances and motive of the crime, the relationship of the victim and offender, and the mental state of the offender. The court may order an offender to be evaluated by a qualified counselor, psychologist, or physician before sentencing. Except as provided under subdivision e of subsection 2, the court shall state on the record in open court its affirmative finding for not requiring an offender to register.
 5. When an individual is required to register under this section, the official in charge of a facility or institution where the individual required to register is confined, or the department, shall, before the discharge, parole, or release of that individual, inform the individual of the duty to register pursuant to this section. The official or the department shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register has been explained to that individual. The official in charge of the place of confinement, or the department, shall obtain the address where the individual expects to reside, attend school, or work upon discharge, parole, or release and shall report the address to the attorney general. The official in charge of the place of confinement, or the department, shall give three copies of the form to the individual and shall send three copies to the attorney general no later than forty-five days before the scheduled

release of that individual. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work upon discharge, parole, or release, one copy to the prosecutor who prosecuted the individual, and one copy to the court in which the individual was prosecuted. All forms must be transmitted and received by the law enforcement agency, prosecutor, and court thirty days before the discharge, parole, or release of the individual.

6. An individual who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine must, before the release or discharge, be informed of the duty to register under this section by the court in which that individual is convicted. The court shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register under this section has been explained to that individual. The court shall obtain the address where the individual expects to reside, attend school, or work upon release or discharge and shall report the address to the attorney general within three days. The court shall give one copy of the form to the individual and shall send two copies to the attorney general. The attorney general shall forward one copy to the appropriate law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work upon discharge, parole, or release.
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 database 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 which 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 which 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.

8. An individual required to register under this section shall comply with the registration requirement for the longer of the following periods:
 - a. A period of fifteen years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later;
 - b. A period of twenty-five years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later, if the offender is assigned a moderate risk by the attorney general as provided in subsection 12; or
 - c. For the life of the individual, if that individual:
 - (1) On two or more occasions has pled guilty or nolo contendere to, or been found guilty of a crime against a child or as a sexual offender. If all qualifying offenses are misdemeanors, this lifetime provision does not apply unless a qualifying offense was committed after August 1, 1999;
 - (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense committed after August 1, 1999, which is described in subdivision a of subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of subsection 1 of section 12.1-20-03 if the person is an adult and the victim is under age twelve, or section 12.1-18-01 if that individual is an adult other than a parent of the victim, or an equivalent offense from another court in the United States, a tribal court, or court of another country; or
 - (3) Is assigned a high risk by the attorney general as provided in subsection 12.
9. An individual required to register under this section who violates this section is guilty of a class C felony. The failure of a homeless individual to register as required in subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of court shall forward all warrants issued for a violation of this section to the county sheriff, who shall enter all such warrants into the national crime information center wanted person file. A court may not relieve an individual, other than a juvenile, who violates this section from serving a term of at least ninety days in jail and completing probation of one year.

10. When an individual is released on parole or probation and is required to register pursuant to this section, but fails to do so within the time prescribed, the court shall order the probation, or the parole board shall order the parole, of the individual revoked.
11. If an individual required to register pursuant to this section is temporarily sent outside the facility or institution where that individual is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that individual is being sent must be notified within a reasonable time period before that individual is released from the facility or institution. This subsection does not apply to any individual temporarily released under guard from the facility or institution in which that individual is confined.
12. The attorney general, with the assistance of the department and the juvenile courts, shall develop guidelines for the risk assessment of sexual offenders who are required to register, with a low-risk, moderate-risk, or high-risk level being assigned to each offender as follows:
 - a. The department shall conduct a risk assessment of sexual offenders who are incarcerated in institutions under the control of the department and sexual offenders who are on supervised probation. The department, in a timely manner, shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning individuals required to be registered under this section who are about to be released or placed into the community.
 - b. The attorney general shall conduct a risk assessment of sexual offenders who are not under the custody or supervision of the department. The attorney general may adopt a law enforcement agency's previous assignment of risk level for an individual if the assessment was conducted in a manner substantially similar to the guidelines developed under this subsection.
 - c. The juvenile courts or the agency having legal custody of a juvenile shall conduct a risk assessment of juvenile sexual offenders who are required to register under this section. The juvenile courts or the agency having legal custody of a juvenile shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning juveniles required to register and who are about to be released or placed into the community.
 - d. The attorney general shall notify the offender of the risk level assigned to that offender. An offender may request a review of that determination with the attorney general's sexual offender risk assessment committee and may present any information that the offender believes may lower the assigned risk level.
13. Relevant and necessary conviction and registration information must be disclosed to the public by a law enforcement agency if the individual is a moderate or high risk and the agency determines that disclosure of the conviction and registration information is necessary for public protection. The attorney general shall develop guidelines for public disclosure of offender registration information. Public disclosure may include internet access if the offender:

- a. Is required to register for a lifetime under subsection 8;
- b. Has been determined to be a high risk to the public by the department, the attorney general, or the courts, according to guidelines developed by those agencies; or
- c. Has been determined to be a high risk to the public by an agency of another state or the federal government.

If the offender has been determined to be a moderate risk, public disclosure must include, at a minimum, notification of the offense to the victim registered under chapter 12.1-34 and to any agency, civic organization, or group of persons who have characteristics similar to those of a victim of the offender. Upon request, law enforcement agencies may release conviction and registration information regarding low-risk, moderate-risk, or high-risk offenders.

14. A state officer, law enforcement agency, or public school district or governing body of a nonpublic school or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations, allowing a sexual offender to attend a school function under section 12.1-20-25, or for disclosing or for failing to disclose information as permitted by this section.
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, 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 shall notify others in similar positions if the juvenile transfers to another learning institution in or outside the state.
16. If an individual has been required to register as a sexual offender or an offender against a child under section 12.1-32-15 or 27-20-52.1 before August 1, 1999, the individual may petition the court to be removed from the offender list if registration is no longer mandatory for that individual. In considering the petition, the court shall comply with the requirements of this section.
17. 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 parks 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.

CHAPTER 116

HOUSE BILL NO. 1030

(Legislative Management)
(Commission on Alternatives to Incarceration)

AN ACT to create and enact a new section to chapter 12.1-32 of the North Dakota Century Code, relating to exceptions from mandatory minimum sentences; to amend and reenact subsection 19 of section 12.1-01-04, subdivision a of subsection 3 of section 12.1-20-03, and subsection 2 of section 12.1-32-07.1 of the North Dakota Century Code, relating to the definition of manifest injustice.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 19 of section 12.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

19. Repealed by S.L. 1975, ch. 116, § 33 "Manifest injustice" means a specific finding by the court that the imposition of sentence is unreasonably harsh or shocking to the conscience of a reasonable individual, with due consideration of the totality of circumstances.

SECTION 2. AMENDMENT. Subdivision a of subsection 3 of section 12.1-20-03 of the North Dakota Century Code is amended and reenacted as follows:

- a. An offense under this section is a class AA felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, if the actor's conduct violates subdivision a of subsection 1, or if the actor's conduct violates subdivision d of subsection 1 and the actor was at least twenty-two years of age at the time of the offense. For any conviction of a class AA felony under subdivision a of subsection 1, the court shall impose a minimum sentence of twenty years' imprisonment, with probation supervision to follow the incarceration. The court may deviate from the mandatory sentence if the court finds that the sentence would impose a manifest injustice ~~as defined in section 39-01-04~~ and the defendant has accepted responsibility for the crime or cooperated with law enforcement. However, a defendant convicted of a class AA felony under this section may not be sentenced to serve less than five years of incarceration.

SECTION 3. AMENDMENT. Subsection 2 of section 12.1-32-07.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Whenever a person has been placed on probation pursuant to subsection 4 of section 12.1-32-02, the court at any time, when the ends of justice will be served, and when reformation of the probationer warrants, may terminate the period of probation and discharge the person so held. A person convicted of gross sexual imposition under subdivision a of subsection 1 of section 12.1-20-03 is not entitled to early termination of probation pursuant to this section, unless the court finds after at least eight years of supervised probation that further supervision would impose a manifest injustice ~~as defined in section 39-01-04~~. Every defendant who has fulfilled the conditions of probation for the entire period, or who has been discharged from probation

prior to termination of the probation period, may at any time be permitted in the discretion of the court to withdraw the defendant's plea of guilty. The court may in its discretion set aside the verdict of guilty. In either case, the court may dismiss the information or indictment against the defendant. The court may, upon its own motion or upon application by the defendant and before dismissing the information or indictment, reduce to a misdemeanor a felony conviction for which the plea of guilty has been withdrawn or set aside. The defendant must then be released from all penalties and disabilities resulting from the offense or crime of which the defendant has been convicted except as provided by sections 12.1-32-15 and 62.1-02-01.

SECTION 4. A new section to chapter 12.1-32 of the North Dakota Century Code is created and enacted as follows:

Mandatory sentences - Exceptions.

1. In addition to any other provision of law, when sentencing an individual convicted of a violation in chapter 19-03.1 for which there is a mandatory minimum sentence, the court may depart from the applicable mandatory minimum sentence if the court, in giving due regard to the nature of the crime, history and character of the defendant, and the defendant's chances of successful rehabilitation, finds a compelling reason on the record that imposition of the mandatory minimum sentence would result in manifest injustice to the defendant and that the mandatory minimum sentence is not necessary for the protection of the public.
2. Subsection 1 does not apply if the individual is sentenced under section 12.1-32-02.1.
3. Upon departing from a mandatory minimum sentence, a judge shall report to the state court administrator who shall make available in electronic form and on the world wide web an annual report by July 1 of each year on the total number of departures from mandatory minimum sentences.

Approved April 20, 2015
Filed April 20, 2015

CHAPTER 117

SENATE BILL NO. 2107

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 12.1-41 of the North Dakota Century Code, relating to the Uniform Act on Prevention of and Remedies for Human Trafficking; to amend and reenact subsection 1 of section 12.1-32-15 of the North Dakota Century Code, relating to definitions; to repeal chapter 12.1-40 of the North Dakota Century Code, relating to human trafficking; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁹⁸ **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~~ subsection 3 of section 12.1-41-02, subsection 3 of section 12.1-41-03, 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~~

⁹⁸ Section 12.1-32-15 was also amended by section 1 of House Bill No. 1029, chapter 127, section 1 of House Bill No. 1407, chapter 115, and section 7 of Senate Bill No. 2215, chapter 96.

12.1-40 subdivision b of subsection 1 of section 12.1-41-02, section 12.1-41-04, 12.1-41-05, or 12.1-41-06, 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.

- 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. Chapter 12.1-41 of the North Dakota Century Code is created and enacted as follows:

12.1-41-01. Definitions.

In this chapter:

- 1. "Adult" means an individual eighteen years of age or older.
- 2. "Coercion" means:
 - a. The use or threat of force against, abduction of, serious harm to, or physical restraint of, an individual;
 - b. The use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of, an individual;
 - c. The abuse or threatened abuse of law or legal process;
 - d. Controlling or threatening to control an individual's access to a controlled substance as defined in section 19-03.1-01;
 - e. The destruction or taking of or the threatened destruction or taking of an individual's identification document or other property;
 - f. The use of debt bondage;
 - g. The use of an individual's physical or mental impairment when the impairment has a substantial adverse effect on the individual's cognitive or volitional function; or
 - h. The commission of civil or criminal fraud.
- 3. "Commercial sexual activity" means sexual activity for which anything of value is given to, promised to, or received, by a person.
- 4. "Debt bondage" means inducing an individual to provide commercial sexual activity in payment toward or satisfaction of a real or purported debt or inducing an individual to provide labor or services in payment toward or satisfaction of a real or purported debt if the reasonable value of the labor or

services is not applied toward the liquidation of the debt or if the length of the labor or services is not limited and the nature of the labor or services is not defined. The term does not include an effort by a creditor to collect an enforceable obligation by means that are permitted under state or federal laws.

5. "Human trafficking" means the commission of an offense created by sections 12.1-41-02 through 12.1-41-06.
6. "Identification document" means a passport, driver's license, immigration document, travel document, or other government-issued identification document, including a document issued by a foreign government.
7. "Labor or services" means activity having economic value.
8. "Minor" means an individual less than eighteen years of age.
9. "Serious harm" means harm, whether physical or nonphysical, including psychological, economic, or reputational, to an individual which would compel a reasonable individual of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm.
10. "Sexual activity" means "sexual act" as defined in section 12.1-20-02. The term includes a sexually explicit performance.
11. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.
12. "Victim" means an individual who is subjected to human trafficking or to conduct that would have constituted human trafficking had this chapter been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.

12.1-41-02. Trafficking an individual.

1. A person commits the offense of trafficking an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:
 - a. Forced labor in violation of section 12.1-41-03; or
 - b. Sexual servitude in violation of section 12.1-41-04.
2. Trafficking an individual who is an adult is a class A felony.
3. Trafficking an individual who is a minor is a class AA felony.

12.1-41-03. Forced labor.

1. A person commits the offense of forced labor if the person knowingly uses coercion to compel an individual to provide labor or services, except when that conduct is permissible under federal law or law of this state other than this chapter.

2. Forced labor of an individual who is an adult is a class A felony.
3. Forced labor of an individual who is a minor is a class AA felony.

12.1-41-04. Sexual servitude.

1. A person commits the offense of sexual servitude if the person knowingly:
 - a. Maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity; or
 - b. Uses coercion or deception to compel an adult to engage in commercial sexual activity.
2. It is not a defense in a prosecution under subdivision a of subsection 1 that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.
3. Sexual servitude under subdivision a of subsection 1 is a class AA felony.
4. Sexual servitude under subdivision b of subsection 1 is a class A felony.

12.1-41-05. Patronizing a victim of sexual servitude.

1. A person commits the offense of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that an individual may engage in commercial sexual activity with another individual and the person knows that the other individual is a victim of sexual servitude.
2. Patronizing a victim of sexual servitude who is an adult is a class B felony.
3. Patronizing a victim of sexual servitude who is a minor is a class A felony.

12.1-41-06. Patronizing a minor for commercial sexual activity.

1. A person commits the offense of patronizing a minor for commercial sexual activity if:
 - a. With the intent that an individual engage in commercial sexual activity with a minor, the person gives, agrees to give, or offers to give anything of value to a minor or another person so that the individual may engage in commercial sexual activity with a minor; or
 - b. The person gives, agrees to give, or offers to give anything of value to a minor or another person so that an individual may engage in commercial sexual activity with a minor.
2. Patronizing a minor for commercial sexual activity under subdivision a of subsection 1 is a class A felony.
3. Patronizing a minor for commercial sexual activity under subdivision b of subsection 1 is a class B felony.

12.1-41-07. Business entity liability.

1. A person that is a business entity may be prosecuted for an offense under sections 12.1-41-02 through 12.1-41-06 as provided by chapter 12.1-03.
2. When a person that is a business entity is prosecuted for an offense under sections 12.1-41-02 through 12.1-41-06, the court may consider the severity of the entity's conduct and order penalties in addition to those otherwise provided for the offense, including:
 - a. A fine of not more than one million dollars per offense;
 - b. Disgorgement of profit from activity in violation of this chapter; and
 - c. Debarment from state and local government contracts.

12.1-41-08. Aggravating circumstance.

1. An aggravating circumstance during the commission of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04 occurs when the defendant recruited, enticed, or obtained the victim of the offense from a shelter that serves individuals subjected to human trafficking, domestic violence, or sexual assault, runaway youth, foster children, or the homeless.
2. If the trier of fact finds that an aggravating circumstance occurred during the commission of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04, the defendant may be imprisoned for up to five years in addition to the period of imprisonment prescribed for the offense.

12.1-41-09. Restitution.

1. The court shall order a person convicted of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04 to pay restitution to the victim of the offense for:
 - a. Expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including reasonable attorney's fees and costs; and
 - b. An amount equal to the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim:
 - (1) The gross income to the defendant for, or the value to the defendant of, the victim's labor or services or sexual activity;
 - (2) The amount the defendant contracted to pay the victim; or
 - (3) The value of the victim's labor or services or sexual activity, calculated under the minimum wage and overtime provisions of the Fair Labor Standards Act [29 U.S.C. 201 et seq.] or section 34-06-22, whichever is higher, even if the provisions do not apply to the victim's labor or services or sexual activity.
2. The court shall order restitution under subsection 1 even if the victim is unavailable to accept payment of restitution.

3. If the victim does not claim restitution ordered under subsection 1 for five years after entry of the order, the restitution must be paid to the crime victims restitution and gift fund under section 54-23.4-05.

12.1-41-10. Victim confidentiality.

In an investigation of or a prosecution for an offense under this chapter, a law enforcement agency and state's attorney shall keep confidential the identity, pictures, and images of the alleged victim and the family of the alleged victim, except to the extent that disclosure is:

1. Necessary for the purpose of investigation or prosecution;
2. Required by law or court order; or
3. Necessary to ensure provision of services or benefits for the victim or the victim's family.

12.1-41-11. Past sexual behavior of victim.

In a prosecution for an offense under this chapter or a civil action under section 12.1-41-15, evidence of a specific instance of the alleged victim's past sexual behavior or reputation or opinion evidence of past sexual behavior of the alleged victim is not admissible unless the evidence is:

1. Admitted in accordance with the North Dakota rules of evidence; or
2. Offered by the prosecution to prove a pattern of human trafficking by the defendant.

12.1-41-12. Immunity of minor.

1. If the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim, the individual is not criminally liable or subject to a juvenile delinquency proceeding under chapter 27-20 for:
 - a. Prostitution under section 12.1-29-03;
 - b. Misdemeanor forgery under section 12.1-24-01;
 - c. Misdemeanor theft offenses under chapter 12.1-23;
 - d. Insufficient funds or credit offenses under section 6-08-16;
 - e. Manufacture or possession of a controlled or counterfeit substance offenses under section 19-03.1-23; and
 - f. Drug paraphernalia offenses under chapter 19-03.4.
2. It is an affirmative defense to felony forgery, felony theft, and felony drug distribution that the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim as defined by this chapter.

3. An individual who has engaged in commercial sexual activity is not criminally liable or subject to a juvenile delinquency proceeding under chapter 27-20 for prostitution if the individual was a minor at the time of the offense.
4. A minor, who under subsection 1 or 3, is not subject to criminal liability or a juvenile delinquency proceeding is presumed to be a child in need of services under chapter 50-25.1.
5. This section does not apply in a prosecution or a juvenile delinquency proceeding for patronizing a prostitute.

12.1-41-13. Affirmative defense of victim.

An individual charged with prostitution, felony forgery, felony theft, felony drug distribution, or an offense listed in subsection 1 of section 12.1-41-12 which was committed as a direct result of being a victim may assert an affirmative defense that the individual is a victim.

12.1-41-14. Motion to vacate and expunge conviction.

1. An individual convicted of prostitution or an offense listed in subsection 1 of section 12.1-41-12 which was committed as a direct result of being a victim may apply by motion to the court to vacate the conviction and expunge the record of conviction. The court may grant the motion on a finding that the individual's participation in the offense was a direct result of being a victim.
2. Official determination or documentation is not required to grant a motion by an individual under subsection 1, but an official determination or documentation from a federal, state, local, or tribal agency that the individual was a victim at the time of the offense creates a presumption that the individual's participation was a direct result of being a victim.
3. A motion filed under subsection 1, any hearing conducted on the motion, and any relief granted are governed by chapter 29-32.1.

12.1-41-15. Civil action.

1. A victim may bring a civil action against a person that commits an offense against the victim under section 12.1-41-02, 12.1-41-03, or 12.1-41-04 for compensatory damages, exemplary or punitive damages, injunctive relief, and any other appropriate relief.
2. If a victim prevails in an action under this section, the court shall award the victim reasonable attorney's fees and costs.
3. An action under this section must be commenced not later than ten years after the later of the date on which the victim:
 - a. No longer was subject to human trafficking; or
 - b. Attained eighteen years of age.
4. Damages awarded to a victim under this section for an item must be offset by any restitution paid to the victim pursuant to Section 12.1-41-09 for the same item.

5. This section does not preclude any other remedy available to a victim under federal law or law of this state other than this chapter.

12.1-41-16. Display of public-awareness sign.

The department of transportation shall display in every transportation station, rest area, and welcome center in the state which is open to the public a public-awareness sign that contains any state or local human trafficking resource information and the National Human Trafficking Resource Center hotline information.

12.1-41-17. Eligibility for benefit or service.

1. A victim is eligible for a benefit or service available through the state, including compensation under chapter 54-23.4, regardless of immigration status.
2. A minor who has engaged in commercial sexual activity is eligible for a benefit or service available through the state, regardless of immigration status.
3. As soon as practicable after a first encounter with an individual who reasonably appears to law enforcement to be a victim or a minor who has engaged in commercial sexual activity, the law enforcement agency shall notify the victim services division of the department of corrections and rehabilitation that the individual may be eligible for a benefit or service under the law of this state.
4. For purposes of this section, "a benefit or service available through the state" does not include a benefit or service of a program administered by the department of human services using federal or special funds, if the victim or minor does not meet program eligibility requirements including an eligibility requirement that is based on immigration status.

12.1-41-18. Law enforcement protocol.

1. On request from an individual whom a law enforcement officer reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. 1101(a)(15)(T) or 8 U.S.C. 1101(a)(15)(U), or for continued presence under 22 U.S.C. 7105(c)(3), the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the form I-914B or form I-918B provided by the United States citizenship and immigration services on its internet website and ask a federal law enforcement officer to request continued presence.
2. If the law enforcement agency determines that an individual does not meet the requirements for the law enforcement agency to comply with subsection 1, the law enforcement agency shall inform the individual of the reason and that the individual may make another request under subsection 1 and submit additional evidence satisfying the requirements.

12.1-41-19. Grant to or contract with service provider.

1. The attorney general may make a grant to or contract with a unit of state or local government, tribal government, or nongovernmental victims service organization to develop or expand service programs for victims.

2. A recipient of a grant or contract under subsection 1 shall report annually to the attorney general the number and demographic information of all victims receiving services under the grant or contract.

12.1-41-20. Use of public funds for abortions prohibited.

Except as provided by federal law, funds of this state or a political subdivision of this state and federal funds passing through the state treasury or a state agency to provide treatment and support services for victims of human trafficking may be used to refer for or counsel for family planning services, but may not be used to perform, refer for, or encourage abortion.

SECTION 3. REPEAL. Chapter 12.1-40 of the North Dakota Century Code is repealed.

Approved April 23, 2015
Filed April 23, 2015

CHAPTER 118

SENATE BILL NO. 2275

(Senators Luick, Burckhard, Laffen, Larsen, Miller)
(Representative Ruby)

AN ACT create and enact a new section to chapter 12.1-41 of the North Dakota Century Code, as created by section 2 of Senate Bill No. 2107, as approved by the sixty-fourth legislative assembly, relating to a forced or coerced abortion performed on a victim of human trafficking; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-41 of the North Dakota Century Code, as created by section 2 of Senate Bill No. 2107, as approved by the sixty-fourth legislative assembly, is created and enacted as follows:

Forced or coerced abortion.

1. As used in this section:

- a. "Forces or coerces" means committing, attempting to commit, or threatening to commit physical harm to the woman, the unborn child, or another individual intended to compel a victim of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04 to have an abortion performed against her will.
- b. "Threat" means at least one statement, or a course of conduct by the defendant, which places one in reasonable apprehension that the individual will follow through with the statement or act as implied by the defendant's course of conduct. The term does not include constitutionally protected speech or any generalized statement regarding a lawful pregnancy option.

2. A forced or coerced abortion during the commission of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04 occurs when the defendant forces or coerces a victim of the offense to have an abortion against her will.
3. Upon the request of the victim, a law enforcement agency investigating a violation of this section shall notify the victim not less than twenty-four hours before initially contacting the individual alleged to have committed a violation of this section.
4. If the trier of fact finds that a forced or coerced abortion occurred during the commission of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04, the court may sentence the defendant to be imprisoned for up to five years in addition to the period of imprisonment prescribed for the offense.

Approved April 20, 2015
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