

CRIMINAL CODE

CHAPTER 97

SENATE BILL NO. 2042

(Legislative Management)
(Human Services Committee)

AN ACT to amend and reenact sections 5-01-05.1, 12.1-01-04, 12.1-04-06, 12.1-04.1-02, 12.1-04.1-03, 12.1-04.1-04, 12.1-04.1-05, 12.1-04.1-06, 12.1-04.1-07, 12.1-04.1-08, 12.1-04.1-10, 12.1-04.1-11, 12.1-04.1-12, 12.1-04.1-13, 12.1-04.1-14, 12.1-04.1-15, 12.1-04.1-22, 12.1-04.1-23, 25-01-01, 25-03.1-04, 25-03.1-08, 25-03.1-10, 25-03.1-11, 25-03.1-18.1, 32-03-48, and 43-41-07, subdivision b of subsection 1 of section 43-48-15, sections 49-10.1-05, 50-25.1-03, 50-25.2-03, and 62.1-01-01, subdivisions b and c of subsection 1 of section 62.1-02-01, and subdivision b of subsection 1 of section 62.1-02-01.2 of the North Dakota Century Code, relating to references to mental health professionals and licensure of social workers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-05.1 of the North Dakota Century Code is amended and reenacted as follows:

5-01-05.1. Public intoxication - Assistance - Medical care.

A peace officer has ~~authority to~~ may take any apparently intoxicated ~~person~~ individual to the ~~person's~~ individual's home, to a local hospital, to a detoxification center, or, whenever that ~~person~~ individual constitutes a danger to that ~~person~~ individual or others, to a jail ~~for purposes of detoxification~~. A ~~duly licensed physician~~ tier 1b mental health professional, as defined under section 25-01-01, of a local hospital or a ~~licensed addiction counselor of a detoxification center~~ has ~~authority to~~ may hold that ~~person~~ individual for treatment up to seventy-two hours. That intoxicated ~~person~~ individual may not be held in jail because of intoxication more than twenty-four hours. An intoxicated ~~person~~ individual may not be placed in a jail unless a jailer is constantly present ~~within hearing distance~~ monitoring the individual and medical services are provided ~~when~~ if the need is indicated. Upon placing that ~~person~~ individual in jail, or if the ~~person~~ individual is admitted ~~into~~ to a hospital or detoxification center, upon admission, the peace officer shall make a reasonable effort to notify the intoxicated ~~person's~~ individual's family as soon as possible. Any additional costs incurred by the city, county, ambulance service, or medical service provider on account of an intoxicated ~~person~~ individual ~~shall be~~ are recoverable from that ~~person~~ individual.

SECTION 2. AMENDMENT. Section 12.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-01-04. General definitions.

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

1. "Act" or "action" means a bodily movement, whether voluntary or involuntary.
 2. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act".
 3. "Actor" includes, where relevant, a person guilty of an omission.
 4. "Bodily injury" means any impairment of physical condition, including physical pain.
 5. "Court" means any of the following courts: the supreme court, a district court, and where relevant, a municipal court.
 6. "Dangerous weapon" means, ~~but is not limited to;~~ includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon ~~which~~ that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO₂ gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.
 7. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade, mine, rocket, missile, or similar device.
 8. "Explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material, or any part thereof may cause an explosion.
 9. ~~Repealed by S.L. 1975, ch. 116, § 33.~~
 - 10- "Firearm" means any weapon ~~which~~ that will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such weapon, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.
- 44-10. "Force" means physical action.
- 42-11. "Government" means:
- a. The government of this state or any political subdivision of this state;
 - b. Any agency, subdivision, or department of the ~~foregoing state or any~~ political subdivision of the state, including the executive, legislative, and judicial branches;
 - c. Any corporation or other entity established by law to carry on any governmental function; and

- d. Any commission, corporation, or agency established by statute, compact, or contract between or among governments for the execution of intergovernmental programs.
- ~~13-12.~~ "Governmental function" includes any activity ~~which~~that one or more public servants are legally authorized to undertake on behalf of government.
- ~~14-13.~~ "Harm" means loss, disadvantage, or injury to the person affected, and includes loss, disadvantage, or injury to any other person in whose welfare the person affected is interested.
- ~~15-14.~~ "Included offense" means an offense:
- a. ~~Which~~That is established by proof of the same or less than all the facts required to establish commission of the offense charged;
 - b. ~~Which~~That consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or
 - c. ~~Which~~That differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission.
- ~~16-15.~~ "Includes" should be read as if the phrase "but is not limited to" were also set forth.
- ~~17-16.~~ "Law enforcement officer" or "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
- ~~18-17.~~ "Local" means of or pertaining to any political subdivision of the state.
- ~~19-18.~~ "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.
- ~~20-19.~~ "Offense" means conduct for which a term of imprisonment or a fine is authorized by statute after conviction.
- ~~21-20.~~ "Official action" includes a decision, opinion, recommendation, vote, or other exercise of discretion by any government agency.
- ~~22-21.~~ "Official proceeding" means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.
- ~~23-22.~~ "Omission" means a failure to act.
- ~~24-23.~~ As used in this title and in sections outside this title which define offenses, "person" includes, where relevant, a corporation, limited liability company, partnership, unincorporated association, or other legal entity. When used to

designate a party whose property may be the subject of action constituting an offense, the word "person" includes a government ~~which~~that may lawfully own property in this state.

~~25-24.~~ "Political subdivision" as used in this title and in any statute outside this title which defines an offense means a county, city, school district, township, and any other local governmental entity created by law.

~~26.~~ "Property" ~~includes both real and personal property.~~

~~27-25.~~ "Public servant" as used in this title and in any statute outside this title which defines an offense means any officer or employee of government, including law enforcement officers, whether elected or appointed, and any person participating in the performance of a governmental function, ~~but the~~. The term does not include witnesses.

~~28-26.~~ "Risk assessment" means an initial phase with a secondary process approved by the department of human services for the evaluation of the likelihood ~~that~~ a person ~~wheth~~that committed an offense will commit another similar offense. The initial phase is an assessment tool that is administered by a trained probation and parole officer. A predetermined score on the initial phase initiates the secondary process that includes a clinical interview, psychological testing, and verification through collateral information or psychophysiological testing, or both. The department of human services shall perform the secondary process of the risk assessment.

~~29-27.~~ "Serious bodily injury" means bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of the function of any bodily member or organ, a bone fracture, or impediment of air flow or blood flow to the brain or lungs.

~~30-28.~~ "Signature" includes any name, mark, or sign written or affixed with intent to authenticate any instrument or writing.

~~31-29.~~ "Substantial bodily injury" means a substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ.

~~32-30.~~ "Thing of value" or "thing of pecuniary value" means a thing of value in the form of money, tangible or intangible property, commercial interests, or anything else the primary significance of which is economic gain to the recipient.

~~33.~~ "Writing" ~~includes printing, typewriting, and copying.~~

~~Words used in the singular include the plural, and the plural the singular. Words in the masculine gender include the feminine and neuter genders. Words used in the present tense include the future tense, but exclude the past tense.~~

31. "Tier 1 mental health professional" has the same meaning as provided under section 25-01-01.

SECTION 3. AMENDMENT. Section 12.1-04-06 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04-06. Examination - Temporary commitment.

Whenever there is reason to doubt the defendant's fitness to proceed, the court may order the detention of the defendant for the purpose of an examination by a ~~psychiatrist or a licensed psychologist~~ tier 1a mental health professional. The detention must be in the least restrictive appropriate setting, including the state hospital, the life skills and transition center, or other suitable facility for a reasonable period, not to exceed thirty days, for such examination. In lieu of detention, the court may allow the defendant to remain in the defendant's present residential setting or other suitable residential setting for the purpose of evaluation by a suitable facility or personnel, subject to any reasonable limitation the court may impose. A human service center may not be considered a suitable facility and may not be considered suitable personnel under this section unless the court is aware that an inquiry ~~has been~~ was made ~~prior to~~ before the court ~~ordering~~ ordered the evaluation to ensure that appropriate resources exist at the human service center being ordered to conduct the evaluation. The court, by subsequent order and for good cause shown, may extend the detention for a period not to exceed thirty additional days. While the defendant is detained, the defendant's legal counsel, family, and others necessary to assist in the defendant's case ~~shall~~ must have reasonable opportunity to examine and confer with the defendant.

SECTION 4. AMENDMENT. Section 12.1-04.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-02. Court authorization of state-funded mental health services for certain defendants.

A defendant who is unable to pay for the services of a tier 1a mental health professional, and to whom those services are not otherwise available, may apply to the court for assistance. Upon a showing of a likely need for examination on the question of lack of criminal responsibility or lack of requisite state of mind as a result of the defendant's mental condition, the court shall authorize reasonable expenditures from public funds for the defendant's retention of the services of one or more tier 1a mental health professionals. Upon request by the defendant, the application and the proceedings on the application must be ex parte and in camera, but any order under this section authorizing expenditures must be made part of the public record.

SECTION 5. AMENDMENT. Section 12.1-04.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-03. Notice of defense of lack of criminal responsibility.

1. If the defendant intends to assert the defense of lack of criminal responsibility, the defendant shall notify the prosecuting attorney in writing and file a copy of the notice with the court. The notice must indicate whether the defendant intends to introduce at trial evidence obtained from examination of the defendant by a tier 1a mental health professional after the time of the alleged offense.
2. The defendant shall file the notice within the time prescribed for pretrial motions or at such earlier or later time as the court directs. For cause shown, the court may allow late filing of the notice and grant additional time to the parties to prepare for trial or may make other appropriate orders.
3. If the defendant fails to give notice in accordance with this section, lack of criminal responsibility may not be asserted as a defense.

SECTION 6. AMENDMENT. Section 12.1-04.1-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-04. Notice regarding expert testimony on lack of state of mind as element of alleged offense.

1. If the defendant intends to introduce at trial evidence obtained from examination of the defendant by a tier 1a mental health professional after the time of the alleged offense to show that the defendant lacked the state of mind required for the alleged offense, the defendant shall notify the prosecuting attorney in writing and file a copy of the notice with the court.
2. The defendant shall file the notice within the time prescribed for pretrial motions or at such earlier or later time as the court directs. For cause shown, the court may allow late filing of the notice and grant additional time to the parties to prepare for trial or may make other appropriate orders.

SECTION 7. AMENDMENT. Section 12.1-04.1-05 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-05. Examination at request of prosecuting attorney.

1. If the defendant has given notice under section 12.1-04.1-03 or 12.1-04.1-04 of intent to introduce evidence obtained from examination of the defendant by a tier 1a mental health professional after the time of the alleged offense, the court, upon application by the prosecuting attorney and after opportunity for response by the defendant, shall order that the defendant be examined by one or more tier 1a mental health professionals retained by the prosecuting attorney. The court shall include in the order provisions as to the time, place, and conditions of the examination.
2. If the parties agree to examination of the defendant by a tier 1a mental health professional retained by the prosecuting attorney without order of the court, sections 12.1-04.1-06, 12.1-04.1-07, 12.1-04.1-08, 12.1-04.1-10, 12.1-04.1-11, 12.1-04.1-12, 12.1-04.1-13, 12.1-04.1-14, and 12.1-04.1-15 apply to that examination.

SECTION 8. AMENDMENT. Section 12.1-04.1-06 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-06. Explanation to defendant.

At the beginning of each examination conducted under section 12.1-04.1-05, the tier 1a mental health professional shall inform the defendant that the examination is being made at the request of the prosecuting attorney; the purpose of the examination is to obtain information about the defendant's mental condition at the time of the alleged offense; and information obtained from the examination may be used at trial and, if the defendant is found not guilty by reason of lack of criminal responsibility, in subsequent proceedings concerning commitment or other disposition.

SECTION 9. AMENDMENT. Section 12.1-04.1-07 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-07. Scope of examination.

An examination of the defendant conducted under section 12.1-04.1-05 may consist of such interviewing, clinical evaluation, and psychological testing as the tier 1a mental health professional considers appropriate, within the limits of nonexperimental, generally accepted medical, psychiatric, or psychological practices.

SECTION 10. AMENDMENT. Section 12.1-04.1-08 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-08. Recording of examination.

1. An examination of the defendant conducted under section 12.1-04.1-05 must be audio-recorded and, if ordered by the court, video-recorded. The manner of recording may be specified by rule or by court order in individual cases.
2. Within seven days after completion of an examination conducted under section 12.1-04.1-05, the tier 1a mental health professional conducting the examination shall deliver a copy of the recording of the examination, under seal, to the court and a copy of the recording to the defendant. The recording may not be disclosed except in accordance with this chapter.

SECTION 11. AMENDMENT. Section 12.1-04.1-10 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-10. Reports by tier 1a mental health professionals and expert witnesses.

A tier 1a mental health professional retained by the prosecuting attorney and a tier 1a mental health professional whom the defendant intends to call to testify at trial shall prepare a written report concerning any examination of the defendant and other pretrial inquiry by or under the supervision of the tier 1a mental health professional. Any other individual whom either party intends to call at trial as an expert witness on any aspect of the defendant's mental condition shall prepare a written report. A report under this section must contain:

1. The specific issues addressed.
2. The identity of individuals interviewed and records or other information used.
3. The procedures, tests, and techniques used.
4. The date and time of examination of the defendant, the explanation concerning the examination given to the defendant, and the identity of each individual present during an examination.
5. The relevant information obtained and findings made.
6. Matters concerning which the mental health professional was unable to obtain relevant information and the reasons therefor.
7. The conclusions reached and the reasoning on which the conclusions were based.

SECTION 12. AMENDMENT. Section 12.1-04.1-11 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-11. Exchange of reports and production of documents.

Not less than fifteen days before trial, the prosecuting attorney shall furnish to the defendant reports prepared pursuant to section 12.1-04.1-10, and the defendant shall furnish to the prosecuting attorney reports by each tier 1a mental health professional or other expert on any aspect of the defendant's mental condition whom the defendant intends to call at trial. Upon application by either party and after hearing, the court may require production of documents prepared, completed, or used in the examination or inquiry by the tier 1a mental health professional or other expert.

SECTION 13. AMENDMENT. Section 12.1-04.1-12 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-12. Use of reports at trial.

Use at trial of a report prepared by a tier 1a mental health professional or other expert is governed by the North Dakota Rules of Evidence. A report of a tier 1a mental health professional or other expert furnished by the defendant pursuant to section 12.1-04.1-10 may not be used at trial unless the tier 1a mental health professional or other expert who prepared the report has been called to testify by the defendant.

SECTION 14. AMENDMENT. Section 12.1-04.1-13 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-13. Notice of expert witnesses.

Not less than twenty days before trial, each party shall give written notice to the other of the name and qualifications of each tier 1a mental health professional or other individual the respective party intends to call as an expert witness at trial on the issue of lack of criminal responsibility or requisite state of mind as an element of the crime charged. For good cause shown, the court may permit later addition to or deletion from the list of individuals designated as expert witnesses.

SECTION 15. AMENDMENT. Section 12.1-04.1-14 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-14. Use of evidence obtained from examination.

1. Except as provided in subsection 2 and in sections 12.1-04.1-09 and 12.1-04.1-26, information obtained as a result of examination of a defendant by a tier 1a mental health professional conducted under section 12.1-04.1-05 is not admissible over objection of the defendant in any proceeding against the defendant.
2. Subject to the limitation in section 12.1-04.1-15, information obtained from an examination of the defendant by a tier 1a mental health professional conducted under section 12.1-04.1-05 is admissible at trial to rebut evidence introduced by the defendant obtained from an examination of the defendant by a tier 1a mental health professional or to impeach the defendant on the defendant's testimony as to mental condition at the time of the alleged offense.

SECTION 16. AMENDMENT. Section 12.1-04.1-15 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-15. Use of recording of examination.

Except as provided in section 12.1-04.1-09, recording of an examination of the defendant concerning the defendant's mental condition at the time of the alleged offense may be referred to or otherwise used only on cross-examination for the purpose of impeachment of the tier 1a mental health professional who conducted the examination and then on redirect examination of that witness to the extent permitted by the North Dakota Rules of Evidence. The defendant must make the recording available to the prosecuting attorney before any use of it pursuant to this section. If the recording is so used, this section does not preclude its use for the purpose of impeachment of the defendant in any other criminal, civil, or administrative proceeding.

SECTION 17. AMENDMENT. Section 12.1-04.1-22 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-22. Initial order of disposition - Commitment to treatment facility - Conditional release - Discharge.

1. The court shall conduct a dispositional hearing within ninety days after an order of commitment pursuant to section 12.1-04.1-21 is entered, unless the court, upon application of the prosecuting attorney or the individual committed, for cause shown, extends the time for the hearing. The court shall enter an initial order of disposition within ten days after the hearing is concluded.
2. In a proceeding under this section, unless excused by order of the court, defense counsel at the trial shall represent the individual committed.
3. If the court finds that the individual lacks sufficient financial resources to retain the services of a tier 1a mental health professional and that those services are not otherwise available, ~~it~~the court shall authorize reasonable expenditures from public funds for the individual's retention of the services of one or more tier 1a mental health professionals to examine the individual and make other inquiry concerning the individual's mental condition.
4. In a proceeding under this section, the individual committed has the burden of proof by a preponderance of the evidence. The court shall enter an order in accordance with the following requirements:
 - a. If the court finds that the individual is not mentally ill or defective or that there is not a substantial risk, as a result of mental illness or defect, that the individual will commit a criminal act, ~~it~~the court shall order the ~~person~~individual discharged from further constraint under this chapter.
 - b. If the court finds that the individual is mentally ill or defective and that there is a substantial risk, as a result of mental illness or defect, that the individual will commit a criminal act of violence threatening another individual with bodily injury or inflicting property damage and that the individual is not a proper subject for conditional release, ~~it~~the court shall order the individual committed to a treatment facility for custody and treatment. If the court finds that the risk that the individual will commit an act of violence threatening another individual with bodily injury or inflicting property damage will be controlled adequately with supervision and treatment if the individual is conditionally released and that necessary supervision and treatment are available, ~~it~~the court shall order the

~~person~~individual released subject to conditions it considers appropriate for the protection of society.

- c. If the court finds ~~that~~ the individual is mentally ill or defective and ~~that~~ there is a substantial risk, as a result of mental illness or defect, that the individual will commit a criminal act not included in subdivision b, ~~if~~the court shall order the individual to report to a treatment facility for noncustodial evaluation and treatment and to accept nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility.

SECTION 18. AMENDMENT. Section 12.1-04.1-23 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04.1-23. Terms of commitment - Periodic review of commitment.

1. Unless an order of commitment of an individual to a treatment facility provides for special terms as to custody during commitment, the director or superintendent of the treatment facility may determine from time to time the nature of the constraints necessary within the treatment facility to carry out the court's order. In an order of commitment, the court may authorize the director or superintendent to allow the individual a limited leave of absence from the treatment facility on terms the court may direct.
2. In an order of commitment of an individual to a treatment facility under this chapter, the court shall set a date for review of the status of the individual. The date set must be within one year after the date of the order.
3. At least sixty days before a date for review fixed in a court order, the director or superintendent of the treatment facility shall inquire as to whether the individual is presently represented by counsel and file with the court a written report of the facts ascertained. If the individual is not represented by counsel, counsel must be provided at public expense to consult with the individual and, if the individual is indigent, to seek arrangement of counsel at public expense to represent the individual in a proceeding for conditional release or discharge.
4. If the court finds in a review ~~that~~ the individual lacks sufficient financial resources to retain the services of a tier 1a mental health professional and ~~that~~ those services are otherwise not available, the court shall authorize reasonable expenditures from public funds for the individual's retention of the services of one or more tier 1a mental health professionals to examine the individual and make other inquiry concerning the individual's mental condition. In proceedings brought before the next date for review, the court may authorize expenditures from public funds for that purpose.
5. If an application for review of the status of the individual has not been filed by the date for review, the director or superintendent shall file a motion for a new date for review to be set by the court. The date set must be within one year after the previous date for review.

SECTION 19. AMENDMENT. Section 25-01-01 of the North Dakota Century Code is amended and reenacted as follows:

25-01-01. Definitions.

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

1. ~~"Defective delinquent" means an incompetent mentally deficient person over eighteen years of age who has been found, in accordance with the procedures established in chapter 25-04, to have demonstrated a pattern of aggravated antisocial behavior such as to present a probable peril to the life, person, or property of others, or who has given substantial evidence of continuing propensity for such behavior.~~
2. "Licensed physician" means an individual licensed under the laws of this state to practice medicine and also means a medical officer of the government of the United States while in this state in the performance of the physician's official duties.
3. ~~"Mentally deficient person" means any person, minor or adult other than a mentally ill person, who is so mentally defective as to be incapable of managing that person's affairs and to require supervision, control, and care for that person's own or the public welfare.~~
- 4.2. "Mentally ill individual" means an individual having a psychiatric or other disease which substantially impairs the individual's mental health.
- 5.3. "North Dakota vision services - school for the blind" means the North Dakota vision services - school for the blind as maintained under section 25-06-01.
- 6.4. "School for the deaf" means the school for the deaf of North Dakota.
- 7.5. "State hospital" means the state hospital for the mentally ill.
- 8.6. "Superintendent" means the superintendent of the state hospital, of the life skills and transition center, of North Dakota vision services - school for the blind, or of the school for the deaf, as the case may be.
- 9.7. "Supervising officer" means the executive director of the department of human services or the superintendent of public instruction, as the case may be.
8. "Tier 1 mental health professional" means a tier 1a or tier 1b mental health professional.
 - a. A tier 1a mental health professional is a psychiatrist licensed under chapter 43-17 or a psychologist licensed under chapter 43-32.
 - b. A tier 1b mental health professional is a licensed physician or a physician assistant licensed under chapter 43-17 or an advanced practice registered nurse licensed under chapter 43-12.
9. "Tier 2 mental health professional" means a tier 2a or a tier 2b mental health professional.
 - a. A tier 2a mental health professional is an independent clinician who is a licensed independent clinical social worker licensed under chapter 43-41, a licensed professional clinical counselor licensed under chapter 43-47, or a licensed marriage and family therapist licensed under chapter 43-53.
 - b. A tier 2b mental health professional is an addiction counselor licensed under chapter 43-45 or a registered nurse licensed under chapter 43-12.

10. "Tier 3 mental health professional" means a licensed associate professional counselor licensed under chapter 43-47, a licensed certified social worker licensed under chapter 43-41, a licensed professional counselor licensed under chapter 43-47, an associate marriage and family therapist licensed under chapter 43-53, an occupational therapist licensed under chapter 43-40, a licensed practical nurse licensed under chapter 43-12, a behavior analyst licensed or registered under chapter 43-32, a vocational rehabilitation counselor practicing under chapter 50-06.1, a school psychologist, or a human relations counselor.
11. "Tier 4 mental health professional" means a direct care associate or technician.

SECTION 20. AMENDMENT. Section 25-03.1-04 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-04. Screening and admission to a public treatment facility.

Under rules adopted by the department, screening of an individual to a public treatment facility for observation, diagnosis, care, or treatment for mental illness or chemical dependency must be performed, in person when reasonably practicable, by a regional human service center. This screening must be performed in the region where the individual is physically located. Upon the request of a court, a law enforcement official, a qualified mental health professional, the individual's legal guardian, a minor's parent or legal custodian, or the individual requesting services, the regional human service center shall conduct a screening. If a request for screening is made by a qualified mental health professional and the individual ~~that~~who is the subject of the screening does not authorize the disclosure of the individual's protected health information, upon the request of the regional human service center, any mental health professional who ~~has~~ treated the individual within the previous six months shall disclose, subject to the requirements of title 42, Code of Federal Regulations, part 2, to the human service center any relevant protected health information regarding that treatment. Upon receipt of the request, the regional human service center shall arrange for a screening of the individual and ~~must~~, if appropriate, shall treat the applicant; or refer the applicant to the appropriate treatment facility. Upon admittance to a public treatment facility, the superintendent or director shall immediately designate a ~~physician, psychiatrist, psychologist, advanced practice registered nurse,~~tier 1 or tier 2 mental health professional to examine the individual.

SECTION 21. AMENDMENT. Section 25-03.1-08 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-08. Application to state's attorney or retained attorney - Petition for involuntary treatment - Investigation by qualified mental health professional.

1. Any individual eighteen years of age or over shall present the information necessary for the commitment of an individual for involuntary treatment to the state's attorney of the county where the respondent is presently located, or which is the respondent's place of residence, or to an attorney retained by that applicant to represent the applicant throughout the proceedings. The attorney shall assist the applicant in completing the petition. The petition must be verified by affidavit of the applicant and contain assertions that the respondent is a person requiring the treatment; the facts, in detail, that are the basis of that assertion; the names, telephone numbers, and addresses, if known, of any witnesses to those facts; and, if known, the name, telephone number, and

address of the nearest relative or guardian of the respondent, or, if none, of a friend of the respondent.

2. The petition may be accompanied by any of the following:
 - a. A written statement supporting the petition from a ~~psychiatrist, physician, physician assistant, psychologist, advanced practice registered nurse,~~tier 1 mental health professional or an addiction counselor who is practicing within the professional scope of practice and who has personally examined the respondent within forty-five days of the date of the petition.
 - b. One or more supporting affidavits otherwise corroborating the petition.
3. In assisting the applicant in completing the petition, the state's attorney may direct a ~~qualified~~tier 1 or tier 2 mental health professional designated by the regional human service center to investigate and evaluate the specific facts alleged by the applicant. The investigation must be completed as promptly as possible and include observations of and conversation with the respondent, unless the respondent cannot be found or refuses to meet with the mental health professional. A written report of the results of the investigation must be delivered to the state's attorney. Copies of the report must be made available upon request to the respondent, the respondent's counsel, and any expert examiner conducting an examination under section 25-03.1-11. The state's attorney or retained attorney shall file the petition if the information provided by the petitioner or gathered by investigation provides probable cause to believe that the subject of the petition is a person requiring treatment. A state's attorney who determines there are insufficient grounds for filing a petition may refer the applicant to other community resources. A state's attorney's decision not to institute proceedings may be reviewed under section 11-16-06.

SECTION 22. AMENDMENT. Section 25-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-10. Involuntary treatment - Court-ordered examination.

If the petition is not accompanied by a written supportive statement of a ~~psychiatrist, physician, physician assistant, psychologist, advanced practice registered nurse,~~tier 1 mental health professional or a licensed addiction counselor who has examined the respondent within the last forty-five days, the court shall order the respondent to be examined by an expert examiner of the respondent's own choice or one appointed by the court. The order must state the date and time within which the respondent must appear; the address to which the respondent is to report; a statement that if the respondent fails to appear at the appointed place at or before the ordered date and time, the respondent may be involuntarily taken into custody and transported to the appointed place; and a statement that the expert examiner may consult with or request participation in the examination by a qualified mental health professional and may include with the written examination report any findings or observations by that mental health professional. Accompanying the order must be an explanation of the intended uses and possible effects of this examination. The examination may be conducted at a treatment facility, at the respondent's home, or at any other suitable place in the community. A request for examination at the state hospital must be screened and approved by a regional human service center. The respondent may be accompanied by one or more relatives or friends at the place of the examination. The costs of the court-ordered examination must be borne by the county that is the respondent's place of residence.

⁴² **SECTION 23. AMENDMENT.** Section 25-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-11. Involuntary treatment - Examination - Report.

1. The respondent must be examined within a reasonable time by an expert examiner as ordered by the court. If the respondent is taken into custody under the emergency treatment provisions of this chapter, the examination must be conducted within twenty-four hours, exclusive of holidays, of custody. Any expert examiner conducting an examination under this section may consult with or request participation in the examination by any qualified mental health professional and may include with the written examination report any findings or observations by that mental health professional. This examination report, and that of the independent examiner, if one has been requested, must be filed with the court. The report must contain:
 - a. Evaluations of the respondent's physical condition and mental status.
 - b. A conclusion as to whether the respondent is a person requiring treatment, with a clear explanation of how that conclusion was derived from the evaluation.
 - c. If the report concludes ~~that~~ the respondent is a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.
 - d. The signature of the examiner who prepared the report.
2. For purposes of any examination conducted pursuant to this section:
 - a. An evaluation of a respondent's physical condition may be made only by a licensed physician, physician assistant, psychiatrist, or advanced practice registered nurse~~tier 1b mental health professional~~.
 - b. An evaluation of a respondent's mental status may be made only by a licensed physician, physician assistant, psychiatrist, advanced practice registered nurse, or psychologist trained in a clinical program~~tier 1 mental health professional~~.
 - c. An evaluation of whether the respondent is chemically dependent may be made only by a licensed physician, physician assistant, psychiatrist, advanced practice registered nurse, tier 1 mental health professional or a licensed addiction counselor, or licensed psychologist trained in a clinical program.
3. If the expert examiner concludes ~~that~~ the respondent is not a person requiring treatment, the court may without taking any other additional action terminate the proceedings and dismiss the petition. If the expert examiner concludes ~~that~~ the respondent is a person requiring treatment, or makes no conclusion ~~thereon~~whether the respondent is a person requiring treatment, the court shall set a date for hearing and shall give notice of hearing to the persons designated in section 25-03.1-12. If the respondent is in custody and is alleged to be a person who is mentally ill or a person who is both mentally ill

⁴² Section 25-03.1-11 was also amended by section 2 of Senate Bill No. 2038, chapter 350.

and chemically dependent, the preliminary hearing date must be within four days, exclusive of weekends and holidays, of the date the respondent was taken into custody through emergency commitment under section 25-03.1-25 unless a delay or continuance is concurred in by the respondent or unless extended by the magistrate for good cause shown. If a preliminary hearing is not required, the treatment hearing must be held within four days, exclusive of weekends and holidays, of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served.

SECTION 24. AMENDMENT. Section 25-03.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-18.1. Court-authorized involuntary treatment with prescribed medication.

1. a. Upon notice and hearing, a ~~treating psychiatrist~~ tier 1b mental health professional may request authorization from the court to treat an individual under a mental health treatment order with prescribed medication. The request may be considered by the court in an involuntary treatment hearing. As a part of the request, ~~the treating a psychiatrist and another licensed physician, physician assistant, psychiatrist, or advanced practice registered nurse not involved in the current diagnosis or treatment of the patient or a final year psychiatric resident physician not involved in the current diagnosis or treatment of the patient~~ shall certify:
 - (1) That the proposed prescribed medication is clinically appropriate and necessary to effectively treat the patient and that the patient is a person requiring treatment;
 - (2) That the patient was offered that treatment and refused it or that the patient lacks the capacity to make or communicate a responsible decision about that treatment;
 - (3) That prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the patient; and
 - (4) That the benefits of the treatment outweigh the known risks to the patient.
- b. The court shall inquire whether the patient has had a sufficient opportunity to adequately prepare to meet the issue of involuntary treatment with prescribed medication and, at the request of the patient, the court may continue the involuntary treatment hearing for a period not exceeding seven days or may appoint an independent expert examiner as provided in subsection 4.
2. a. Evidence of the factors certified under subsection 1 may be presented to the court at an involuntary treatment hearing held pursuant to sections 25-03.1-19 and 25-03.1-22, or at a separate hearing after motion and notice. The court in ruling on the requested authorization for involuntary treatment with prescribed medication shall consider all relevant evidence presented at the hearing, including:
 - (1) The danger the patient presents to self or others;
 - (2) The patient's current condition;

- (3) The patient's treatment history;
 - (4) The results of previous medication trials;
 - (5) The efficacy of current or past treatment modalities concerning the patient;
 - (6) The patient's prognosis; and
 - (7) The effect of the patient's mental condition on the patient's capacity to consent.
- b. Involuntary treatment with prescribed medication may not be authorized by the court solely for the convenience of facility staff or for the purpose of punishment.
3. If the factors certified under subsection 1 have been demonstrated by clear and convincing evidence, the court may include in its involuntary treatment order a provision, or it may issue a separate order after notice and hearing, authorizing the ~~treating psychiatrist~~ tier 1b mental health professional to involuntarily treat the patient with prescribed medication on such terms and conditions as are appropriate. The order for involuntary treatment with prescribed medication, however, may not be in effect for more than ninety days.
 4. If a patient has requested an examination by an independent expert examiner under this chapter, and if the ~~treating psychiatrist~~ tier 1b mental health professional has requested authorization for involuntary treatment with prescribed medication, only a psychiatrist or final year psychiatric resident physician may independently examine the patient as to the issue of involuntary treatment with prescribed medication.

SECTION 25. AMENDMENT. Section 32-03-48 of the North Dakota Century Code is amended and reenacted as follows:

32-03-48. Definitions.

As used in sections 32-03-48 through 32-03-50, unless the context otherwise requires:

1. "Critical incident" means any event encountered by emergency service personnel within the scope of their employment which causes them to experience unusually strong emotional reactions that have the potential to interfere with their ability to perform their jobs or that may interfere with their personal lives.
2. "Critical incident stress debriefing" means the process of resolving the effects of critical incidents on emergency service personnel through a structured meeting with both psychological and educational components according to the model approved by the state department of health.
3. "Critical incident stress management team" means those volunteers who are recognized by the state department of health as members of an organized group that provides critical incident stress debriefing services on behalf of the state.

4. "Emergency service personnel" means individuals who provide emergency services to persons requiring medical aid, firefighting services, law enforcement assistance, or other emergency assistance. The term includes law enforcement officers, firefighters, rescue personnel, ambulance personnel, quick response personnel, emergency service dispatchers, nurses, physicians, and other emergency care providers.
5. ~~"Mental health personnel" means psychiatrists, licensed psychologists, licensed social workers, licensed mental health counselors, nurses, members of the clergy, and other individuals approved by the state department of health to function as members of a critical incident stress management team, who have completed appropriate training as approved by the department.~~
6. "Peer support personnel" means those members of a critical incident stress management team who are emergency service personnel and who have completed appropriate training approved by the state department of health.

⁴³ **SECTION 26. AMENDMENT.** Section 43-41-07 of the North Dakota Century Code as amended in section 2 of Senate Bill No. 2033, as approved by the sixty-fifth legislative assembly, is amended and reenacted as follows:

43-41-07. Qualification for licensure by an applicant licensed in another jurisdiction.

1. An applicant may be granted a license upon satisfactory:
 - a. Satisfactory proof to the board that the applicant is licensed in good standing under the laws of another jurisdiction that imposes substantially the same requirements as this chapter ~~and a board determination; or~~
 - b. Determination of the board that at the time of application for licensure under this section the applicant is licensed in good standing under the laws of another jurisdiction and possesses qualifications or experience in the practice of social work which are substantially similar to the minimum requirements for licensure under this chapter.
2. The applicant shall pay the licensure fees specified by the board.

SECTION 27. AMENDMENT. Subdivision b of subsection 1 of section 43-48-15 of the North Dakota Century Code is amended and reenacted as follows:

- b. Being convicted of an offense, as defined by ~~subsection 20 of~~ section 12.1-01-04, and which the board determines has a direct bearing upon a person's ability to serve the public as a licensed clinical laboratory personnel or, following the conviction of any offense, if the board determines that the person is not sufficiently rehabilitated.

SECTION 28. AMENDMENT. Section 49-10.1-05 of the North Dakota Century Code is amended and reenacted as follows:

49-10.1-05. Railroad police.

⁴³ Section 43-41-07 was also amended by section 2 of Senate Bill No. 2033, chapter 299.

Railroad police officers who are designated by a railroad to be licensed under the laws of this state, while engaged in their employment with the railroad, have the authority of a "law enforcement officer" pursuant to subsection 17 of as defined under section 12.1-01-04 for the purpose of arresting any person committing a felony on railroad property or associated with railroad equipment, or to arrest a person committing a misdemeanor involving railroad property or relating to persons or property being transported by the railroad, or awaiting transportation by the railroad, and have the power of removing may remove an individual from a train who has no right to be there, or who is engaging in a conduct prohibited by title 12.1.

SECTION 29. AMENDMENT. Section 50-25.1-03 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-03. Persons required and permitted to report - To whom reported.

1. Any ~~physician, nurse, dentist, optometrist, dental hygienist, medical examiner or coroner;~~ tier 1 mental health professional, tier 2 mental health professional, tier 3 mental health professional, or tier 4 mental health professional as defined under section 25-01-01; or any other medical or mental health professional, religious practitioner of the healing arts, schoolteacher or administrator, school counselor, ~~addiction counselor, social worker,~~ child care worker, foster parent, police or law enforcement officer, juvenile court personnel, probation officer, division of juvenile services employee, or member of the clergy having knowledge of or reasonable cause to suspect that a child is abused or neglected, or has died as a result of abuse or neglect, shall report the circumstances to the department if the knowledge or suspicion is derived from information received by that ~~person~~individual in that ~~person's~~individual's official or professional capacity. A member of the clergy, however, is not required to report such circumstances if the knowledge or suspicion is derived from information received in the capacity of spiritual adviser.
2. Any person having reasonable cause to suspect that a child is abused or neglected, or has died as a result of abuse or neglect, may report such circumstances to the department.
3. A person ~~who has~~having knowledge of or reasonable cause to suspect that a child is abused or neglected, based on images of sexual conduct by a child discovered on a workplace computer, shall report the circumstances to the department.

SECTION 30. AMENDMENT. Section 50-25.2-03 of the North Dakota Century Code is amended and reenacted as follows:

50-25.2-03. Reporting of abuse or neglect - Method of reporting.

1. Any medical or mental health professional or personnel, law enforcement officer, firefighter, member of the clergy, or caregiver having knowledge that a vulnerable adult has been subjected to abuse or neglect, or who observes a vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect, shall report the information to the department or the department's designee or to an appropriate law enforcement agency if the knowledge is derived from information received by that ~~person~~individual in that ~~person's~~individual's official or professional capacity. A member of the clergy, however, is not required to report the information if the knowledge is derived from information received in the

capacity of spiritual adviser. For purposes of this subsection, "medical or mental health professional or personnel" means a professional or personnel providing health care or services to a vulnerable adult, on a full-time or part-time basis, on an individual basis or at the request of a caregiver, and includes a ~~physician, nurse, medical examiner, coroner, dentist, dental hygienist, optometrist, pharmacist, chiropractor, podiatrist, physical therapist, occupational therapist, addiction counselor, counselor, marriage and family therapist, tier 1 through tier 4 mental health professional as defined under section 25-01-01, social worker, mental health professional,~~ emergency medical services personnel, hospital personnel, nursing home personnel, congregate care personnel, or any other person providing medical and mental health services to a vulnerable adult.

2. A report, if required by section 25-01.3-04, satisfies all reporting requirements of this chapter.
3. Any person not required to report under subsection 1 who has reasonable cause to believe that a vulnerable adult has been subjected to abuse or neglect, or who observes a vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect, may report the information to the department or the department's designee or to an appropriate law enforcement agency. A law enforcement agency receiving a report under this section shall immediately notify the department or the department's designee of the report.
4. ~~A person~~An individual required to report under subsection 1 shall make an oral or written report and a person voluntarily reporting under subsection 2 may make an oral or written report, as soon as possible. To the extent reasonably possible, a person who makes a report under this section shall include in the report:
 - a. The name, age, and residence address of the alleged vulnerable adult;
 - b. The name and residence address of the caregiver, if any;
 - c. The nature and extent of the alleged abuse or neglect or the conditions and circumstances that would reasonably be expected to result in abuse or neglect;
 - d. Any evidence of previous abuse or neglect, including the nature and extent of the abuse or neglect; and
 - e. Any other information ~~that~~ in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse or neglect and the identity of the individual responsible for the alleged abuse or neglect.

⁴⁴ **SECTION 31. AMENDMENT.** Section 62.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

62.1-01-01. General definitions.

As used in this title, unless the context otherwise requires:

⁴⁴ Section 62.1-01-01 was also amended by section 1 of House Bill No. 1395, chapter 428.

1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance. "Dangerous weapon" does not include a spray or aerosol containing CS, also known as ortho-chlorobenzamalonitrile; CN, also known as alpha-chloroacetophenone; or other irritating agent intended for use in the defense of an individual, nor does the term include a device that uses voltage for the defense of an individual, unless the device uses a projectile and voltage, then the term includes the device for an individual who is prohibited from possessing a firearm under this title. However, the term includes a device that uses a projectile and may be used to apply multiple applications of voltage during a single incident.
2. "Direct supervision of an adult" means that an adult is present in such close proximity so as to be capable of observing and directing the actions of the individual supervised.
3. "Firearm" or "weapon" means any device which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such device, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon. For a felon who is not sentenced under section 12.1-32-09.1, the term does not include a firearm or weapon that is a rifle that has a barrel sixteen inches [40.64 centimeters] or longer or a shotgun that has a barrel eighteen inches [45.72 centimeters] or longer and which is one of the following:
 - a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured before 1899.
 - b. A replica of any firearm described in subdivision a, if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.
 - c. A muzzleloading rifle or muzzleloading shotgun that is designed to use black powder, or a black powder substitute, and cannot use fixed ammunition.
4. "Gaming site" means any room or premises licensed by the attorney general or by a city or county governing body to conduct legal gaming operations.
5. "Government building" means a building which is owned, possessed, or used by or leased to the state of North Dakota, or any of its political subdivisions.
6. "Handgun" means any firearm that is not designed to be fired from the shoulder, which has a barrel less than sixteen inches [40.64 centimeters] long, and which is capable of firing, by the energy of an explosive in a fixed metallic

cartridge, an exposed projectile through a rifled bore. The term includes all firearms that are designed to be readily modified between rifle and pistol forms, if in compliance with the National Firearms Act [26 U.S.C. 5801-5872].

7. "Law enforcement officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
8. "Machine gun, submachine gun, or fully automatic rifle" means a firearm, mechanism, or instrument not requiring that the trigger be pressed for each shot, and having a reservoir, belt, or other means of storing and carrying ammunition which can be loaded into the firearm, mechanism, or instrument and fired therefrom at a rate of five or more shots to the second.
9. "Mentally deficient individual" means any individual, minor or adult other than a mentally ill individual, who is so mentally defective as to be incapable of managing that individual's affairs and to require supervision, control, and care for that individual's own or the public welfare.
10. "Plain view" means the handgun is placed in such a location or carried in such a position as to be easily discernible by the ordinary observation of a passerby. In a motor vehicle, this includes being placed on the seat, dashboard, or in a gunrack as long as the handgun is not covered or is in any other way concealed from view.
- 40-11. "Rifle" means any firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each pull of the trigger.
- 44-12. "Secured" means the firearm is closed into the trunk or nonpassenger part of the vehicle; placed into a closed and secure carrying device; rendered inoperative by the use of a trigger, hammer, cylinder, slide, or barrel-locking device that renders the firearm incapable of firing until the device is unlocked and removed; or so disassembled or disabled as to be rendered incapable of firing.
- 42-13. "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches [40.64 centimeters] in length and any firearm made from a rifle, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].
- 43-14. "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches [45.72 centimeters] in length and any firearm made from a shotgun, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].
- 44-15. "Shotgun" means a firearm designed or redesigned, made or remade, and intended to be fired with one hand below or behind and one hand in front of the breach, which uses the energy of the explosive in a fixed shotgun shell to fire through a smooth or a rifled bore either a number of ball shot or a single projectile for each single pull of the trigger.

- ~~45-16.~~ "Silencer" means any device for or attached to any firearm which will silence or deaden the sound or natural report of the firearm when it is discharged.
- ~~46-17.~~ "Unloaded" means the chamber of the firearm does not contain a loaded shell. If the firearm is a revolver, then none of the chambers in the cylinder may contain a loaded shell.

SECTION 32. AMENDMENT. Subdivisions b and c of subsection 1 of section 62.1-02-01 of the North Dakota Century Code are amended and reenacted as follows:

- b. A person who has been convicted anywhere of a felony offense of this or another state or the federal government not provided for in subdivision a or who has been convicted of a class A misdemeanor offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another state or the federal government and the offense was committed while using or possessing a firearm, a dangerous weapon, or, as defined in ~~subsections 7 and 8 of~~ section 12.1-01-04, a destructive device or an explosive, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of five years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.
- c. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in this state or elsewhere by a court of competent jurisdiction, other than a person who has had the petition that provided the basis for the diagnosis, confinement, or commitment dismissed under section 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or as a mentally deficient person ~~as defined in section 25-04-04 individual~~, is prohibited from purchasing a firearm or having one in possession or under control. This limitation does not apply to a person who has not suffered from the disability for the previous three years or who has successfully petitioned for relief under section 62.1-02-01.2.

SECTION 33. AMENDMENT. Subdivision b of subsection 1 of section 62.1-02-01.2 of the North Dakota Century Code is amended and reenacted as follows:

- b. Finds that a person is a ~~"mentally deficient person", as defined in subsection 3 of section 25-04-04~~mentally deficient individual;

Approved April 25, 2017

Filed April 25, 2017

CHAPTER 98

SENATE BILL NO. 2300

(Senators Casper, Meyer, Robinson)
(Representatives O'Brien, Vetter, Boe)

AN ACT to amend and reenact section 12.1-17-02 of the North Dakota Century Code, relating to aggravated assault of a peace officer; and to provide a penalty.

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 if that person:
 - a. Willfully causes serious bodily injury to another human being;
 - 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;
 - c. Causes bodily injury or substantial bodily injury to another human being while attempting to inflict serious bodily injury on any human being; or
 - 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:~~
 - a. ~~Is under twelve years of age;~~
 - b. ~~Is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; or the victim suffers~~
 - c. ~~Suffers~~ permanent loss or impairment of the function of a bodily member or organ.

Approved April 3, 2017

Filed April 4, 2017

CHAPTER 99

SENATE BILL NO. 2216

(Senators Dever, Burckhard, Nelson)
(Representatives Karls, J. Nelson, Westlind)

AN ACT to create and enact a new subsection to section 12.1-17-11 of the North Dakota Century Code, relating to the definition of a health care facility; to amend and reenact subsection 1 of section 12.1-17-11 of the North Dakota Century Code, relating to contact by bodily fluids or excrement; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-17-11 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual is guilty of an offense if the individual causes blood, emesis, excrement, mucus, saliva, semen, vaginal fluid, or urine to come in contact with:
 - a. A law enforcement officer acting in the scope of employment;
 - b. An employee of a correctional facility or the department of corrections and rehabilitation acting in the scope of employment unless the employee does an act within the scope of employment which requires or causes the contact;
 - c. ~~Any person~~An individual lawfully present in a correctional facility who is not an inmate;
 - d. ~~Any person~~An individual lawfully present in the penitentiary or an affiliated facility of the penitentiary who is not an inmate; or
 - e. ~~Any person who is~~An individual transporting an individual who is lawfully detained;
 - f. A health care facility employee or contractor acting within the scope of employment unless the employee or contractor is performing an act within the scope of employment which requires or causes the contact; or
 - g. An emergency responder, including a licensed medical services provider, law enforcement officer, firefighter, volunteer firefighter, officer of a nonprofit volunteer fire department, emergency medical technician, emergency nurse, ambulance operator, or a provider of civil defense services, who while acting in the scope of employment is present at a health care facility.

SECTION 2. A new subsection to section 12.1-17-11 of the North Dakota Century Code is created and enacted as follows:

As used in this section, "health care facility" means an office or institution providing health care services or treatment of diseases, whether physical,

mental, or emotional, or other medical, physiological, or psychological conditions, including a hospital; clinic; ambulatory surgery center; outpatient care facility; weight control clinic; nursing home; basic care or assisted living facility; laboratory; or office of any medical professional licensed or registered under title 43 or any individual who is included within a specialty and subspecialty of those fields. The term includes a waiting room, hallway, private room, semiprivate room, ward, and any mobile or temporary facility.

Approved April 19, 2017

Filed April 20, 2017

CHAPTER 100

HOUSE BILL NO. 1218

(Representatives Delmore, Klemin, K. Koppelman, Paur)
(Senators Armstrong, Casper, Luick, Nelson)

AN ACT to amend and reenact subsection 2 of section 12.1-20-07 of the North Dakota Century Code, relating to the offense level for sexual assault; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 12.1-20-07 of the North Dakota Century Code is amended and reenacted as follows:

2. The offense is ~~a class~~:
 - a. A class C felony if the actor's conduct violates subdivision b, c, d, or e of subsection 1, or subdivision f of subsection 1 if the adult is at least twenty-two years of age, ~~a~~; or
 - b. A class A misdemeanor if the actor's conduct violates subdivision f of subsection 1 if the adult is at least eighteen years of age and not twenty-two years of age or older, or ~~a class B~~ misdemeanor if the actor's conduct violates subdivision a of subsection 1.

Approved March 14, 2017

Filed March 15, 2017

CHAPTER 101

HOUSE BILL NO. 1183

(Representatives Boschee, Hanson, K. Koppelman, Maragos, M. Nelson, Roers
Jones)

(Senators Armstrong, D. Larson, Nelson, Piepkorn)

AN ACT to amend and reenact section 12.1-20-12.1, subsection 2 of section 12.1-20-12.2, and subsection 4 of section 12.1-27.2-01 of the North Dakota Century Code, relating to indecent exposure toward minors, surreptitious intrusion, and sexual performances by children; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

12.1-20-12.1. Indecent exposure.

1. A person, with intent to arouse, appeal to, or gratify that person's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that person:
 - a. Masturbates in a public place or in the presence of a minor; or
 - b. Exposes one's penis, vulva, or anus in a public place or to a minor in a public or private place;:
 - c. Exposes one's penis, vulva, or anus by unsolicited electronic means; or
 - d. Exposes one's penis, vulva, or anus by any electronic means to a minor.
2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.2, or after being required to register under section 12.1-32-15.
3. A person who commits a violation of subdivision a or b of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class C felony. A person who commits a violation of subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class B felony.
4. The act of a woman discreetly breastfeeding her child is not a violation of this section.
5. As used in this section, "electronic means" includes images and picture, transmitted via electronic mail, electronic messaging, or from an electronic communications device.

SECTION 2. AMENDMENT. Subsection 2 of section 12.1-20-12.2 of the North Dakota Century Code is amended and reenacted as follows:

2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.1, or after being required to register under section 12.1-32-15, or if the victim is a minor.

SECTION 3. AMENDMENT. Subsection 4 of section 12.1-27.2-01 of the North Dakota Century Code is amended and reenacted as follows:

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;~~
 - a. Sexual intercourse;
 - b. Sodomy, as defined under section 12.1-27.1-01;
 - c. Sexual bestiality;
 - d. Masturbation;
 - e. Sadomasochistic abuse, as defined under section 12.1-27.1-01;
 - f. Lewd exhibition of the buttocks, breasts, or genitals;
 - g. Nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, if depicted for the purpose of the sexual stimulation or the sexual gratification of any individual who may view such depiction; or
 - h. Physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or breasts. It is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 102

HOUSE BILL NO. 1293

(Representatives Grueneich, Dockter, Headland, K. Koppelman, Lefor, Nathe, Oliver,
M. Ruby, Satrom, Seibel)
(Senator Wanzek)

AN ACT to amend and reenact sections 12.1-22-03 and 37-17.1-22 of the North Dakota Century Code, relating to trespassing on posted property and disaster and emergency response recovery costs; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-22-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-22-03. Criminal trespass - Noncriminal offense on posted property.

1. An individual is guilty of a class C felony if, knowing that that individual is not licensed or privileged to do so, the individual enters or remains in a dwelling or in highly secured premises.
2. An individual is guilty of a class A misdemeanor if, knowing that that individual is not licensed or privileged to do so, the individual:
 - a. Enters or remains in or on any building, occupied structure, or storage structure, or separately secured or occupied portion thereof; or
 - b. Enters or remains in any place so enclosed as manifestly to exclude intruders.
3.
 - a. An individual is guilty of a class B misdemeanor if, knowing that that individual is not licensed or privileged to do so, the individual enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the individual in charge of the premises or other authorized individual or by posting in a manner reasonably likely to come to the attention of intruders. The name of the person posting the premises must appear on each sign in legible characters.
 - b. Even if the conduct of the owner, tenant, or individual authorized by the owner varies from the provisions of subdivision a, an individual may be found guilty of violating subdivision a if the owner, tenant, or individual authorized by the owner substantially complied with subdivision a and notice against trespass is clear from the circumstances.
 - c. An individual who violates ~~this subsection~~subdivision a is guilty of a class A misdemeanor for the second or subsequent offense within a two-year period.
4.
 - a. An individual, knowing the individual is not licensed or privileged to do so, may not enter or remain in a place as to which notice against trespass is

- given by posting in a manner reasonably likely to come to the attention of intruders. A violation of this subdivision is a noncriminal offense.
- b. A peace officer shall cite an individual who violates subdivision a with a fine of two hundred fifty dollars for each violation.
 - c. The peace officer citing the individual shall:
 - (1) Take the name and address of the individual; and
 - (2) Notify the individual of the right to request a hearing if posting bond by mail.
- d. The peace officer may not take the individual into custody or require the individual to proceed with the peace officer to any other location for the purpose of posting bond. The officer shall provide the individual with an envelope for use in mailing the bond.
- e. An individual cited may appear before the designated official and pay the statutory fine for the violation at or before the time scheduled for hearing.
- f. If the individual has posted bond, the individual may forfeit bond by not appearing at the designated time.
- g. If the individual posts bond by mail, the bond must be submitted within fourteen days of the date of the citation and the individual cited shall indicate on the envelope or citation whether a hearing is requested. If the individual does not request a hearing within fourteen days of the date of the citation, the bond is deemed forfeited and the individual is deemed to have admitted to the violation and to have waived the right to a hearing on the issue of commission of the violation. If the individual requests a hearing, the court for the county in which the citation is issued shall issue a summons to the individual requesting the hearing notifying the individual of the date of the hearing before the designated official.
- h. Upon appearing at the hearing scheduled in the citation or otherwise scheduled at the individual's request, the individual may make a statement in explanation of the individual's action. The official may at that time waive or suspend the statutory fine or bond.
- i. A citing peace officer may not receive the statutory fine or bond.
- j. The bond required to secure appearance before the judge must be identical to the statutory fine established in subdivision b.
- 4-5. An individual is guilty of a class B misdemeanor if that individual remains upon the property of another after being requested to leave the property by a duly authorized individual. An individual who violates this subsection is guilty of a class A misdemeanor for the second or subsequent offense within a two-year period.
- 5-6. This section does not apply to a peace officer in the course of discharging the peace officer's official duties.

SECTION 2. AMENDMENT. Section 37-17.1-22 of the North Dakota Century Code is amended and reenacted as follows:

~~37-17.1-22. (Effective through June 30, 2017) Disaster or emergency response and recovery costs.~~

~~Whenever the governor declares a state of disaster or emergency in accordance with section 37-17.1-05, or when the governor enters into an agreement with the federal government following a disaster or emergency declared by the president of the United States, the director of the division of homeland security shall determine and record the costs of the state and local response and recovery operations in accordance with an agreement with the federal government, in accordance with procedures established by the governor in the case of a state declared disaster or emergency, and in accordance with procedures established by the state emergency response plan. If the event has met the Stafford Act minimum for a presidential disaster declaration and for which the request is denied, the governor shall make application to the state emergency commission for a grant of funds in an amount equal to the response and recovery costs of the state and fifty percent of the public infrastructure recovery costs above statutorily maintained emergency funds for counties that exceeds twice the individual county federal declaration eligibility threshold, limited to a maximum amount available per disaster of one million dollars and a maximum amount available per biennium of three million dollars. Immediately following the response or recovery operations, or prior thereto if determined necessary by the governor, the governor shall make application to the state emergency commission for a grant of funds in an amount equal to the response and recovery costs of the state. Notwithstanding other provisions of chapter 54-16, it must be conclusively presumed upon receipt by the emergency commission of such application from the governor that a disaster or emergency exists, and the commission immediately shall grant and direct the transfer to the department of the governor's designated representative of an amount equal to that certified in such application by the governor.~~

~~(Effective after June 30, 2017) Disaster or emergency response and recovery costs.~~

~~Whenever the governor declares a state of disaster or emergency in accordance with section 37-17.1-05, or when the governor enters into an agreement with the federal government following a disaster or emergency declared by the president of the United States, the director of the division of homeland security shall determine and record the costs of the state response and recovery operations in accordance with an agreement with the federal government or in accordance with procedures established by the governor in the case of a state-declared disaster or emergency. Immediately following the response or recovery operations, or prior thereto if determined necessary by the governor, the governor shall make application to the state emergency commission for a grant of funds in an amount equal to the response and recovery costs of the state. Notwithstanding other provisions of chapter 54-16, it must be conclusively presumed upon receipt by the emergency commission of such application from the governor that a disaster or emergency exists, and the commission immediately shall grant and direct the transfer to the department of the governors designated representative of an amount equal to that certified in such application by the governor.~~

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved February 23, 2017

Filed February 23, 2017

CHAPTER 103

HOUSE BILL NO. 1426

(Representatives Porter, Kempenich, Rohr, Schmidt)
(Senator Schaible)

AN ACT to amend and reenact subsection 4 of section 12.1-25-01, subsection 1 of section 12.1-25-02, subsection 1 of section 12.1-25-03, and section 12.1-25-04 of the North Dakota Century Code, relating to riot offenses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 12.1-25-01 of the North Dakota Century Code is amended and reenacted as follows:

4. The offense is a class ~~GB~~ felony if it is under subdivision b of subsection 1 ~~and/or~~ the riot involves one hundred or more persons. Otherwise it is a class ~~A misdemeanor~~ ~~C~~ felony.

SECTION 2. AMENDMENT. Subsection 1 of section 12.1-25-02 of the North Dakota Century Code is amended and reenacted as follows:

1. A person is guilty of a class ~~GB~~ felony if ~~he~~ the person:
 - a. Knowingly supplies a firearm, dangerous weapon, or destructive device for use in a riot;
 - b. Teaches another to prepare or use a firearm, dangerous weapon, or destructive device with intent that any such thing be used in a riot; or
 - c. While engaging in a riot, is knowingly armed with a firearm, dangerous weapon, or destructive device.

SECTION 3. AMENDMENT. Subsection 1 of section 12.1-25-03 of the North Dakota Century Code is amended and reenacted as follows:

1. A person is guilty of a class ~~BA~~ misdemeanor if ~~he~~ the person engages in a riot, as defined in section 12.1-25-01.

SECTION 4. AMENDMENT. Section 12.1-25-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-25-04. Disobedience of public safety orders under riot conditions.

A person is guilty of a class ~~BA~~ misdemeanor if, during a riot as defined in section 12.1-25-01, or when one is immediately impending, ~~he~~ the person disobeys a reasonable public safety order to move, disperse, or refrain from specified activities in the immediate vicinity of the riot. A public safety order is an order designed to prevent or control disorder, or promote the safety of persons or property, issued by the senior law enforcement official on the scene.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved February 23, 2017

Filed February 23, 2017

CHAPTER 104

HOUSE BILL NO. 1245

(Representatives Beadle, Blum, Boehning, Maragos, Streytle)
(Senators Casper, Unruh)

AN ACT to amend and reenact subsection 37 of section 12.1-30-03 of the North Dakota Century Code, relating to alcohol establishments open on Sunday; and to repeal section 5-02-05.1 of the North Dakota Century Code, relating to local Sunday alcoholic beverage permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 37 of section 12.1-30-03 of the North Dakota Century Code is amended and reenacted as follows:

37. Premises licensed to dispense beer and alcoholic beverages within the limits prescribed in ~~sections~~section 5-02-05 and ~~5-02-05.1~~.

SECTION 2. REPEAL. Section 5-02-05.1 of the North Dakota Century Code is repealed.

Approved March 13, 2017

Filed March 13, 2017

CHAPTER 105

HOUSE BILL NO. 1222

(Representatives Delmore, Klemin, K. Koppelman, Maragos, Paur, Vetter)
(Senators D. Larson, Luick, Nelson)

AN ACT to create and enact section 12.1-31-01.2 of the North Dakota Century Code, relating to the process for seeking a sexual assault restraining order; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 12.1-31-01.2 of the North Dakota Century Code is created and enacted as follows:

12.1-31-01.2. Sexual assault restraining order - Penalty.

1. For purposes of this section:
 - a. "Second or subsequent violation of a protection order" means two or more violations of protection orders.
 - b. "Sexual assault" means nonconsensual sexual contact as defined in section 12.1-20-07.
2. An individual who is the victim of sexual assault or the parent, stepparent, or guardian of a minor who reasonably believes the minor is a victim of sexual assault may seek a sexual assault restraining order from a court of competent jurisdiction in the manner provided in this section.
3. A petition for relief must allege facts sufficient to show the name of the alleged victim, the name of the individual who committed the sexual assault, and that the individual committed the sexual assault. An affidavit made under oath stating the specific facts and circumstances supporting the relief sought must accompany the petition.
4. If the petition for relief alleges reasonable grounds to believe an individual has committed sexual assault, the court, pending a full hearing, may grant a temporary sexual assault restraining order.
5. A temporary restraining order may be entered only against the individual named in the petition. The order must include prohibiting the individual from:
 - a. Harassing, stalking, or threatening the individual requesting the order;
 - b. Appearing at the individual's residence, school, and place of employment;
and
 - c. Contacting the individual requesting the order.
6. The court may grant a sexual assault restraining order prohibiting the respondent from contacting, harassing, stalking, or threatening the applicant.

and from appearing at the applicant's residence, school, and place of employment if:

- a. An individual files a petition under subsection 3:
 - b. The sheriff serves the respondent with a copy of the temporary restraining order issued under subsections 4 and 5, and with notice of the time and place of the hearing:
 - c. The court sets a hearing for not later than fourteen days after issuance of the temporary restraining order unless the time period is extended upon written consent of the parties, or upon a showing the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence; and
 - d. The court finds after the hearing there are reasonable grounds to believe the respondent committed sexual assault.
7. A restraining order may be issued only against the individual named in the petition. Relief granted by the restraining order may not exceed a period of two years. The restraining order may be served on the respondent by publication pursuant to rule 4 of the North Dakota Rules of Civil Procedure.
8. A sexual assault restraining order must contain a conspicuous notice to the respondent providing:
- a. The specific conduct that constitutes a violation of the order;
 - b. Notice that violation of the restraining order is punishable as a class A misdemeanor; and
 - c. Notice that a peace officer may arrest the respondent without a warrant and take the respondent into custody if the peace officer has probable cause to believe the respondent has violated an order issued under this section.
9. If the respondent knows of an order issued under subsections 4 and 5, or subsection 6, violation of the order is a class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of a protection order is a class C felony. If the existence of an order issued under subsection 3, or subsections 4 and 5 can be verified by a peace officer, the officer, without a warrant, may arrest and take into custody an individual whom the peace officer has probable cause to believe has violated the order.
10. The clerk of court shall transmit a copy of a restraining order by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the alleged victim of sexual assault. Each appropriate law enforcement agency may make available to its officers current information as to the existence and status of any restraining order involving sexual assault.
11. Notwithstanding subsection 5 of section 11-16-05, a state's attorney may advise and assist an individual in the preparation of documents necessary to secure a restraining order under this section.

12. Fees for filing and service of process may not be charged to the petitioner in a proceeding seeking relief due to sexual assault under section 12.1-20-07.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 106

HOUSE BILL NO. 1304

(Representatives Carlson, Headland, K. Koppelman, Porter)
(Senators Armstrong, Casper)

AN ACT to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to prohibiting the wearing of masks, hoods, and face coverings during the commission of a criminal offense; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Wearing of masks during commission of criminal offense prohibited.

1. An individual may not wear a mask, hood, or other device that covers, hides, or conceals any portion of that individual's face:
 - a. With the intent to intimidate, threaten, abuse, or harass any other individual;
 - b. For the purpose of evading or escaping discovery, recognition, or identification during the commission of a criminal offense; or
 - c. For the purpose of concealment, flight, or escape when the individual has been charged with, arrested for, or convicted of a criminal offense.
2. A violation of this section is a class A misdemeanor.

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

Approved February 23, 2017

Filed February 23, 2017

CHAPTER 107

SENATE BILL NO. 2309

(Senators Poolman, Kreun, Unruh, Nelson)
(Representatives Blum, O'Brien)

AN ACT to create and enact a new section to chapter 14-07.1 of the North Dakota Century Code, relating to the establishment of a domestic violence court pilot project; and to amend and reenact section 12-60-23, subsection 9 of section 12.1-31.2-01, subsections 1 and 3 of section 12.1-31.2-02, section 14-07.1-02, and subsections 4 and 5 of section 14-07.1-03 of the North Dakota Century Code, relating to the issuance, transmittal, and registry of protection orders and orders prohibiting contact.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-60-23 of the North Dakota Century Code is amended and reenacted as follows:

12-60-23. Bureau to maintain registry of protection orders, orders prohibiting contact, and restraining orders.

The bureau shall maintain a registry of all orders of which it receives notice under sections 11-15-32, 12.1-31.2-02, 14-07.1-02, and 14-07.1-03.

SECTION 2. AMENDMENT. Subsection 9 of section 12.1-31.2-01 of the North Dakota Century Code is amended and reenacted as follows:

- ~~9. The clerk of court shall transmit a copy of a restraining order by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the alleged victim of disorderly conduct. Each appropriate law enforcement agency may make available to its officers current information as to the existence and status of any restraining order involving disorderly conduct. Whenever a restraining order is issued, extended, modified, or terminated under this section, the court shall transmit the order electronically to the bureau. Unless the order is a temporary order under subsection 4, the bureau shall enter the order electronically in the national crime information center database provided by the federal bureau of investigation, or its successor agency. The sheriff of the county in which the order was issued shall maintain and respond to inquiries regarding the order in the national crime information center database provided by the federal bureau of investigation, or its successor agency, pursuant to bureau and federal requirements. Whenever a restraining order is issued, the clerk of court shall forward a copy of the order to the local law enforcement agency with jurisdiction over the residence of the protected party by the close of business on the day the restraining order is issued. Once the bureau, after consultation with the state court administrator, determines and implements an electronic method to notify the sheriff of the county that issued the order, the clerk of court's requirement to forward the order to a law enforcement agency will be satisfied.~~

SECTION 3. AMENDMENT. Subsections 1 and 3 of section 12.1-31.2-02 of the North Dakota Century Code are amended and reenacted as follows:

1. If an individual who is charged with or arrested for a crime of violence or threat of violence, stalking, harassment, or a sex offense is released from custody before arraignment or trial, the court authorizing the release of the individual shall consider and may issue, ~~if there is no outstanding restraining or protection order prohibiting the individual from having contact with the victim,~~ an order prohibiting the individual from having contact with the victim. The order must contain the court's directives and must inform the individual that any violation of the order constitutes a criminal offense. The state's attorney shall provide a copy of the order to the victim. The court shall determine at the time of the individual's arraignment whether an order issued pursuant to this section will be extended. If the court issues an order pursuant to this section before the time the individual is charged, the order expires at the individual's arraignment or within seventy-two hours of issuance if charges against the individual are not filed.

3. Whenever an order prohibiting contact is issued, modified, extended, or terminated under this section, the clerk of court shall forward a copy of the order within one business day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order ~~for one year or until the date of expiration specified by the order into any information system available in the state that is used by law enforcement agencies to list outstanding warrants.~~ The order is enforceable in any jurisdiction in this state in the central warrant information system and the national crime information center database provided by the federal bureau of investigation, or its successor agency.
 - a. Once the bureau, after consultation with the state court administrator, determines and implements a method to transmit electronically to the bureau an order prohibiting contact, the court electronically shall send the full text of the order as issued, modified, extended, or terminated in accordance with this section and any data fields identified by the bureau. This electronic submission will fulfill the law enforcement agency's requirement to enter the order in the central warrant information system, but will not fulfill its requirement to enter, maintain, and respond to inquiries regarding the order in the national crime information center database provided by the federal bureau of investigation, or its successor agency.
 - b. Once the bureau, after consultation with the state court administrator, determines and implements an electronic method to notify law enforcement about the order, the clerk of court's requirement to forward the order to the law enforcement agency will be satisfied.
 - c. Once the bureau, after consultation with the director of state radio, determines and implements a method to enter the order into the national crime information center database provided by the federal bureau of investigation, or its successor agency, the bureau shall enter the order electronically in the national crime information center database provided by the federal bureau of investigation, or its successor agency. This electronic entry will fulfill the law enforcement agency's requirement to enter the order in the national crime information center database provided by the federal bureau of investigation, or its successor agency, but will not fulfill its requirement to maintain and respond to inquiries regarding the

order in the national crime information center database provided by the federal bureau of investigation, or its successor agency.

SECTION 4. A new section to chapter 14-07.1 of the North Dakota Century Code is created and enacted as follows:

Domestic violence court.

The district court may require an individual who has committed a crime involving domestic violence, as defined in this chapter, or who has violated a domestic violence protection order to complete domestic violence treatment under the direction of the domestic violence court program as a condition of probation in accordance with rules adopted by the supreme court. If the district court finds a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the district court shall revoke the defendant's probation and shall sentence the defendant in accordance with chapter 12.1-32.

⁴⁵ **SECTION 5. AMENDMENT.** Section 14-07.1-02 of the North Dakota Century Code is amended and reenacted as follows:

14-07.1-02. Domestic violence protection order.

1. An action for a protection order commenced by a verified application alleging the existence of domestic violence may be brought in district court by any family or household member or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic violence protection order. An action may be brought under this section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.
2. Upon receipt of the application, the court shall order a hearing to be held not later than fourteen days from the date of the hearing order, or at a later date if good cause is shown.
3. Service must be made upon the respondent at least five days prior to the hearing. If service cannot be made, the court may set a new date.
4. Upon a showing of actual or imminent domestic violence, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:
 - a. Restraining any party from threatening, molesting, injuring, harassing, or having contact with any other person.
 - b. Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the domestic violence is occurring, or from a domestic violence care facility, if this exclusion is necessary to the physical or mental well-being of the applicant or others.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.

⁴⁵ Section 14-07.1-02 was also amended by section 1 of House Bill No. 1402, chapter 116.

- d. Recommending or requiring that either or both parties undergo counseling with a domestic violence program or other agency that provides professional services that the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports must be borne by the parties or, if indigent, by the respondent's county of residence.
 - e. Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorney's fees and costs.
 - f. Awarding temporary use of personal property, including motor vehicles, to either party.
 - g. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or to the chief of police, or the chief's designee, of the city in which the respondent resides.
5. A court of competent jurisdiction may issue a dual protection order restricting both parties involved in a domestic violence dispute if each party has commenced an action pursuant to subsection 1 and the court, after a hearing, has made specific written findings of fact that both parties committed acts of domestic violence and that neither party acted in self-defense. The order must clearly define the responsibilities and restrictions placed upon each party so that a law enforcement officer may readily determine which party has violated the order if a violation is alleged to have occurred.
 6. The court may amend its order or agreement at any time upon subsequent petition filed by either party.
 7. No order or agreement under this section affects title to any real property in any matter.
 8. The petition for an order for protection must contain a statement listing each civil or criminal action involving both parties.
 9. Upon the application of an individual residing within the state, a court may issue a domestic violence protection order or an ex parte temporary protection order under this chapter even though the actions constituting domestic violence occurred exclusively outside the state. In these cases, a respondent is subject to the personal jurisdiction of this state upon entry into this state. If the domestic violence justifying the issuance of a protection order under this chapter occurred exclusively outside the state, the relief that may be granted is limited to an order restraining the party from having contact with or committing acts of domestic violence on another person in this state.

10. Whenever a protection order is issued, extended, modified, or terminated under this section, the court shall transmit the order electronically to the bureau. The bureau shall enter the order electronically in the national crime information center database provided by the federal bureau of investigation, or its successor agency. The sheriff of the county in which the order was issued shall maintain and respond to inquiries regarding the record in the national crime information center database provided by the federal bureau of investigation, or its successor agency, pursuant to bureau and federal requirements. Whenever a protection order is issued, the clerk of court shall forward a copy of the order to the local law enforcement agency with jurisdiction over the residence of the protected party by the close of business on the day the protection order is issued. Once the bureau, after consultation with the state court administrator, determines and implements an electronic method to notify the sheriff of the county that issued the order, the clerk of court's requirement to forward the order to a law enforcement agency will be satisfied.

SECTION 6. AMENDMENT. Subsections 4 and 5 of section 14-07.1-03 of the North Dakota Century Code are amended and reenacted as follows:

4. A full hearing as provided by section 14-07.1-02 must be set for not later than fourteen days from the issuance of the temporary order, or at a later date if good cause is shown. The respondent must be served forthwith with a copy of the ex parte order along with a copy of the application and notice of the date set for the hearing.
5. ~~The clerk of court shall transmit a copy of each temporary protection order, or extension, modification, or termination thereof, by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the applicant or over the residence at which the actual domestic violence that is the subject of the temporary protection order has occurred, or is likely to occur, if requested by the applicant and approved by the court. Each appropriate law enforcement agency may make available information as to the existence and current status of any temporary protection order issued pursuant to this section, through an existing verification system, to any law enforcement officer responding to the scene of reported domestic violence.~~ Whenever a temporary protection order is issued, extended, modified, or terminated under this section, the court shall transmit the order electronically to the bureau. Whenever a temporary protection order is issued, the clerk of court shall forward a copy of the order to the local law enforcement agency with jurisdiction over the residence of the protected party by the close of business on the day the order is issued. Once the bureau, after consultation with the state court administrator, determines and implements an electronic method to notify the sheriff of the county that issued the order, the clerk of court's requirement to forward the order will be satisfied.

Approved March 14, 2017

Filed March 15, 2017

CHAPTER 108

HOUSE BILL NO. 1041

(Legislative Management)
(Incarceration Issues Committee)

AN ACT to create and enact a new section to chapter 12.1-32 and a new section to chapter 54-23.3 of the North Dakota Century Code, relating to presumptive probation and faith-based organizations; to amend and reenact sections 12-44.1-32, 12-54.1-01, 12-59-08, 12.1-17-13, and 12.1-23-05, subdivision c of subsection 1 of section 12.1-32-02, subsection 2 of section 12.1-32-02, subsection 3 of section 12.1-32-07, section 19-03.1-22.3, subsection 1 of section 19-03.1-22.5, subsections 5 and 7 of section 19-03.1-23, subdivision a of subsection 1 of section 19-03.1-23.1, subdivision f of subsection 5 of section 39-08-01, subsection 2 of section 39-20-01, subsection 17 of section 50-06-05.1, and section 50-09-29 of the North Dakota Century Code, relating to sentence reduction credit, medical paroles, domestic violence offender treatment, grading of theft offenses, sentencing alternatives, credit for time spent in custody, terms and conditions of probation, controlled substances, and the supplemental nutrition assistance program; to provide a penalty; to provide for the creation of a pretrial services program pilot project within the department of corrections and rehabilitation; to provide a report to the legislative management; to provide for a report to the legislative assembly; to provide an appropriation; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-32 of the North Dakota Century Code is amended and reenacted as follows:

~~12-44.1-32. Performance-based sentence~~Sentence reduction credit.

~~The presiding judge of a judicial district in which a correctional facility is located, after consultation with the other judges in the district, may authorize the facility administrator to provide for~~An inmate sentenced to a correctional facility under this chapter is eligible to earn sentence reductions based upon performance criteria established ~~throughby~~ the administrator ~~except that sentence reductions may not be given to offenders sentenced under section 12.1-32-09.1, including sentence reduction for good conduct.~~ While incarcerated in a correctional facility, an offender may earn no more than a one-day sentence reduction per six days served.

SECTION 2. AMENDMENT. Section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

~~12-54.1-01. Performance-based sentence~~Sentence reduction.

Except as provided under section 12.1-32-09.1, ~~offenders~~an offender committed to the legal and physical custody of the department of corrections and rehabilitation ~~are~~is eligible to earn sentence reductions based upon performance criteria established through department and penitentiary rules. Performance criteria includes participation in court-ordered or staff-recommended treatment and education programs and good work performance. The department may credit an offender

committed to the legal and physical custody of the department who is eligible for sentence reduction five days good time per month for each month of the sentence imposed. The department may not credit an offender with any sentence reduction for time spent in custody prior to before sentencesentencing and commitment, for time under supervised probation, or for any sentence where the incarceration time is six months or less to the legal and physical custody of the department. The department may not credit an offender with any sentence reduction for time spent on probation under the supervision and management of the department.

SECTION 3. AMENDMENT. Section 12-59-08 of the North Dakota Century Code is amended and reenacted as follows:

12-59-08. EmergencyMedical paroles.

~~If an inmate, including an inmate whose sentence is subject to sections 12.1-32-02.1 and 12.1-32-09.1, and an inmate sentenced under subsection 1 of section 12.1-32-01, has a serious or terminal medical condition, the parole board may consider whether an grant the inmate may receive an emergency a medical parole at a meeting scheduled by the chairman. The board may request the inmate to personally appear before the board before the board makes a decision whether to grant the inmate an emergency parole. The board may grant or deny an emergency parole, or grant a conditional emergency parole, or continue its consideration to another meeting. Two members of the parole board may grant emergency parole, subject to terms and conditions of emergency parole that may be established by the two members of the parole board, or by the department of corrections and rehabilitation with the approval of the parole board. An inmate who receives an emergency a medical parole remains under the jurisdiction of the parole board until the expiration of the maximum term or terms of imprisonment for which the inmate was sentenced, less any sentence reduction the inmate has received.~~

SECTION 4. 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 evaluation and treatment program as determined by the court. 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 findings for the record explaining why an order to complete a domestic violence offender treatment program would be inappropriate.

⁴⁶ **SECTION 5. AMENDMENT.** Section 12.1-23-05 of the North Dakota Century Code is amended and reenacted as follows:

12.1-23-05. Grading of theft offenses.

1. Notwithstanding subsection 3, theft under this chapter is a class A felony if the property or services stolen exceed fifty thousand dollars in value.

⁴⁶ Section 12.1-23-05 was also amended by section 1 of House Bill No. 1269, chapter 164.

2. Notwithstanding the provisions of subsection 3, theft under this chapter is a class B felony if the property or services stolen exceed ten thousand dollars in value but do not exceed fifty thousand dollars or are acquired or retained by a threat to commit a felony.
3. Theft under this chapter is a class C felony if:
 - a. The property or services stolen exceed one thousand dollars in value;
 - b. The property or services stolen are acquired or retained by threat and (1) are acquired or retained by a public servant by a threat to take or withhold official action, or (2) exceed one hundred dollars in value;
 - c. The property or services stolen exceed one hundred dollars in value and are acquired or retained by a public servant in the course of official duties;
 - d. The property stolen is a firearm, ammunition, or an explosive or destructive device, ~~or an automobile, aircraft, or other motor-propelled vehicle;~~
 - e. The property consists of any government file, record, document, or other government paper stolen from any government office or from any public servant;
 - f. The defendant is in the business of buying or selling stolen property and the defendant receives, retains, or disposes of the property in the course of that business;
 - g. The property stolen consists of any implement, paper, or other thing uniquely associated with the preparation of any money, stamp, bond, or other document, instrument, or obligation of this state;
 - h. The property stolen consists of livestock taken from the premises of the owner;
 - i. The property stolen consists of a key or other implement uniquely suited to provide access to property the theft of which would be a felony and it was stolen to gain such access;
 - j. The property stolen is a card, plate, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit, or is a debit card, electronic fund transfer card, code, or other means of access to an account for the purposes of initiating electronic fund transfers; or
 - k. The property stolen is a prescription drug as defined in section 43-15.3-01.
4. All other theft under this chapter is a class A misdemeanor, unless the requirements of subsection 5 are met.
5. Theft under this chapter of property or services of a value not exceeding five hundred dollars is a class B misdemeanor if:
 - a. The theft was not committed by threat;

- b. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft; and
- c. The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of official duties.

The special classification provided in this subsection applies if the offense is classified under this subsection in the charge or if, at sentencing, the required factors are established by a preponderance of the evidence.

6. Notwithstanding subsection 3 of section 12.1-06-01, an attempt to commit a theft under this chapter is punishable equally with the completed offense when the actor has completed all of the conduct which the actor believes necessary on the actor's part to complete the theft except receipt of the property.
7. For purposes of grading, the amount involved in a theft under this chapter is the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that the actor was stealing, or which the actor could reasonably have anticipated to have been the property or services involved. Thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be charged as one offense and the amounts proved to have been stolen may be aggregated in determining the grade of the offense.

SECTION 6. AMENDMENT. Subdivision c of subsection 1 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

- c. A term of imprisonment, including intermittent imprisonment:
 - (1) In a state correctional facility in accordance with section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a class A misdemeanor.
 - (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
 - (3) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based or faith-based programs.
 - (4) In the case of persons convicted of an offense who are under eighteen years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the department of corrections and rehabilitation.

SECTION 7. AMENDMENT. Subsection 2 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

2. Credit against any sentence to a term of imprisonment must be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed or as a result of the conduct on which such charge was based. "Time spent in custody" includes time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal. The total amount of credit the defendant is entitled to for time spent in custody and

any credit for sentence reduction under section 12-44.1-32 or 12-54.1-01 the defendant is entitled to must be stated in the criminal judgment.

SECTION 8. AMENDMENT. Subsection 3 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

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;
- 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; or
- k. One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.

SECTION 9. A new section to chapter 12.1-32 of the North Dakota Century Code is created and enacted as follows:

Presumptive probation.

1. The sentencing court shall sentence an individual who has pled guilty to, or has been found guilty of, a class C felony offense or class A misdemeanor

offense to a term of probation at the time of initial sentencing, except for an offense involving domestic violence; an offense subject to registration under section 12.1-32-15; an offense involving a firearm or dangerous weapon, explosive, or incendiary device; or if a mandatory term of incarceration is required by law.

2. The sentencing court may impose a sentence of imprisonment if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. Aggravating factors include:
 - a. That the individual has plead guilty to, or has been found guilty of, a felony offense or class A misdemeanor offense prior to the date of the commission of the offense or offenses charged in the complaint, information, or indictment;
 - b. The age and vulnerability of the victim, whether the individual was in a position of responsibility or trust over the victim, or whether the individual abused a public position of responsibility or trust; or
 - c. If the individual used threats or coercion in the commission of the offense.
3. This section does not preclude the sentencing court from deferring imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an individual to a term of incarceration with credit for time spent in custody if execution of the sentence is suspended.

⁴⁷ **SECTION 10. AMENDMENT.** Section 19-03.1-22.3 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.

A person who intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance, unless the substance was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, is guilty of a class AB misdemeanor if the controlled substance is marijuana. Otherwise, the offense is a class A misdemeanor. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, injected, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

SECTION 11. AMENDMENT. Subsection 1 of section 19-03.1-22.5 of the North Dakota Century Code is amended and reenacted as follows:

1. The use of controlled substance analog includes the ingestion, inhalation, absorption, or any other method of taking the controlled substance analog into the body. An individual who intentionally uses a controlled substance analog is guilty of a class C-felonyA misdemeanor for a first offense and a class C felony for a second or subsequent offense, unless the individual obtains the analog directly from a practitioner or pursuant to a valid prescription or order of a practitioner.

⁴⁷ Section 19-03.1-22.3 was also amended by section 5 of House Bill No. 1269, chapter 164.

⁴⁸ **SECTION 12. AMENDMENT.** Subsections 5 and 7 of section 19-03.1-23 of the North Dakota Century Code are amended and reenacted as follows:

5. A violation of this ~~chapter~~title or a law of another state or the federal government which is equivalent to an offense with respect to the manufacture, delivery, or intent to deliver a controlled substance under this ~~chapter~~title committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, 3, and 4. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.

7.
 - a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class A misdemeanor for a first offense under this subsection and a class C felony for a second or subsequent offense under this subsection. If, at the time of the offense the person is in or on, ~~or within one thousand feet [300.48 meters]~~ of the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves ~~one ounce [28.35 grams] or less of marijuana~~. Any person who violates this subsection regarding possession of ~~one ounce [28.35 grams] or less of marijuana~~ is guilty of a class B misdemeanor.

 - b. If an individual is sentenced to the legal and physical custody of the department of corrections and rehabilitation under this subsection, the department may place the individual in a drug and alcohol treatment program designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the individual from imprisonment to begin any court-ordered period of probation.

 - c. If the individual is not subject to any court-ordered probation, the court shall order the individual to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court.

 - d. Probation under this subsection may include placement in another facility, treatment program, or drug court. If an individual is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.

 - e. An individual incarcerated under this subsection as a result of a second probation revocation is not eligible for release from imprisonment upon the successful completion of treatment.

⁴⁸ Section 19-03.1-23 was also amended by section 6 of House Bill No. 1269, chapter 164, section 1 of House Bill No. 1341, chapter 165, and section 2 of House Bill No. 1341, chapter 165.

⁴⁹ **SECTION 13. AMENDMENT.** Subdivision a of subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

- a. The offense was committed during a school-sponsored activity or was committed during the hours of six a.m. to ten p.m. if school is in session, the offense involved the manufacture, delivery, or possession, with intent to manufacture or deliver a controlled substance in or on, or within ~~one thousand feet [300.48 meters]~~three hundred feet [91.4 meters] of, the real property comprising a ~~child-care or preschool facility, a~~ public or private elementary or secondary school, or a public career and technical education school, ~~or a public or private college or university;~~

⁵⁰ **SECTION 14. AMENDMENT.** Subdivision f of subsection 5 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

- f. If the offense is subject to subdivision a or b, a municipal court or district court may not suspend a sentence, but may convert each day of a term of imprisonment to ten hours of community service for an offense subject to paragraph 2 of subdivision a. If the offense is subject to subdivision c, the district court may suspend a sentence, except for sixty days' imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the offense is subject to subdivision d, the district court may suspend a sentence, except for one year's imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the defendant is found to be in need of alcohol and substance abuse treatment and rehabilitation, the district court may order the defendant placed under the supervision and management of the department of corrections and rehabilitation and is subject to the conditions of probation under section 12.1-32-07. The district court may require the defendant to complete alcohol and substance abuse treatment and rehabilitation under the direction of the drug court program as a condition of probation in accordance with rules adopted by the supreme court. The district court may terminate probation under this section when the defendant completes the drug treatment program. If the district court finds that a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the district court shall revoke the defendant's probation and shall sentence the defendant in accordance with this subsection.

⁵¹ **SECTION 15. AMENDMENT.** Subsection 2 of section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

⁴⁹ Section 19-03.1-23.1 was also amended by section 7 of House Bill No. 1269, chapter 164, section 1 of House Bill No. 1270, chapter 167, and section 3 of House Bill No. 1341, chapter 165.

⁵⁰ Section 39-08-01 was also amended by section 1 of Senate Bill No. 2176, chapter 268, and section 2 of Senate Bill No. 2176, chapter 268.

⁵¹ Section 39-20-01 was also amended by section 4 of Senate Bill No. 2176, chapter 268.

2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, ~~except individuals mentioned in section 39-20-03,~~ under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall determine which of the tests is to be used.

⁵² **SECTION 16. AMENDMENT.** Subsection 17 of section 50-06-05.1 of the North Dakota Century Code is amended and reenacted as follows:

17. To act as the official agency of the state in the administration of the supplemental nutrition assistance program and to direct and supervise county administration of that program. Provided, however, that the department with the consent of the budget section of the legislative management may terminate the program if the rate of federal financial participation in administrative costs provided under Public Law 93-347 is decreased or limited, or if the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act. ~~Unless at least seven years has elapsed since the most recent felony conviction that has as an element the possession, use, or distribution of a controlled substance,~~ The department shall not deny assistance under the supplemental nutrition assistance program to any individual who has been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].

SECTION 17. AMENDMENT. Section 50-09-29 of the North Dakota Century Code is amended and reenacted as follows:

50-09-29. Requirements for administration of temporary assistance for needy families.

1. Except as provided in subsections 2, 3, and 4, the department of human services, in its administration of the temporary assistance for needy families program, shall:
 - a. Provide assistance to otherwise eligible women in the third trimester of a pregnancy;
 - b. Except as provided in subdivision c, afford eligible households benefits for no more than sixty months;
 - c. Exempt eligible households from the requirements of subdivision b due to mental or physical disability of a parent or child, mental or physical incapacity of a parent, or other hardship including a parent subject to domestic violence as defined in section 14-07.1-01;
 - d. Unless an exemption, exclusion, or disregard is required by law, count income and assets whenever actually available;

⁵² Section 50-06-05.1 was also amended by section 3 of House Bill No. 1136, chapter 331.

- e. Except as provided in subdivision j, and as required to allow the state to receive funds from the federal government under title IV-A, provide no benefits to noncitizen immigrants who arrive in the United States after August 21, 1996;
- f. Limit eligibility to households with total available assets, not otherwise exempted or excluded, of a value established by the department;
- g. Exclude one motor vehicle of any value in determining eligibility;
- h. Require work activities for all household members not specifically exempted by the department of human services for reasons such as mental or physical disability of a parent or child or mental or physical incapacity of a parent;
- i. Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies and establish numerical goals for reducing the illegitimacy rate for the state for periods through calendar year 2005;
- j. To the extent required to allow the state to receive funds from the federal government under title IV-A, provide benefits to otherwise eligible noncitizens who are lawfully present in the United States;
- k. Establish and enforce standards against program fraud and abuse;
- l. Provide employment placement programs;
- m. Exempt from assets and income the savings and proportionate matching funds in individual development accounts;
- n. Determine the unemployment rate of adults living in a county that includes Indian reservation lands and a significant population of Indian individuals by using unemployment data provided by job service North Dakota;
- o. When appropriate, require household members to complete high school;
- p. To the extent required to allow the state to receive funds from the federal government under title IV-A, exempt single parents from required work activities;
- q. Provide for sanctions, including termination of assistance to the household, if a household member fails to cooperate with work requirements;
- r. Provide for sanctions, including termination of assistance to the household, if a household member fails, without good cause, to cooperate with child support activities;
- s. Deny assistance with respect to a minor child absent from the household for more than one calendar month, except as specifically provided by the state agency for absences;
- t. Require each household to participate in developing an individual employment plan and provide for sanctions, including termination of assistance to the household, if adult or minor household members age

- sixteen or older fail to cooperate with the terms of the individual employment plan;
- u. Provide pre-pregnancy family planning services that are to be incorporated into the temporary assistance for needy families program assessment;
 - v. Except in cases of pregnancy resulting from rape or incest, not increase the assistance amount to recognize the increase in household size when a child is born to a household member who was a recipient of assistance under this chapter during the probable month of the child's conception;
 - w. Disregard earned income as an incentive allowance for no more than twelve months; and
 - x. Consider, and if determined appropriate, authorize demonstration projects in defined areas which may provide benefits and services that are not identical to benefits and services provided elsewhere; and
 - y. ~~Unless at least seven years has elapsed since the most recent felony conviction that has as an element the possession, use, or distribution of a controlled substance, deny assistance to any individual who has been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].~~
2. If the secretary of the United States department of health and human services determines that funds otherwise available for the temporary assistance for needy families program in this state must be reduced or eliminated should the department of human services administer the program in accordance with any provision of subsection 1, the department of human services shall administer the program in a manner that avoids the reduction or loss.
 3. If the department of human services determines, subject to the approval of the legislative management, that there is insufficient worker opportunity, due to increases in the unemployment rate, to participate in work activities, the department may administer the temporary assistance for needy families program in a manner different than provided in subsection 1.
 4. If the department of human services determines, subject to the approval of the legislative management, that administration of the temporary assistance for needy families program, in the manner provided by subsection 1, causes otherwise eligible individuals to become a charge upon the counties under chapter 50-01, the department may administer the program in a manner that avoids that result.
 5. The department of human services may not deny assistance to any individual who has been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substance Act [21 U.S.C. 802(6)].

SECTION 18. A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

Faith-based programming.

1. The department of corrections and rehabilitation, with contracts through the department of human services and through the implementation of the community behavioral health program, shall allow faith-based organizations to provide services to individuals who need addiction treatment services.
2. For purposes of this section "faith-based organization" means a nonprofit corporation or association operated by a religious or denominational organization, including an organization operated for religious, educational, or charitable purposes and which is operated, supervised, or controlled by or in connection with a religious organization, or an organization that has a mission statement, policies, or practices clearly demonstrating the organization is guided or motivated by faith.

SECTION 19. PRETRIAL SERVICES DIVISION PILOT PROJECT - REPORT TO LEGISLATIVE ASSEMBLY. The department of corrections and rehabilitation may establish a pretrial services program as a pilot project in one or more judicial districts during the biennium beginning July 1, 2017, and ending June 30, 2019. The pretrial services pilot project must involve coordination among the department, the judicial branch, the commission on legal counsel for indigents, and state and local law enforcement agencies for the provision of pretrial services by the department for the district courts to individuals charged with felony offenses. Pretrial services include risk assessments, background and criminal history background investigations, recommendations for conditions of pretrial release, monitoring and supervision of individuals on pretrial release for compliance with pretrial conditions to assure the individual's appearance at all court proceedings, and reporting violations of pretrial release conditions to the district court. The department and the judicial branch shall provide a report of the process and outcome measures of the pretrial services program and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

SECTION 20. JUSTICE REINVESTMENT INITIATIVE - REPORT TO LEGISLATIVE MANAGEMENT - REPORT TO LEGISLATIVE ASSEMBLY. Before September 1, 2018, the department of corrections and rehabilitation and the supreme court shall provide a report to the legislative management regarding the progress of the justice reinvestment initiative. The department of corrections and rehabilitation and the supreme court shall provide a report on the progress of the justice reinvestment initiative to the sixty-sixth legislative assembly.

SECTION 21. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$110,916, or so much of the sum as may be necessary, and \$1,532,785 from federal funds, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing sections 16 and 17 of this Act, for the period beginning with the effective date of this section, and ending June 30, 2019.

SECTION 22. EFFECTIVE DATE. Sections 8 and 9 of this Act become effective January 1, 2018.

SECTION 23. EMERGENCY. Sections 1 through 5, 7, 10 through 17, and 21 of this Act are declared to be an emergency measure.

Approved April 21, 2017

Filed April 21, 2017

CHAPTER 109

HOUSE BILL NO. 1195

(Representatives Klemin, Maragos, Schneider)
(Senators Hogue, D. Larson, Mathern)

AN ACT to create and enact a new section to chapter 12.1-32 of the North Dakota Century Code, relating to imprisonment of minors; to amend and reenact subsection 4 of section 12.1-20-03 of the North Dakota Century Code, relating to gross sexual imposition; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 12.1-20-03 of the North Dakota Century Code is amended and reenacted as follows:

4. If, as a result of injuries sustained during the course of an offense under this section, the victim dies, the offense is a class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed unless the defendant was a juvenile at the time of the offense.

SECTION 2. A new section to chapter 12.1-32 of the North Dakota Century Code is created and enacted as follows:

Juveniles - Sentencing - Reduction.

1. Notwithstanding any other provision of law, a court may reduce a term of imprisonment imposed upon a defendant convicted as an adult for an offense committed and completed before the defendant was eighteen years of age if:
 - a. The defendant has served at least twenty years in custody for the offense;
 - b. The defendant filed a motion for reduction in sentence; and
 - c. The court has considered the factors provided in this section and determined the defendant is not a danger to the safety of any other individual, and the interests of justice warrant a sentence modification.
2. A defendant whose sentence is reduced under this section must be ordered to serve a period of supervised release of at least five years upon release from imprisonment. The conditions of supervised release and any modification or revocation of the term of supervised release must be in accordance with this chapter.
3. When determining whether to reduce a term of imprisonment under this section, the court shall consider:
 - a. The factors provided in section 12.1-32-04, including the nature of the offense;
 - b. The age of the defendant at the time of the offense;

- c. A report and recommendation from the department of corrections and rehabilitation, including information relating to the defendant's ability to comply with the rules of the institution and whether the defendant completed any educational, vocational, or other prison programming;
 - d. A report and recommendation from the state's attorney for any county in which the defendant was prosecuted;
 - e. Whether the defendant has demonstrated maturity, rehabilitation, and a fitness to re-enter society sufficient to justify a sentence reduction;
 - f. A statement by a victim or a family member of a victim who was impacted by the actions of the defendant;
 - g. A report of a physical, mental, or psychiatric examination of the defendant conducted by a licensed health care professional;
 - h. The defendant's family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system;
 - i. The role of the defendant in the offense and whether an adult also was involved in the offense;
 - j. The diminished culpability of juveniles compared to adults and the level of maturity and failure to appreciate the risks and consequences; and
 - k. Any additional information the court determines relevant.
4. A defendant may make a second motion for a reduction in sentence under this section no earlier than five years after the initial motion for reduction.
5. A defendant may make a final motion for a reduction in sentence no earlier than five years after the order for a second motion was filed.

Approved April 17, 2017

Filed April 17, 2017

CHAPTER 110

HOUSE BILL NO. 1058

(Representatives Paur, Trotter, K. Koppelman)
(Senators Hogue, Campbell)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵³ **SECTION 1. AMENDMENT.** Subsection 7 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

7. Registration consists of a written statement signed by the individual, giving the information required by the attorney general, and the biometric data 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, biometric data, 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 register~~, within three days after the change, with 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 register~~, at least ten days before the change, with 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, ~~the individual shall inform in writing register~~ within ~~five~~three days of the termination with 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

⁵³ Section 12.1-32-15 was also amended by section 1 of House Bill No. 1334, chapter 111, and section 1 of Senate Bill No. 2303, chapter 112.

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 biometric data portion of the registration if that agency has a set of biometric data on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration.

Approved April 11, 2017

Filed April 12, 2017

CHAPTER 111

HOUSE BILL NO. 1334

(Representatives Meier, Delmore, Karls, Klemin, Porter, Steiner)
(Senators Myrdal, Oehlke, Schaible)

AN ACT to amend and reenact section 12.1-32-15 of the North Dakota Century Code, relating to registration requirements for sexual offenders; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁴ **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 section 14-09-22, 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. "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.
 - 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.

⁵⁴ Section 12.1-32-15 was also amended by section 1 of House Bill No. 1058, chapter 110, and section 1 of Senate Bill No. 2303, chapter 112.

- f. "Reside" means to live permanently or be situated for a considerable time in a home or a particular place.
- g. "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, 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.
- g-h. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.
- h-i. "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.

- d. 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 biometric data 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, biometric data, 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 biometric data portion of the registration if that agency has a set of biometric data 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. An individual assessed as a high-risk sexual offender in accordance with subsection 12, may not reside within five hundred feet [152.4 meters] of a public or nonpublic preschool or elementary, middle, or high school.

14. 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.

44-15. 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.

45-16. 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.

46-17. 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.

47-18. 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.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 112

SENATE BILL NO. 2303

(Senators D. Larson, Luick, Schaible)
(Representatives Karls, Keiser)

AN ACT to amend and reenact subsections 2 and 7 of section 12.1-32-15 of the North Dakota Century Code, relating to registration requirements for sexual offenders; and to provide a contingent effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁵ **SECTION 1. AMENDMENT.** Subsections 2 and 7 of section 12.1-32-15 of the North Dakota Century Code are amended and reenacted as follows:

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 of the individual's place of residence, 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:
 - a. 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.
 - b. 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.
 - c. 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.

⁵⁵ Section 12.1-32-15 was also amended by section 1 of House Bill No. 1058, chapter 110, and section 1 of House Bill No. 1334, chapter 111.

- d. 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.
7. Registration consists of a written or electronic statement signed by the individual, giving the information required by the attorney general, and the biometric data 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, biometric data, 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~~ having local jurisdiction of the individual's place of residence 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~~ having local jurisdiction of the individual's place of residence 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~~ having local jurisdiction of the individual's place of residence. 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 also shall also register within three days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. If an individual required to register in North Dakota, including in a tribal registry, resides in another state or on tribal lands, that individual shall register employment and school addresses and any changes in required registration information with the law enforcement agency having local jurisdiction over the school or employment address. 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 biometric data portion of the registration if that agency has a set of biometric data 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.

SECTION 2. CONTINGENT EFFECTIVE DATE. This Act becomes effective on the date the attorney general certifies to the legislative council that the registration process provided in section 1 of this Act is operational.

Approved April 13, 2017

Filed April 13, 2017

CHAPTER 113

HOUSE BILL NO. 1194

(Representatives Klemin, Heinert, K. Koppelman)
(Senators Hogue, D. Larson)

AN ACT to create and enact a new section to chapter 12.1-34 of the North Dakota Century Code, relating to providing a victim's rights card; and to amend and reenact subsections 6 and 10 of section 12.1-34-01, subsections 1, 2, and 6 of section 12.1-34-02, and subsection 1 of section 12.1-34-06 of the North Dakota Century Code, relating to treatment standards for victims.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 6 and 10 of section 12.1-34-01 of the North Dakota Century Code are amended and reenacted as follows:

6. "Family member" includes a spouse, child, sibling, parent, grandparent, grandchild, legal guardian, or custodian of a victim, and any person with a relationship to the victim which is substantially similar to a relationship specified in this section.
10. "Victim" means a natural person who has suffered direct or threatened physical, financial, or ~~emotional~~ psychological harm ~~where there is probable cause to believe that the harm has been caused by the commission of a criminal act as the result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed.~~ The term "victim" includes the family members of a minor, incompetent, incapacitated, or deceased person. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

⁵⁶ **SECTION 2. AMENDMENT.** Subsections 1, 2, and 6 of section 12.1-34-02 of the North Dakota Century Code are amended and reenacted as follows:

1. Informed by those entities that have contact with the victim or witness as to the availability of and the methods available for registration with the statewide automated victim information and notification system. Those entities include law enforcement, prosecuting attorneys, the courts, and custodial authorities. A victim or witness who clearly objects to registration may not be required to register with the system or must be able to opt out of the system. A victim has the right to:
 - a. Prevent the disclosure of confidential or privileged information about the victim or the victim's family; and
 - b. Be notified of any request for identifying information or confidential or privileged information about the victim or victim's family.
2. Informed as to status of investigation. Victims and witnesses, upon request, must be informed by law enforcement authorities investigating a criminal case

⁵⁶ Section 12.1-34-02 was also amended by section 1 of House Bill No. 1345, chapter 308.

of the status of the investigation, except where the prosecuting attorney or law enforcement authority determines that to disclose such information would unreasonably interfere with the investigation, until such time as the alleged offender is apprehended or the investigation is closed. A victim, upon request, must be allowed to confer with the prosecuting attorney.

6. Services available. Victims and witnesses must be informed by the prosecuting attorney and arresting law enforcement agency of all appropriate and available public or private programs that provide counseling, treatment, or support for victims and witnesses, including rape crisis centers, victim and witness assistance programs, elderly victim services, victim assistance hotlines, social service agencies, and domestic violence programs. Victims and witnesses must be informed of the right to seek the advice of an attorney. The prosecuting attorney and law enforcement authority shall advise victims eligible for services of the relevant provisions of chapter 54-23.4.

SECTION 3. AMENDMENT. Subsection 1 of section 12.1-34-06 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 4. A new section to chapter 12.1-34 of the North Dakota Century Code is created and enacted as follows:

Victim's rights card.

The attorney general shall develop a card containing the rights of victims as provided in this chapter and section 25 of article I of the Constitution of North Dakota to be distributed to all crime victims.

Approved April 17, 2017

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