

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1313
(Representatives Koppelman, DeKrey, Delmore)
(Senators Nelson, Traynor, Trenbeath)

AN ACT to create and enact a new subsection to section 12.1-20-01 of the North Dakota Century Code, relating to the age of a person engaging in sexual conduct with a minor; to amend and reenact sections 12.1-20-03, 12.1-20-03.1, and 12.1-32-06.1 of the North Dakota Century Code, relating to sentencing of sexual offenders; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-20-01 of the North Dakota Century Code is created and enacted as follows:

When criminality depends on the victim being a minor, the actor is guilty of an offense only if the actor is at least four years older than the minor.

SECTION 2. AMENDMENT. Section 12.1-20-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-03. Gross sexual imposition - Penalty.

1. A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:
 - a. ~~He~~ That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;
 - b. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance;
 - c. ~~He~~ That person knows that the victim is unaware that a sexual act is being committed upon him or her;
 - d. The victim is less than fifteen years old; or
 - e. ~~He~~ That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct.
2. A person who engages in sexual contact with another, or who causes another to engage in sexual contact, is guilty of an offense if:
 - a. The victim is less than fifteen years old; or
 - b. ~~He~~ That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being.
3. a. An offense under this section is a class A AA felony if in the course of the offense the actor inflicts serious bodily injury upon the victim ~~or~~, if ~~his~~ the actor's conduct violates subdivision a ~~or d~~ of subsection 1, or if the actor's conduct violates subdivision d of

subsection 1 and the actor was more than five years older than the victim at the time of the offense.

- b. An offense under this section is a class C felony if the actor's conduct violates subdivision d of subsection 1 or subdivision a of subsection 2, and the actor was at least four but not more than five years older than the victim at the time of the offense.
 - c. Otherwise the offense is a class B A felony.
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.

SECTION 3. AMENDMENT. Section 12.1-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

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

1. An individual in adult court is guilty of ~~a class A felony~~ an offense if the individual engages in any combination of three or more sexual acts or sexual contacts with a minor under the age of fifteen years during a period of three or more months. The offense is a class AA felony if the actor was more than five years older than the victim at the time of the offense. The offense is a class C felony if the actor was at least four but not more than five years older than the victim at the time of the offense. ~~The court may not defer imposition of sentence, nor may the court suspend any part of the specified sentence, either at the time of or after the imposition of the sentence, unless the court first finds that the offense was the defendant's first violation of this chapter and that extenuating or mitigating circumstances exist which justify a suspension. The court shall announce the circumstances that justify a suspension in open court when sentence is imposed and recite these circumstances in the sentence or order suspending part of the sentence.~~
2. If more than three sexual acts or contacts are alleged, a jury must unanimously agree that any combination of three or more acts or contacts occurred. The jury does not need to unanimously agree which three acts or contacts occurred.
3. No other felony offense under this chapter involving the same victim may be charged in the same proceeding with a charge under this section unless the other charged offense occurred outside the time period charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section, but a separate count may be charged for each victim if more than one victim is involved.

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

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

1. Except as provided in this section, the length of the period of probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony and two years for a misdemeanor or infraction from the later of the date of:
 - a. The order imposing probation;
 - b. The defendant's release from incarceration; or
 - c. Termination of the defendant's parole.

2. If the defendant has pled or been found guilty of an offense for which the court imposes a sentence of restitution or reparation for damages resulting from the commission of the offense, the court may, following a restitution hearing pursuant to section 12.1-32-08, impose an additional period of probation not to exceed five years.
3. If the defendant has pled or been found guilty of a felony sexual offense ~~against a minor~~ in violation of ~~section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, or 12.1-20-14~~ chapter 12.1-20, the court shall impose a period of supervised probation of five years to be served after ~~sentencing or incarceration.~~ The court may impose an additional period of supervised probation not to exceed five years if the additional period of probation is in conjunction with a commitment to a sexual offender treatment or aftercare program. If the defendant has pled or been found guilty of a misdemeanor sexual offense ~~against a minor~~ in violation of ~~section 12.1-20-05, 12.1-20-06, or 12.1-20-07~~ chapter 12.1-20, the court may impose an additional period of probation not to exceed two years ~~if the additional period of probation is in conjunction with a commitment to a sexual offender treatment or aftercare program.~~ If the unserved portion of the defendant's maximum period of incarceration is less than one year, a violation of the probation imposed under this subsection is a class A misdemeanor.
4. If the defendant has pled or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility for support continues.
5. In felony cases, in consequence of violation of probation conditions, the court may impose an additional period of probation not to exceed five years. The additional period of probation may follow a period of incarceration if the defendant has not served the maximum period of incarceration available at the time of initial sentencing or deferment.
6. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
7. Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1313.

House Vote: Yeas 88 Nays 0 Absent 6

Senate Vote: Yeas 44 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State