

Introduced by

Representatives Koppelman, DeKrey, Delmore

Senators Nelson, Traynor, Trenbeath

1 A BILL for an Act to amend and reenact sections 12.1-20-03, 12.1-20-03.1, and 12.1-32-06.1 of
2 the North Dakota Century Code, relating to sentencing of sexual offenders; and to provide a
3 penalty.

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

5 **SECTION 1. AMENDMENT.** Section 12.1-20-03 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12.1-20-03. Gross sexual imposition.**

8 1. A person who engages in a sexual act with another, or who causes another to
9 engage in a sexual act, is guilty of an offense if:

10 a. ~~He~~ That person compels the victim to submit by force or by threat of imminent
11 death, serious bodily injury, or kidnapping, to be inflicted on any human being;

12 b. That person or someone with that person's knowledge has substantially
13 impaired the victim's power to appraise or control the victim's conduct by
14 administering or employing without the victim's knowledge intoxicants, a
15 controlled substance as defined in chapter 19-03.1, or other means with intent
16 to prevent resistance;

17 c. ~~He~~ That person knows that the victim is unaware that a sexual act is being
18 committed upon him or her;

19 d. The victim is less than fifteen years old; or

20 e. ~~He~~ That person knows or has reasonable cause to believe that the other
21 person suffers from a mental disease or defect which renders him or her
22 incapable of understanding the nature of his or her conduct.

23 2. A person who engages in sexual contact with another, or who causes another to
24 engage in sexual contact, is guilty of an offense if:

- 1 a. The victim is less than fifteen years old; or
- 2 b. ~~He~~ That person compels the victim to submit by force or by threat of imminent
- 3 death, serious bodily injury, or kidnapping, to be inflicted on any human being.
- 4 3. An offense under this section is a class A AA felony if in the course of the offense
- 5 the actor inflicts serious bodily injury upon the victim or if ~~his~~ the actor's conduct
- 6 violates subdivision a or d of subsection 1. Otherwise the offense is a class B A
- 7 felony.
- 8 4. If, as a result of injuries sustained during the course of an offense under this
- 9 section, the victim dies, the offense is a class AA felony, for which the maximum
- 10 penalty of life imprisonment without parole must be imposed.

11 **SECTION 2. AMENDMENT.** Section 12.1-20-03.1 of the North Dakota Century Code

12 is amended and reenacted as follows:

13 **12.1-20-03.1. Continuous sexual abuse of a child.**

- 14 1. An individual in adult court is guilty of a class A AA felony if the individual engages
- 15 in any combination of three or more sexual acts or sexual contacts with a minor
- 16 under the age of fifteen years during a period of three or more months. The court
- 17 may not defer imposition of sentence, ~~nor may the court suspend any part of the~~
- 18 ~~specified sentence, either at the time of or after the imposition of the sentence,~~
- 19 ~~unless the court first finds that the offense was the defendant's first violation of this~~
- 20 ~~chapter and that extenuating or mitigating circumstances exist which justify a~~
- 21 ~~suspension. The court shall announce the circumstances that justify a suspension~~
- 22 ~~in open court when sentence is imposed and recite these circumstances in the~~
- 23 ~~sentence or order suspending part of the sentence.~~
- 24 2. If more than three sexual acts or contacts are alleged, a jury must unanimously
- 25 agree that any combination of three or more acts or contacts occurred. The jury
- 26 does not need to unanimously agree which three acts or contacts occurred.
- 27 3. No other felony offense under this chapter involving the same victim may be
- 28 charged in the same proceeding with a charge under this section unless the other
- 29 charged offense occurred outside the time period charged under this section or the
- 30 other offense is charged in the alternative. A defendant may be charged with only

1 one count under this section, but a separate count may be charged for each victim
2 if more than one victim is involved.

3 **SECTION 3. AMENDMENT.** Section 12.1-32-06.1 of the North Dakota Century Code
4 is amended and reenacted as follows:

5 **12.1-32-06.1. Length and termination of probation - Additional probation for**
6 **violation of conditions.**

- 7 1. Except as provided in this section, the length of the period of probation imposed in
8 conjunction with a sentence to probation or a suspended execution or deferred
9 imposition of sentence may not extend for more than five years for a felony and
10 two years for a misdemeanor or infraction from the later of the date of:
11 a. The order imposing probation;
12 b. The defendant's release from incarceration; or
13 c. Termination of the defendant's parole.
- 14 2. If the defendant has pled or been found guilty of an offense for which the court
15 imposes a sentence of restitution or reparation for damages resulting from the
16 commission of the offense, the court may, following a restitution hearing pursuant
17 to section 12.1-32-08, impose an additional period of probation not to exceed five
18 years.
- 19 3. If the defendant has pled or been found guilty of a felony sexual offense ~~against a~~
20 ~~minor~~ in violation of ~~section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, or 12.1-20-11~~
21 chapter 12.1-20, the court shall impose a period of supervised probation of five
22 years to be served after sentencing or incarceration. The court may impose an
23 additional period of supervised probation not to exceed five years ~~if the additional~~
24 ~~period of probation is in conjunction with a commitment to a sexual offender~~
25 ~~treatment or aftercare program.~~ If the defendant has pled or been found guilty of a
26 misdemeanor sexual offense ~~against a minor~~ in violation of ~~section 12.1-20-05,~~
27 ~~12.1-20-06, or 12.1-20-07~~ chapter 12.1-20, the court may impose an additional
28 period of probation not to exceed two years ~~if the additional period of probation is~~
29 ~~in conjunction with a commitment to a sexual offender treatment or aftercare~~
30 ~~program.~~

- 1 4. If the defendant has pled or been found guilty of abandonment or nonsupport of
2 spouse or children, the period of probation may be continued for as long as
3 responsibility for support continues.
- 4 5. In felony cases, in consequence of violation of probation conditions, the court may
5 impose an additional period of probation not to exceed five years. The additional
6 period of probation may follow a period of incarceration if the defendant has not
7 served the maximum period of incarceration available at the time of initial
8 sentencing or deferment.
- 9 6. The court may terminate a period of probation and discharge the defendant at any
10 time earlier than that provided in subsection 1 if warranted by the conduct of the
11 defendant and the ends of justice.
- 12 7. Notwithstanding the fact that a sentence to probation subsequently can be
13 modified or revoked, a judgment that includes such a sentence constitutes a final
14 judgment for all other purposes.