

CRIMINAL CODE

CHAPTER 162

HOUSE BILL NO. 1434
(Representatives Scherber, Ring, Martinson)
(Senators Yockim, Olson, Mushik)

CORPORAL PUNISHMENT IN SCHOOLS

AN ACT to create and enact a new section to chapter 15-47 of the North Dakota Century Code, relating to the use of corporal punishment by school district employees; and to amend and reenact subsection 1 of section 12.1-05-05 of the North Dakota Century Code, relating to the use of force by persons responsible for minors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-05-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. ~~A~~ Except as provided in section 2 of this Act, a parent, guardian, or other person responsible for the care and supervision of a minor, or ~~teacher, or~~ other person responsible for the care and supervision of such a minor for a special purpose, or a person acting at the direction of any of the foregoing persons, may use reasonable force upon the minor for the purpose of safeguarding or promoting his welfare, including prevention and punishment of his misconduct, and the maintenance of proper discipline. The force may be used for this purpose, whether or not it is "necessary" as required by subsection 1 of section 12.1-05-07. The force used must not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.

SECTION 2. A new section to chapter 15-47 of the North Dakota Century Code is hereby created and enacted to read as follows:

Corporal punishment - Prohibited - Guidelines. No school district employee may inflict, cause to be inflicted, or threaten to inflict corporal punishment on a pupil. For purposes of this section, corporal punishment means the willful infliction of, willfully causing the infliction of, or willfully allowing the infliction of physical pain on a pupil. This section does not prohibit the use of force that is necessary for a school district employee to quell a physical disturbance threatening physical injury to a person or damage to property, to quell a verbal disturbance, for the purposes of self-defense, for the preservation of order, or to obtain possession of weapons or other dangerous objects within the control of a pupil. Physical pain or discomfort caused by athletic competition or other recreational activities voluntarily engaged in by a pupil is not corporal punishment. Each school board shall develop policies defining expected student behavior and procedures to follow in the event the standard of expected student behavior is violated.

CHAPTER 163

SENATE BILL NO. 2164
(Committee on Judiciary)
(At the request of the Attorney General)

INCEST

AN ACT to amend and reenact section 12.1-20-11 of the North Dakota Century Code, relating to the definition of the crime of incest.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-20-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-20-11. Incest. A person who intermarries, cohabits, or ~~has sexual intercourse~~ engages in a sexual act with another person related to him within a degree of consanguinity within which marriages are declared incestuous and void by section 14-03-03, knowing such other person to be within said degree of relationship, is guilty of a class C felony.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 164

SENATE BILL NO. 2052
(Legislative Council)
(Interim Judiciary Committee)

IMMUNODEFICIENCY VIRUS PROCEDURES

AN ACT to create and enact a new section to chapter 12.1-20 and chapter 23-07.4 of the North Dakota Century Code, relating to transfer of body fluids that may contain the human immunodeficiency virus and public health procedures for persons with the human immunodeficiency virus infection; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

Transfer of body fluid that may contain the human immunodeficiency virus - Definitions - Defenses - Penalty.

1. As used in this section, unless the context otherwise requires:
 - a. "Body fluid" means semen, irrespective of the presence of spermatozoa; blood; or vaginal secretion.
 - b. "Transfer" means to engage in sexual activity by genital-genital contact, oral-genital contact, or anal-genital contact, or to permit the reuse of a hypodermic syringe, needle, or similar device without sterilization.
2. A person who, knowing that that person is or has been afflicted with acquired immune deficiency syndrome, afflicted with acquired immune deficiency syndrome related complexes, or infected with the human immunodeficiency virus, willfully transfers any of that person's body fluid to another person is guilty of a class A felony.
3. It is an affirmative defense to a prosecution under this section that if the transfer was by sexual activity, the sexual activity took place between consenting adults after full disclosure of the risk of such activity and with the use of an appropriate prophylactic device.

SECTION 2. Chapter 23-07.4 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-07.4-01. Public health procedures for persons with human immunodeficiency virus infection. Subject to this chapter, the state health officer or a designee of the state health officer may examine or cause to be

examined a person reasonably believed to be infected with or to have been exposed to the human immunodeficiency virus.

1. Orders or restrictive measures directed to a person with human immunodeficiency virus infection must be used as the last resort when other measures to protect the public health have failed, including all reasonable efforts, which must be documented, to obtain the voluntary cooperation of the person who may be subject to the order or measure. The orders and measures must be applied serially with the least intrusive measures used first. The burden of proof is on the state health officer or a designee of the state health officer to show that specified grounds exist for the issuance of the orders or restrictive measures and that the terms and conditions imposed are no more restrictive than necessary to protect the public health.
2. When the state health officer or a designee of the state health officer knows or has reason to believe, because of medical or epidemiological information, that a person within that official's jurisdiction has human immunodeficiency virus infection and is a danger to the public health, that official may issue an order, according to the following priority, to:
 - a. Require the person to be examined and tested to determine whether the person has human immunodeficiency virus infection;
 - b. Require a person with human immunodeficiency virus infection to report to a qualified physician or health worker for counseling on the disease and for information on how to avoid infecting others; or
 - c. Direct a person with human immunodeficiency virus infection to cease and desist from specified conduct that endangers the health of others, but only if that official has determined that clear and convincing evidence exists to believe that the person has been ordered to report for counseling as provided in subdivision b and continues to demonstrate behavior that endangers the health of others.
3. If a person violates an order issued under subdivision c of subsection 2 and it is shown that the person is a danger to others, the state health officer or a designee of the state health officer may enforce the order by imposing such restrictions upon the person as are necessary to prevent the specific conduct that endangers the health of others. Restrictions must be in writing, setting forth the name of the person to be restricted and the initial period of time, not to exceed ninety days, during which the order remains effective, the terms of the restrictions, and any other conditions as may be necessary to protect the public health. Restrictions must be imposed in the least restrictive manner necessary to protect the public health.
4. Upon issuance of any order under subsection 2 or 3, the state health officer or a designee of the state health officer shall promptly, personally, and confidentially notify the person who is the subject of the order, stating the grounds and provisions of the order and the right to contest the order, the right to be present

at a judicial hearing in the county court in the county in which the person resides to review the order, and the right to be represented by counsel during the hearing. If the person who is the subject of the order refuses to comply with the order and refuses to cooperate voluntarily with the state health officer or a designee of the state health officer, the state health officer or designee may petition the county court in the county in which the person resides for an order of compliance. The state health officer or designee shall request the state's attorney in the county in which the person resides to file the petition in the county court. If an order of compliance is requested, the court shall hear the matter within ten days after the request. Notice of the place, date, and time of the court hearing must be made by personal service or, if the person is not available, must be mailed to the person who is the subject of the order by certified mail at the person's last known address. Proof of mailing by the state health officer or designee is sufficient notice under this section. The burden of proof is on the state health officer or designee to show by clear and convincing evidence that the specified grounds exist for the issuance of the order and for the need for compliance and that the terms and conditions imposed in the order are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order. If the court dismisses the order, the fact that the order was issued must be expunged from the records of the state department of health and consolidated laboratories. If the court affirms or modifies the order and the person subject to the order is infected with the human immunodeficiency virus, the court shall require the person to disclose the names and addresses, if known, of persons with whom the person has had contact that poses an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus. Failure to comply with court-ordered disclosure constitutes contempt of court.

5. A person who is the subject of an order authorized under this section is entitled to representation by legal counsel during any hearing to review the issuance of the order.

23-07.4-02. Emergency public health procedures.

1. When the procedures under section 23-07.4-01 have been exhausted or cannot be satisfied and the state health officer or designee knows or has reason to believe, because of medical or epidemiological information, that a person within that official's jurisdiction has human immunodeficiency virus infection and that the person continues to engage in behavior that presents an imminent danger to the public health, the state health officer or designee may bring an action in county court in the county in which the person resides to enjoin the person from engaging in or continuing to engage in such behavior. The state health officer or designee shall request the state's attorney to file the action in county court.
2. In addition to issuance of an injunction order requested under subsection 1, the court may issue other appropriate orders including an order to take the person into custody, for a period not to exceed ninety days and place the person in a facility

designated or approved by the state health officer. A custody order issued for the purpose of counseling and testing to determine whether the person has human immunodeficiency virus infection must provide for the immediate release from custody and from the facility for any person whose confirmed test results are negative and may provide for counseling or other appropriate measures to be imposed on any person whose confirmed test results are positive. The person who is the subject of the order must be given prompt, personal, and confidential notice of the order stating the grounds and provisions of the order and notifying the person of the right to contest the order, the right to be present at a judicial hearing in the county court in the county in which the person resides to review the order, and the right to be represented by counsel during the hearing. If the person contests testing or treatment, no invasive medical procedures may be carried out before a hearing is held under subsection 3.

3. Any order issued by the county court under subsection 2 is subject to review in a court hearing. Prompt, personal, and confidential notice of the place, date, and time of the court hearing and of the person's right to be present at the hearing and the right to representation by counsel during the hearing must be given to the person who is the subject of the court order. The hearing must be conducted by the court within forty-eight hours after the order is issued. The burden of proof is on the state health officer or designee to show by clear and convincing evidence that grounds exist for the order issued by the court under subsection 2 and that the terms and conditions imposed in the order are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order. If the court dismisses the order, the fact that the order was issued must be expunged from the records of the state department of health and consolidated laboratories. If the court affirms or modifies the order and the person subject to the order is infected with the human immunodeficiency virus, the court shall require the person to disclose the names and addresses, if known, of persons with whom the person subject to the order has had contact that poses an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus. Failure to comply with court-ordered disclosure constitutes contempt of court.
4. A person who is the subject of an order authorized under this section is entitled to representation by legal counsel during any hearing to review the issuance of the order.

23-07.4-03. Closed hearing - Confidentiality of information. A hearing conducted under this chapter must be closed and any report, transcript, record, or other information relating to actions taken under this chapter is confidential.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 165

HOUSE BILL NO. 1527
(Representatives Mertens, Wilkie, Brokaw)
(Senator Richard)

TRESPASS PENALTY

AN ACT to create and enact a new subsection to section 12.1-22-03 of the North Dakota Century Code, relating to the penalty for being on property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-22-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

A person is guilty of a class B misdemeanor if that person remains upon the property of another after being requested to leave the property by a duly authorized person.

Approved April 11, 1989
Filed April 11, 1989

CHAPTER 166

SENATE BILL NO. 2515
(Nething)

THEFT OFFENSE GRADING

AN ACT to amend and reenact subsection 1 of section 12.1-23-05 of the North Dakota Century Code, relating to grading of theft offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

1. ~~Theft~~ Notwithstanding the provisions of subsection 2, theft under this chapter is a class B felony if the property or services stolen exceed ten thousand dollars in value or are acquired or retained by a threat to commit a class A or class B felony or to inflict serious bodily injury on the person threatened or on any other person.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 167

HOUSE BILL NO. 1059
(Legislative Council)
(Interim Law Enforcement Committee)

MISAPPLICATION OF ENTRUSTED PROPERTY

AN ACT to amend and reenact section 12.1-23-07 of the North Dakota Century Code, relating to the gradation of the offense of misapplication of entrusted property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-23-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-23-07. Misapplication of entrusted property.

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

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 168

HOUSE BILL NO. 1282
(W. Williams, Christman, Ness)

AUCTION THEFT

AN ACT to amend and reenact subsection 3 of section 12.1-23-09 of the North Dakota Century Code, relating to prima facie evidence of theft in auction-related situations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 12.1-23-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. a. It ~~shall be~~ is a prima facie case of theft under this chapter if it is shown that a public servant or an officer, director, agent, employee of, or a person connected in any capacity with a financial institution has failed to pay or account upon lawful demand for money or property entrusted to him as part of his official duties or if an audit reveals a shortage or falsification of his accounts.
- b. It is a prima facie case of theft under this chapter if it is shown that a person, having successfully bid on and obtained an item at an auction, removed the item from the auction premises without paying or making provisions to pay for the item.
- c. Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.
- e- d. Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 169

HOUSE BILL NO. 1419
(Representatives Wald, Wentz, D. Larson)
(Senators Nalewaja, J. Meyer)

OBSCENITY

AN ACT to create and enact a new section to chapter 12.1-27.2 of the North Dakota Century Code, relating to possession of certain materials; to amend and reenact subsections 4 and 9 of section 12.1-27.1-01, sections 12.1-27.1-03, 12.1-27.2-01, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, 12.1-27.2-05, and 12.1-27.2-06 of the North Dakota Century Code, relating to obscenity and sexual performances by minors; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 9 of section 12.1-27.1-01 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. As used in this chapter, the terms "obscene material" and "obscene performance" mean material or a performance which:
 - a. Taken as a whole, the average person, applying contemporary North Dakota standards, would find predominantly appeals to a prurient interest;
 - b. Depicts or describes in a patently offensive manner sexual conduct, whether normal or perverted; and
 - c. Taken as a whole, ~~lacks~~ the reasonable person would find lacking in serious literary, artistic, political, or scientific value.

Whether material or a performance is obscene must be judged with reference to ordinary adults, unless it appears from the character of the material or the circumstances of its dissemination that the material or performance is designed for minors or other specially susceptible audience, in which case the material or performance must be judged with reference to that type of audience.

9. As used in this chapter, the term "prurient interest" means a voyeuristic, lascivious, degrading, shameful, or morbid interest in nudity, sex, or excretion that goes substantially beyond customary limits of candor in description or representation of those matters.

SECTION 2. AMENDMENT. Section 12.1-27.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.1-03. Promoting obscenity to minors - Minor performing in obscene performance - Classification of offenses.

1. It shall be a class C felony for a person, knowing of its character, to knowingly recklessly promote to a minor any material or performance which is harmful to minors, or to admit a minor to premises where a performance harmful to minors is exhibited or takes place.
2. It shall be a class C felony to permit a minor to participate in a performance which is harmful to minors.

SECTION 3. AMENDMENT. Section 12.1-27.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.2-01. Definitions. As used in this chapter:

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

SECTION 4. AMENDMENT. Section 12.1-27.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.2-02. Use of a ~~child~~ minor in a sexual performance. A person is guilty of a class B felony if, knowing the character and content of a performance, that person employs, authorizes, or induces a ~~child less than sixteen years of age~~ minor to engage in sexual conduct during a performance or, if being a parent, legal guardian, or custodian of a ~~child less than sixteen years of age~~ minor, that person consents to the participation by the ~~child~~ minor in sexual conduct during a performance.

SECTION 5. AMENDMENT. Section 12.1-27.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.2-03. Promoting or directing an obscene sexual performance by a child minor. A person is guilty of a class B felony if, knowing the character and content of a performance, that person produces, directs, or promotes any obscene performance which includes sexual conduct by a child less than sixteen years of age person who was a minor at the time of the performance.

SECTION 6. AMENDMENT. Section 12.1-27.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.2-04. Promoting a sexual performance by a child minor. A person is guilty of a class C felony if, knowing the character and content of a performance, that person produces, directs, or promotes any performance which includes sexual conduct by a child less than sixteen years of age person who was a minor at the time of the performance.

SECTION 7. A new section to chapter 12.1-27.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Possession of certain materials prohibited. A person is guilty of a class A misdemeanor following a first offense or a class C felony following a second or subsequent offense if, knowing of its character and content, that person knowingly possesses any motion picture, photograph, or other visual representation that includes sexual conduct by a minor.

SECTION 8. AMENDMENT. Section 12.1-27.2-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.2-05. Sexual performance by a child minor - Affirmative defenses. It is an affirmative defense to a prosecution under this chapter that:

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

SECTION 9. AMENDMENT. Section 12.1-27.2-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.2-06. Proof of age of child minor. When it becomes necessary under this chapter to determine whether a child who minor participated in a

sexual performance ~~was under the age of sixteen years~~, the trier of fact may base its determination on personal inspection of the ~~child~~ minor, inspection of a photograph or motion picture of the sexual performance, testimony by a witness to the sexual performance as to the age of the ~~child~~ minor based upon the ~~child's~~ minor's appearance, expert testimony based upon the appearance of the ~~child~~ minor in the sexual performance, or any other method authorized by law or by rule.

Approved March 30, 1989
Filed March 31, 1989

CHAPTER 170

SENATE BILL NO. 2455
(W. Meyer)

GAMING TAXES AND LIMITATIONS

AN ACT to create and enact a new subdivision to subsection 5 of section 12.1-28-02, two new subsections to section 53-06.1-07, a new section to chapter 53-06.1, a new subsection to section 57-39.2-04, and a new subsection to section 57-40.2-04 of the North Dakota Century Code, relating to seizure of illegal gaming devices, the maximum prize per play in electronic video gaming device play of games of chance, commingling of games of charitable gaming tickets, imposition of a tax in lieu of sales taxes on charitable gaming tickets, and sales and use tax exemption for proceeds from games of chance conducted through use of electronic gaming devices; and to amend and reenact subsection 3 of section 53-06.1-11, sections 53-06.1-12, and 53-06.1-12.1 of the North Dakota Century Code, and subsections 4 and 5 of section 53-06.1-14 of the North Dakota Century Code, as contained in House Bill No. 1641, as approved by the fifty-first legislative assembly, relating to expense limitations for organizations, distributors, and manufacturers of gaming devices, and games of chance taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 5 of section 12.1-28-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

A law enforcement officer may seize any device described in subdivision a upon probable cause to believe that the device was used or is intended to be used in violation of this chapter or chapter 53-06.1. The court shall order the device forfeited in the same manner and according to the same procedure as provided under chapter 19-03.1.

SECTION 2. Two new subsections to section 53-06.1-07 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

In electronic video gaming device play of any game of chance permitted by this section, the maximum prize per play is five hundred dollars.

Any game using charitable gaming tickets may be conducted only through use of commingled games after June 30, 1991.

* SECTION 3. AMENDMENT. Subsection 3 of section 53-06.1-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 53-06.1-11 was also amended by section 6 of House Bill No. 1185, chapter 615.

3. Subject to the limitations of this subsection, expenses incurred in connection with holding, operating, or conducting any game of chance pursuant to this chapter may be deducted from adjusted gross proceeds, to the extent that total expenses for games of chance do not exceed forty-five fifty percent of the total the first two hundred thousand dollars of adjusted gross proceeds, computed on an annual basis per quarter and forty-five percent of the adjusted gross proceeds in excess of two hundred thousand dollars per quarter. The figure used for adjusted gross proceeds is as determined in subsection 1 of section 53-06.1-01 before any reduction for taxes. This subsection does not authorize violations of the rent limitations contained in this chapter.

SECTION 4. AMENDMENT. Section 53-06.1-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-12. Tax based on adjusted gross proceeds. A tax as provided in this section upon the total adjusted gross proceeds received by a licensed eligible organization ~~shall~~ must be paid to the licensing authority on a quarterly basis in ~~such~~ the manner and upon ~~such~~ the forms as ~~shall~~ be prescribed by the licensing authority by rule. The figure used for adjusted gross proceeds is as determined in subsection 1 of section 53-06.1-01 before any reduction for expenses. The amount of this tax ~~shall~~ must be paid from adjusted gross proceeds and may not be charged against the percentage limitation of expenses. The tax is hereby imposed upon every eligible organization, to be levied, collected, and paid quarterly with respect to the adjusted gross proceeds of the eligible organization as provided in this section, computed at the following rates:

1. On adjusted gross proceeds not in excess of ~~six~~ two hundred thousand dollars per quarter, a tax of five percent.
2. On adjusted gross proceeds in excess of two hundred thousand dollars per quarter but not in excess of four hundred thousand dollars per quarter, a tax of ten percent.
3. On adjusted gross proceeds in excess of four hundred thousand dollars per quarter but not in excess of six hundred thousand dollars per quarter, a tax of fifteen percent.
4. On adjusted gross proceeds in excess of six hundred thousand dollars per quarter, a tax of twenty percent.

SECTION 5. AMENDMENT. Section 53-06.1-12.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-12.1. Allocation of games of chance tax - Appropriation. The state treasurer, at the direction of the licensing authority, shall pay quarterly to cities and counties in proportion to the tax collected under ~~section 53-06.1-12 from eligible organizations conducting games of chance within each city, for sites within city limits, or within each county, for sites outside city limits, the following amounts which are hereby appropriated:~~

1. ~~Two fifths of the tax collected under subsection 1 of section 53-06.1-12 within the city or county.~~
2. ~~One-tenth of the tax collected under subsection 2 of section 53-06.1-12 within the city or county.~~

~~The remaining tax collected under section 53-06.1-12, up to the amount paid during the 1985-87 biennium, shall be paid by the licensing authority to the state treasurer for deposit in the state general fund one hundred seventy thousand dollars per quarter to cities and counties in proportion to the adjusted gross proceeds within each city, for sites within city limits, or within each county, for sites outside city limits, to the total adjusted gross proceeds. Any amounts received by a city or county under this section must be used by the city or county for expenses connected with enforcement of this chapter within the city or county. Any amount remaining because of the limitation with respect to the 1985-87 biennium, up to~~ In addition, two hundred thousand dollars per biennium, must be deposited in the attorney general's operating budget fund and must be used only for the enforcement of gaming as appropriated. ~~Any amount remaining in excess of two hundred thousand dollars taxes collected under this chapter must be deposited by the state treasurer in the general fund.~~

SECTION 6. A new section to chapter 53-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Charitable gaming tickets excise tax in lieu of sales and use taxes. In addition to any other tax provided by law and in lieu of sales or use taxes, there is imposed a tax of two percent on the gross receipts from the sale at retail of charitable gaming tickets to a final user. A sale at retail for purposes of this section includes charitable gaming tickets sold and charitable gaming tickets given in return for another charitable gaming ticket as authorized under this chapter. Gross receipts for purposes of this section includes the face value of all charitable gaming tickets sold or given in return for another charitable gaming ticket. The tax imposed by this section must be paid to the licensing authority at the time returns are made and taxes are paid by the eligible organization under section 53-06.1-12.

* SECTION 7. AMENDMENT. Subsections 4 and 5 of section 53-06.1-14 of the 1987 Supplement to the North Dakota Century Code, as amended by House Bill No. 1641, as approved by the fifty-first legislative assembly, are hereby amended and reenacted to read as follows:

4. Every manufacturer or distributor of electronic video gaming devices through which games of chance are conducted under this chapter shall apply before the first day of April of each year for an annual license upon a form prescribed by the attorney general and shall submit the appropriate license fee. Each applicant shall provide such necessary and reasonable information as the attorney general requires. The license fee for a manufacturer or distributor is one thousand dollars. Every eligible organization shall purchase or lease all electronic video gaming devices from a ~~manufacturer or~~ distributor licensed under this chapter.
5. No licensed or authorized eligible organization may be a distributor. No wholesaler of liquor or alcoholic beverages may be

* NOTE: Section 53-06.1-14 was also amended by section 2 of House Bill No. 1210, chapter 618; section 15 of Senate Bill No. 2220, chapter 612; and section 7 of House Bill No. 1641, chapter 613.

a distributor. No North Dakota licensed manufacturer may be a distributor.

SECTION 8. A new subsection to section 57-39.2-04 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from electronic gaming devices licensed by the attorney general under chapter 53-06.1.

SECTION 9. A new subsection to section 57-40.2-04 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from electronic games of chance licensed by the attorney general under chapter 53-06.1.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 171

SENATE BILL NO. 2408
(Senator Stenehjem)
(Representative R. Larson)

SUNDAY FOOD STORE EMPLOYEES

AN ACT to amend and reenact subsection 30 of section 12.1-30-03 of the North Dakota Century Code, relating to businesses allowed to operate on Sundays.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 30 of section 12.1-30-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30. Food stores operated by an owner or manager in addition to not more than six employees working in the store at one time on a Sunday; however, the governing body of a city or county may, by ordinance, increase the number of employees allowed to work in a store at one time on a Sunday.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 172

SENATE BILL NO. 2340
(Senator Mathern)
(Representative Bernstein)

CRIMINAL SENTENCING ALTERNATIVES

AN ACT to amend and reenact subsection 1 of section 12.1-32-02 of the North Dakota Century Code, relating to sentencing alternatives in criminal cases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 12.1-32-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Every person convicted of an offense who is sentenced by the court shall be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense:
 - a. Payment of the reasonable costs of ~~his~~ that person's prosecution.
 - b. Probation.
 - c. A term of imprisonment, including intermittent imprisonment:
 - (1) In a state correctional facility, a regional corrections center, a county jail, or in the state farm in accordance with section 12-51-07, 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 programs.
 - d. A fine.
 - e. Restitution for damages resulting from the commission of the offense.
 - f. Restoration of damaged property, or other appropriate work detail.
 - g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.

* NOTE: Section 12.1-32-02 was also amended by section 2 of House Bill No. 1052, chapter 158.

~~h. Commitment to any other facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.~~

Sentences imposed under this subsection shall not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection shall not be construed as not permitting the unconditional discharge of an offender following conviction. Sentences under subdivisions e or f shall be imposed in the manner provided in section 12.1-32-08. This subsection shall not be construed to prohibit utilization of sections 12-53-13 through 12-53-19, relating to suspension of imposition of sentence, nor shall this subsection limit the conditions which can be imposed on a probationer under section 12-53-14.

Approved March 22, 1989
Filed March 23, 1989