CRIMINAL CODE

CHAPTER 118

SENATE BILL NO. 2185

(Senators Kilzer, Christmann)
(Representatives Kaldor, Weiler)

SERIOUS BODILY INJURY DEFINED

AN ACT to amend and reenact subsection 29 of section 12.1-01-04 of the North Dakota Century Code, relating to the definition of serious bodily injury.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 29 of section 12.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

29. "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, ~~or~~ a bone fracture, or impediment of air flow or blood flow to the brain or lungs.

Approved March 7, 2007
Filed March 8, 2007

CHAPTER 119

HOUSE BILL NO. 1122

(Judiciary Committee)
(At the request of the Commission on Legal Counsel for Indigents)

LEGAL COUNSEL FOR INDIGENTS

AN ACT to amend and reenact subsection 3 of section 12.1-04.1-23, subsection 2 of section 12.1-04.1-26, subsection 4 of section 12.1-32-07, subdivision a of subsection 4 of section 12.1-32-08, subsection 6 of section 14-15-19, subsection 2 of section 23-07.6-03, sections 23-07.6-05, 23-07.6-06, and 25-01.2-11, subsection 2 of section 27-20-17, subsection 4 of section 27-20-22, section 27-20-26, subsections 2 and 3 of section 27-20-49, and sections 27-22-02, 29-07-01.1, 29-32.1-05, and 31-01-16 of the North Dakota Century Code, relating to providing legal counsel at public expense.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 12.1-04.1-23 of the North Dakota Century Code is amended and reenacted as follows:

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, ~~the court shall appoint~~ counsel must be provided at public expense to consult with the individual and, if ~~appropriate~~ the individual is indigent, to ~~apply to the court for appointment~~ seek arrangement of counsel at public expense to represent the individual in a proceeding for conditional release or discharge.

SECTION 2. AMENDMENT. Subsection 2 of section 12.1-04.1-26 of the North Dakota Century Code is amended and reenacted as follows:

2. In a proceeding under sections 12.1-04.1-20 through 12.1-04.1-25 for an initial order of disposition, in a proceeding for modification or termination of an order of commitment to a treatment facility initiated by the individual at the time of a review, or in a proceeding in which the status of the individual might be adversely affected, the individual has a right to counsel. If the court finds that the individual ~~lacks sufficient financial resources to retain counsel~~ is indigent and that counsel is not otherwise available, ~~it shall appoint~~ counsel must be provided at public expense to represent the individual.

[66] **SECTION 3. AMENDMENT.** Subsection 4 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

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66 Section 12.1-32-07 was also amended by section 5 of House Bill No. 1015, chapter 15, and section 1 of Senate Bill No. 2241, chapter 135.

4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate and may include any one or more of the following:

   a. Work faithfully at a suitable employment or faithfully pursue a course of study or of career and technical education training that will equip the defendant for suitable employment.

   b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

   c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.

   d. Support the defendant's dependents and meet other family responsibilities.

   e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.

   f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05, except when imposition of sentence is deferred.

   g. Refrain from excessive use of alcohol or any use of narcotics or of another dangerous or abusable drug without a prescription.

   h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.

   i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.

   j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.

   k. Report to a probation officer at reasonable times as directed by the court or the probation officer.

   l. Submit to a medical examination or other reasonable testing for the purpose of determining the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.

   m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.

   n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.

o. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.

p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed or provided at public expense for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 4 of section 12.1-32-08.

q. Provide community service for the number of hours designated by the court.

r. Refrain from any subscription to, access to, or use of the internet.

SECTION 4. AMENDMENT. Subdivision a of subsection 4 of section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

a. Under section 12.1-32-07, the court may order that the defendant reimburse indigent defense costs and expenses as a condition of probation. The court shall notify the defendant, the defendant's probation officer, and the prosecuting attorney of the amount of costs and expenses to be reimbursed, as determined by the commission on legal counsel for indigents, and of the defendant's right to a hearing on the reimbursement amount. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of seventy-five dollars per hour for ~~appointed~~ counsel services plus reasonable expenses. The reimbursement amount must include an application fee imposed under section 29-07-01.1 if the fee has not been paid before disposition of the case and the court has not waived payment of the fee. If the defendant requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the basis for the amount to be reimbursed must be demonstrated. In determining the amount and method of reimbursement, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.

SECTION 5. AMENDMENT. Subsection 6 of section 14-15-19 of the North Dakota Century Code is amended and reenacted as follows:

6. Before the petition is heard, notice of the hearing on the petition and opportunity to be heard must be given the parents of the child, the guardian of the child, the person having legal custody of the child, any proposed custodian of the child, and, in the discretion of the court, a person ~~appointed to represent~~ representing any party.

SECTION 6. AMENDMENT. Subsection 2 of section 23-07.6-03 of the North Dakota Century Code is amended and reenacted as follows:

2. Isolation or quarantine with notice.

a. Authorization. The state or a local health officer may make a written petition to the trial court for an order authorizing the isolation or quarantine of an individual or groups of individuals.

b. Content of petition. A petition under subdivision a must specify the identity of the individual or groups of individuals subject to isolation or quarantine, including identification by characteristics if actual identification is impossible or impractical; the premises subject to isolation or quarantine; the date and time at which isolation or quarantine commences; the suspected contagious disease if known; recommended decontamination, treatment, or preventative measures for the suspected contagious disease; a statement of compliance with the conditions and principles authorizing isolation and quarantine under this chapter; and a statement of the basis upon which isolation or quarantine is justified in compliance with this chapter. The petition must be accompanied by the sworn affidavit of the state or local health officer attesting to the facts asserted in the petition, with any further information that may be relevant and material to the court's consideration.

c. Notice. Notice to the individuals or groups of individuals identified in the petition must be accomplished within twenty-four hours in accordance with the North Dakota Rules of Civil Procedure. The notice must include a statement that the respondent has the right to counsel, including ~~appointed~~ counsel provided at public expense if indigent and must include a copy of this chapter.

SECTION 7. AMENDMENT. Section 23-07.6-05 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-05. Court hearing. A hearing must be held on a petition filed under subsection 2 of section 23-07.6-03 within five days of filing the petition. For a good cause shown, the court may continue the hearing for up to ten days. A respondent has the right to a court hearing in the district court serving the county in which the respondent resides. A record of the proceedings pursuant to this section must be made and retained. If parties cannot personally appear before the court due to risks of contamination or the spread of disease, proceedings may be conducted by their authorized representatives and be held via any means that allows all parties to fully participate. The respondent has a right to counsel and if the respondent is indigent ~~or otherwise unable to pay for or obtain counsel~~, the respondent has the right to have counsel ~~appointed~~ provided at public expense. The respondent, respondent's representative, or respondent's counsel has the right to cross-examine witnesses testifying at the hearing. A petition for a hearing does not stay a written directive ordering confinement. The court shall determine by a preponderance of the evidence if the respondent is infected with a communicable disease, if the respondent poses a substantial threat to the public health, and if confinement is necessary and is the least restrictive alternative to protect or preserve the public health. The court shall also determine whether to order the respondent to follow the state or local health ~~officers~~ officer's directive for decontamination, treatment, or preventative measures if the petition is granted. If the written directive was issued by a local health officer, the state health officer has the right to be made a party to the proceedings.

SECTION 8. AMENDMENT. Section 23-07.6-06 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-06. Notice of hearing. Notice of the hearing must be given to the respondent and must inform the respondent of the respondent's right to counsel or ~~appointed~~ counsel at public expense under this chapter and must include a copy of this chapter.

SECTION 9. AMENDMENT. Section 25-01.2-11 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-11. Psychosurgery, sterilization, or research - Court order required - Hearing - Right to ~~court-appointed~~ attorney at public expense - Application to residential institution or facility. A court of competent jurisdiction may issue the orders required for the procedures or treatments in subsection 4 of section 25-01.2-09 upon application of the party alleging the necessity of the procedure, the person who is receiving or is entitled to receive the treatment, or the person's guardian, following a hearing on the application.

1. The person receiving or entitled to treatment shall:

   a. Receive prior notice of the hearing;

   b. Have the right and the opportunity to present evidence; and

   c. Have the right to be confronted with and to cross-examine witnesses.

2. If the developmentally disabled person ~~cannot afford counsel, the court~~ is indigent, counsel shall ~~appoint an attorney~~ be provided at public expense not less than ten days before the hearing.

3. The burden of proof is on the party alleging the necessity of the procedure or treatment.

4. An order allowing the procedure or treatment may not be granted unless the party alleging the necessity of the procedure or treatment proves by clear and convincing evidence that the procedure is in the best interest of the recipient and that no less drastic measures are feasible.

This section applies only with respect to an institution or facility that provides residential care.

[67] **SECTION 10. AMENDMENT.** Subsection 2 of section 27-20-17 of the North Dakota Century Code is amended and reenacted as follows:

2. If the child is not released, a judge or referee shall hold a detention or shelter care hearing promptly and not later than ninety-six hours after the child is placed in detention or shelter care to determine whether there is probable cause to believe the child has committed the delinquent or unruly acts alleged, or the child is deprived and whether the child's detention or shelter care is required under section 27-20-14. Reasonable notice thereof, either oral or written, stating the time, place,

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[67] Section 27-20-17 was also amended by section 10 of House Bill No. 1092, chapter 274.

and purpose of the detention or shelter care hearing must be given to the child and, if they can be found, to the child's parents, guardian, or other custodian. Prior to the commencement of the hearing, the court shall inform the parties of their right to counsel and to ~~appointed~~ counsel at public expense if they are ~~needy persons~~ indigent, and of the child's right to remain silent with respect to any allegations of delinquency or unruly conduct.

SECTION 11. AMENDMENT. Subsection 4 of section 27-20-22 of the North Dakota Century Code is amended and reenacted as follows:

4. The summons must state that a party is entitled to counsel in the proceedings and that ~~the court will appoint~~ counsel will be provided at public expense if the party is ~~unable without undue financial hardship to employ counsel~~ indigent.

[68] **SECTION 12. AMENDMENT.** Section 27-20-26 of the North Dakota Century Code is amended and reenacted as follows:

27-20-26. Right to counsel.

1. Except as otherwise provided under this chapter, a party is entitled to representation by legal counsel at custodial, post-petition, and informal adjustment stages of proceedings under this chapter and, if ~~as a needy person the party is unable to employ counsel~~ indigent, to have ~~the court provide~~ counsel provided at public expense for the party. If a party appears without counsel the court shall ascertain whether the party knows of the party's right to counsel and to be provided with counsel ~~by the court if the party is a needy person~~ at public expense, if indigent. The court may continue the proceeding to enable a party to obtain counsel and ~~shall provide~~ counsel shall be provided for an unrepresented ~~needy~~ indigent person upon the person's request. Counsel must be provided for a child not represented by the child's parent, guardian, or custodian at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. If the interests of two or more parties conflict, separate counsel must be provided for each of them.

2. ~~A needy~~ An indigent person is one who at the time of requesting counsel is unable, without undue financial hardship, to provide for full payment of legal counsel and all other necessary expenses for representation. A child is not to be considered ~~needy~~ indigent under this section if the child's parents or parent can, without undue financial hardship, provide full payment for legal counsel and other expenses of representation. Any parent entitled to the custody of a child involved in a proceeding under this chapter is, unless undue financial hardship would ensue, responsible for providing legal counsel and for paying other necessary expenses of representation for the parent's child. The court may enforce performance of this duty by appropriate order. As used in this subsection, the word "parent" includes adoptive parents.

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[68] Section 27-20-26 was also amended by section 14 of House Bill No. 1092, chapter 274.

SECTION 13. AMENDMENT. Subsections 2 and 3 of section 27-20-49 of the North Dakota Century Code are amended and reenacted as follows:

2. The commission on legal counsel for indigents shall pay reasonable compensation for services and related expenses of counsel ~~appointed by the court~~ provided at public expense for a party and the supreme court shall pay reasonable compensation for a guardian ad litem. The attorney general shall pay the witness fees, mileage, and travel expense of witnesses incurred in the proceedings under this chapter in the amount and at the rate provided for in section 31-01-16. Expenses of the state include the cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court if the child is in the legal custody of a state agency in which case the cost must be reimbursed to the county by that state agency at the state mileage rate, excluding meals and lodging, plus twenty-nine cents per mile.

3. If, after due notice to the parents or other persons legally obligated to care for and support the child, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses stated in subsection 1, and expenses payable by the commission on legal counsel for indigents or the supreme court under subsection 2, the court may order them to pay the same and prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the clerk of the juvenile court for remittance to the person to whom compensation is due, or if the costs and expenses have been paid by the county or the state to the county treasurer of the county or to the state treasurer.

SECTION 14. AMENDMENT. Section 27-22-02 of the North Dakota Century Code is amended and reenacted as follows:

27-22-02. Execution of compact - Text. The governor is hereby authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

Article I - Findings and Purposes.

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals, and welfare, and the health, morals, and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

1. Cooperative supervision of delinquent juveniles on probation or parole;

2. The return, from one state to another, of delinquent juveniles who have escaped or absconded;

3. The return, from one state to another, of nondelinquent juveniles who have run away from home; and

4. Additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively.

In carrying out the provisions of this compact, the party states shall be guided by the noncriminal, reformative, and protective policies which guide their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

Article II - Existing Rights and Remedies.

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies, and procedures, and shall not be in derogation of parental rights and responsibilities.

Article III - Definitions.

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected, or dependent children; "state" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

Article IV - Return of Runaways.

1. That the parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for the juvenile's return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of the juvenile's running away, the juvenile's location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering the juvenile's own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not the juvenile is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel the juvenile's return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, the judge shall present to the appropriate court or to the

executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to the juvenile's legal custody, and that it is in the best interest and for the protection of such juvenile that the juvenile be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing the peace officer or other appropriate person to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile, unless the juvenile shall first be taken forthwith before a judge of a court in the state, who shall inform the juvenile of the demand made for the juvenile's return, and who may appoint ~~counsel or~~ a guardian ad litem for the juvenile or counsel may be provided at public expense. If the judge of such court shall find that the requisition is in order, the judge shall deliver such juvenile over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding. Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person, or agency entitled to the juvenile's legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint ~~counsel or~~ a guardian ad litem for such juvenile or counsel may be provided at public expense, and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for the person's own protection and welfare, for such a time not exceeding ninety days as will enable the person's return to another state party to this compact pursuant to a requisition for the person's return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein the juvenile is found any criminal charge, or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in such state, or if the juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being

returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon the juvenile's return to the state from which the juvenile ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

2. That the state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

3. That "juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor.

Article V - Return of Escapees and Absconders.

1. That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody the juvenile has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of the juvenile's adjudication as a delinquent juvenile, the circumstances of the breach of the terms of the juvenile's probation or parole or of the juvenile's escape from an institution or agency vested with the juvenile's legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing the peace officer or other appropriate person to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding the juvenile shall have appointed to receive the juvenile, unless the juvenile shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform the juvenile of the demand made for the juvenile's return and who may appoint ~~counsel or~~ a guardian ad litem for the juvenile or counsel may be provided at public expense. If the judge of such court shall find that the requisition is in order, the judge shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding the juvenile shall have appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with that person's legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, that person must be taken forthwith before a judge of the appropriate court, who may appoint ~~counsel or~~ a guardian ad litem for such person or counsel may be provided at public expense, and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety days, as will enable the person's detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with the juvenile's legal custody or supervision, there is pending in the state wherein the juvenile is detained any criminal charge or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in such state, or if the juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon the juvenile's return to the state from which the juvenile escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

2. That the state to which a delinquent juvenile is returned under this article shall be responsible for the payment of the transportation costs of such return.

Article VI - Voluntary Return Procedure.

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with the juvenile's legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of article IV, 1. or of article V, 1., may consent to the juvenile's immediate return to the state from which the juvenile absconded, escaped, or ran away. Such consent shall be given by the juvenile or delinquent juvenile and the juvenile's counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and the juvenile's counsel or guardian ad litem, if any, consent to the juvenile's return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of the juvenile's rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver the juvenile to the duly accredited officer or officers of the state demanding the juvenile's return, and

shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order the juvenile to return unaccompanied to such state and shall provide the juvenile with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

Article VII - Cooperative Supervision of Probationers and Parolees.

1. That the duly constituted judicial and administrative authorities of a state party to this compact, herein called "sending state", may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact, herein called "receiving state", while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian, or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies, and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases when the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

2. That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

3. That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against the juvenile within the receiving state any criminal charge or any proceeding to have the juvenile adjudicated a delinquent juvenile for any act committed in such state or if the juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to

transport delinquent juveniles being so returned through any and all states party to this compact without interference.

4. That the sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Article VIII - Responsibility for Costs.

1. That the provisions of articles IV, 2., V, 2., and VII, 4. of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

2. That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to articles IV, 2., V, 2., or VII, 4. of this compact.

Article IX - Detention Practices.

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup nor be detained or transported in association with criminal, vicious, or dissolute persons.

Article X - Supplementary Agreements.

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment, and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

1. Provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles, taking into consideration the character of facilities, services, and subsistence furnished;

2. Provide that the delinquent juvenile shall be given a court hearing prior to the juvenile being sent to another state for care, treatment, and custody;

3. Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

4. Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

5. Provide for reasonable inspection of such institutions by the sending state;

6. Provide that the consent of the parent, guardian, person, or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to the juvenile being sent to another state; and

7. Make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

Article XI - Acceptance of Federal and Other Aid.

That any state party to this compact may accept any and all donations, gifts, and grants of money, equipment, and services from the federal or any local government, or any agency thereof and from any person, firm, or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.

Article XII - Compact Administrators.

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Article XIII - Execution of Compact.

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form or execution to be in accordance with the laws of the executing state.

Article XIV - Renunciation.

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present article.

Article XV - Severability.

That the provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

SECTION 15. AMENDMENT. Section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

29-07-01.1. Payment of expenses for defense of indigents - Reimbursement of indigent defense costs and expenses - Indigent defense administration fund - Continuing appropriation.

1. Lawyers ~~appointed~~ provided to represent indigent persons must be compensated at a reasonable rate to be determined by the commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person prosecuted in district court, when approved by the ~~judge~~ commission, must be paid by the state ~~if the action is prosecuted in district court and~~. Expenses necessary for the adequate defense of an indigent person prosecuted in municipal court, when approved by the judge, must be paid by the city in which the alleged offense took place ~~if the action is prosecuted in municipal court~~. The city shall also pay the expenses in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19. A defendant requesting representation by ~~appointed~~ counsel at public expense, or for whom ~~appointed~~ counsel provided at public expense without a request is considered appropriate by the court, shall submit an application for ~~appointed~~ indigent defense services. For an application for ~~appointed~~ indigent defense services in the district court, a nonrefundable application fee of twenty-five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the case, the fee amount must be added to the amount to be reimbursed under this section. Application fees collected under this subsection must be forwarded for deposit in the indigent defense administration fund established under subsection 4.

2. A defendant ~~with appointed~~ for whom counsel is provided at public expense, subject to this subsection, shall reimburse the state or city such sums as the state or city expends on the defendant's behalf.

   a. At the time counsel is ~~appointed~~ provided for a defendant, the ~~appointing~~ court shall advise the defendant of the defendant's potential obligation to reimburse the appropriate governmental entity the amounts expended on behalf of the defendant.

   b. Within ninety days after its judgment of conviction or after conclusion of an appeal of its initial judgment of conviction, the court ~~that appointed counsel for the defendant~~ shall notify the defendant and the prosecuting attorney of the amount of indigent defense costs and expenses, as determined by the commission, the defendant is obligated to reimburse if able to do so and of the defendant's right to a hearing on the reimbursement amount. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of seventy-five dollars per hour for ~~appointed~~ counsel services plus reasonable expenses. If the defendant requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the basis for the amount to be reimbursed must be demonstrated. In determining the amount of reimbursement and method of

payment, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.

c. A defendant who is required to reimburse indigent defense costs and expenses and who is not willfully in default in that reimbursement may at any time petition the court to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

3. The state's attorney of the county or prosecuting attorney of the city in which the alleged offense took place, if reimbursement has not been received, shall seek civil recovery of any amounts expended on the defendant's behalf anytime the state's attorney or city attorney determines the person for whom counsel was appointed may have funds to repay the state or city within six years of the date such amount was paid on that person's behalf. A person against whom civil recovery is sought under this subsection is entitled to all exemptions accorded to other judgment debtors. The state's attorney may contract with a private sector collection agency for assistance in seeking recovery of such funds. Before referring the matter to a collection agency, the state's attorney shall notify the person who is the subject of the collection action.

4. The indigent defense administration fund is a special fund in the state treasury. The state treasurer shall deposit in the fund all application fees collected under subsection 1. All moneys in the indigent defense administration fund are appropriated on a continuing basis to the commission on legal counsel for indigents to be used in the administration of the indigent defense system.

SECTION 16. AMENDMENT. Section 29-32.1-05 of the North Dakota Century Code is amended and reenacted as follows:

29-32.1-05. ~~Appointment of counsel~~ Counsel at public expense - Applicant's inability to pay costs and litigation expenses.

1. If an applicant requests ~~appointment of~~ counsel and the court is satisfied that the applicant is ~~unable to obtain adequate representation, the court shall appoint~~ indigent, counsel shall be provided at public expense to represent the applicant.

2. Costs and expenses incident to a proceeding under this chapter, including fees for ~~appointed~~ counsel provided at public expense, must be reimbursed in the same manner as are costs and expenses incurred in the defense of criminal prosecutions.

SECTION 17. AMENDMENT. Section 31-01-16 of the North Dakota Century Code is amended and reenacted as follows:

31-01-16. Compensation and mileage and travel expense of witness. A witness in a civil or criminal case is entitled to receive:

1. A sum of twenty-five dollars for each day necessarily in attendance before the district court or before any other board or tribunal, except municipal court.

2. A sum for mileage and travel expense reimbursement equal to the reimbursement rates provided for state employees in sections 44-08-04 and 54-06-09.

In all criminal cases in district court, the attorney general shall pay prosecution witness fees and expenses~~,~~ and the ~~supreme court shall pay other witness fees for indigents and expenses~~ commission on legal counsel for indigents shall pay witness fees and expenses for witnesses in those cases in which counsel has been provided by the commission. Prisoners may not be compensated as witnesses under this section.

Approved March 5, 2007
Filed March 6, 2007

CHAPTER 120

HOUSE BILL NO. 1319

(Representatives Porter, Carlisle, Klemin, S. Meyer)
(Senators Holmberg, Potter)

DEADLY FORCE USE AND LIABILITY

AN ACT to create and enact two new sections to chapter 12.1-05 of the North Dakota Century Code, relating to the use of and liability for deadly force; and to amend and reenact section 12.1-05-07 of the North Dakota Century Code, relating to the use of deadly force.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-05-07 of the North Dakota Century Code is amended and reenacted as follows:

12.1-05-07. Limits on the use of force - Excessive force - Deadly force.

1. ~~A person~~ An individual is not justified in using more force than is necessary and appropriate under the circumstances.

2. Deadly force is justified in the following instances:

   a. When it is expressly authorized by law or occurs in the lawful conduct of war.

   b. When used in lawful self-defense, or in lawful defense of others, if such force is necessary to protect the actor or anyone else against death, serious bodily injury, or the commission of a felony involving violence. The use of deadly force is not justified if it can be avoided, with safety to the actor and others, by retreat or other conduct involving minimal interference with the freedom of the ~~person~~ individual menaced. ~~A person~~ An individual seeking to protect ~~someone else~~ another individual must, before using deadly force, try to cause ~~that person~~ the other individual to retreat, or otherwise comply with the requirements of this provision, if safety can be obtained thereby. ~~But, (1) a~~ However, the duty to retreat or avoid force does not apply under the following circumstances:

      (1) A public servant justified in using force in the performance of ~~his~~ the public servant's duties or ~~a person~~ an individual justified in using force in ~~his assistance~~ assisting the public servant need not desist from ~~his~~ the public servant's or individual's efforts because of resistance or threatened resistance by or on behalf of the ~~person~~ other individual against whom ~~his~~ the public servant's or individual's action is directed; and ~~(2) no person~~

      (2) An individual is not required to retreat within or from ~~his~~ that individual's dwelling or place of work or from an occupied motor home or travel trailer as defined in section 39-01-01, unless ~~he~~ the individual was the original aggressor or is

assailed by ~~a person~~ another individual who ~~he~~ the individual knows also dwells or works there or who is lawfully in the motor home or travel trailer.

c. When used by ~~a person~~ an individual in possession or control of a dwelling ~~or~~, place of work, or ~~a person~~ an occupied motor home or travel trailer as defined in section 39-01-01, or by an individual who is licensed or privileged to be there, if ~~such~~ the force is necessary to prevent commission of arson, burglary, robbery, or a felony involving violence upon or in the dwelling ~~or~~, place of work, or occupied motor home or travel trailer, and the use of force other than deadly force for ~~such~~ these purposes would expose ~~anyone~~ any individual to substantial danger of serious bodily injury.

d. When used by a public servant authorized to effect arrests or prevent escapes, if ~~such~~ the force is necessary to effect an arrest or to prevent the escape from custody of ~~a person~~ an individual who has committed or attempted to commit a felony involving violence, or is attempting to escape by the use of a deadly weapon, or has otherwise indicated that ~~he~~ the individual is likely to endanger human life or to inflict serious bodily injury unless apprehended without delay.

e. When used by a guard or other public servant, if ~~such~~ the force is necessary to prevent the escape of a prisoner from a detention facility, unless ~~he~~ the guard or public servant knows that the prisoner is not ~~such a person~~ an individual as described in subdivision d. A detention facility is any place used for the confinement, pursuant to a court order, of ~~a person~~ ~~(1)~~ an individual charged with or convicted of an offense~~;~~ ~~or~~ ~~(2)~~, charged with being or adjudicated a juvenile delinquent~~;~~ ~~or~~ ~~(3)~~, held for extradition~~;~~, or ~~(4)~~ otherwise confined ~~pursuant to~~ under court order.

f. When used by a duly licensed physician, or ~~a person~~ an individual acting at ~~his~~ the physician's direction, if ~~such~~ the force is necessary to administer a recognized form of treatment to promote the physical or mental health of a patient and if the treatment is administered ~~(1)~~ in an emergency; ~~(2)~~ with the consent of the patient, or, if the patient is a minor or an incompetent person, with the consent of ~~his~~ the patient's parent, guardian, or other person entrusted with ~~his~~ the patient's care and supervision; or ~~(3)~~ by order of a court of competent jurisdiction.

g. When used by ~~a person~~ an individual who is directed or authorized by a public servant, and who does not know that~~, if such is the case,~~ the public servant is ~~himself~~ not authorized to use deadly force under the circumstances.

SECTION 2. A new section to chapter 12.1-05 of the North Dakota Century Code is created and enacted as follows:

Use of deadly force - Presumption of fear of death or serious bodily injury.

1. An individual is presumed to have held a reasonable fear of imminent peril of death or serious bodily injury to that individual or another when using deadly force if:

   a. The individual against whom the deadly force was used was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered and remains within a dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01, or if the individual had removed or was attempting to remove another against that individual's will from the dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01; and

   b. The individual who uses deadly force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

2. The presumption in subsection 1 may be rebutted by proof beyond a reasonable doubt that the individual who used the deadly force did not have a reasonable fear of imminent peril of death or serious bodily injury to that individual or another.

3. The presumption in subsection 1 does not apply if the court finds that any of the following have occurred:

   a. The individual against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01, including an owner, lessee, or titleholder, and there is not a temporary or permanent domestic violence protection order or any other order of no contact against that individual;

   b. The individual removed or sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the individual against whom the deadly force is used;

   c. The individual who uses deadly force is engaged in the commission of a crime or is using the dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01 to further the commission of a crime; or

   d. The individual against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01 in the performance of official duties and the officer provided identification, if required, in accordance with any applicable law or warrant from a court, or if the individual using force knew or reasonably should have known that the individual entering or attempting to enter was a law enforcement officer.

SECTION 3. A new section to chapter 12.1-05 of the North Dakota Century Code is created and enacted as follows:

Immunity from civil liability for justifiable use of force.

1. An individual who uses force as permitted under this chapter is immune from civil liability for the use of the force to the individual against whom force was used or to that individual's estate unless that individual is a law enforcement officer who was acting in the performance of official duties and the officer provided identification, if required, in accordance with any applicable law or warrant from a court, or if the individual using force knew or reasonably should have known that the individual was a law enforcement officer.

2. The court shall award reasonable attorney's fees and court costs and disbursements incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from civil liability as provided in subsection 1.

Approved April 24, 2007
Filed April 25, 2007

CHAPTER 121

SENATE BILL NO. 2262

(Senators Hacker, Potter, Wanzek)
(Representatives DeKrey, Delmore, S. Kelsh)

CRIMINAL INTENT RENUNCIATION

AN ACT to amend and reenact section 12.1-06-05 of the North Dakota Century Code, relating to the renunciation of criminal intent; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[69] **SECTION 1. AMENDMENT.** Section 12.1-06-05 of the North Dakota Century Code is amended and reenacted as follows:

12.1-06-05. General provisions.

1. The definition of an offense in sections 12.1-06-01 to 12.1-06-04 ~~shall~~ does not apply to another offense also defined in sections 12.1-06-01 to 12.1-06-04.

2. Whenever "attempt" or "conspiracy" is made an offense outside this chapter, it ~~shall mean~~ means attempt or conspiracy, as the case may be, as defined in this chapter.

3. a. ~~In~~ Other than as provided in subsection 4, in a prosecution under section 12.1-06-01, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of ~~his~~ criminal intent, the defendant avoided the commission of the crime attempted by abandoning ~~his~~ any criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.

   b. ~~In~~ Other than as provided in subsection 4, in a prosecution under section 12.1-06-03 or 12.1-06-04, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of ~~his~~ criminal intent, the defendant prevented the commission of the crime solicited or of the crime or crimes contemplated by the conspiracy.

   c. A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by (1) a belief that a circumstance exists which increases the probability of detection or apprehension of the defendant or another participant in the criminal operation, or which makes more difficult the

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[69] Section 12.1-06-05 was also amended by section 1 of Senate Bill No. 2030, chapter 162.

consummation of the crime, or (2) a decision to postpone the criminal conduct until another time or to substitute another victim, or another but similar objective.

4. An individual under the age of twenty-one is immune from prosecution under this chapter if:

a. The individual voluntarily and completely renounced the individual's criminal intent;

b. The individual is a student enrolled in an elementary school, middle school, or a high school in this state;

c. The offense would have resulted in:

(1) Harm to another student enrolled in an elementary school, middle school, or a high school in this state;

(2) Harm to an employee of a school district or a nonpublic school in this state; or

(3) Damage to a school building or school property; and

d. The renunciation was given to a law enforcement officer or to an administrator of a school or school district in this state before any harm to others or damage to property occurs.

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

Approved April 30, 2007
Filed May 1, 2007

CHAPTER 122

SENATE BILL NO. 2415

(Senators Christmann, Dever, Heitkamp)
(Representatives Grande, Wald)

IMPLANTED MICROCHIPS PROHIBITED

AN ACT to create and enact a new section to chapter 12.1-15 of the North Dakota Century Code, relating to implanted microchips in individuals; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-15 of the North Dakota Century Code is created and enacted as follows:

Implanting microchips prohibited. A person may not require that an individual have inserted into that individual's body a microchip containing a radio frequency identification device. A violation of this section is a class A misdemeanor.

Approved April 4, 2007
Filed April 5, 2007

CHAPTER 123

HOUSE BILL NO. 1216

(Representatives DeKrey, Delmore, Koppelman)
(Senators Hacker, Lyson, Nelson)

SEXUAL OFFENDER SENTENCING AND PROBATION

AN ACT to amend and reenact subsection 3 of section 12.1-20-01, section 12.1-20-03, subsection 1 of section 12.1-20-03.1, and sections 12.1-32-06.1 and 12.1-32-07.1 of the North Dakota Century Code, relating to sentencing and probation supervision of sexual offenders; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 12.1-20-01 of the North Dakota Century Code is amended and reenacted as follows:

3. When criminality depends on the victim being a minor fifteen years of age or older, the actor is guilty of an offense only if the actor is at least ~~four~~ three 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. 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. 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. 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. 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; or

c. That person knows that the victim is unaware that sexual contact is being committed on the victim.

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

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 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. Subsection 1 of section 12.1-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual in adult court is guilty of 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 least twenty-two years of age at the time of the offense. Otherwise, the offense is a class A felony. The court may not defer imposition of sentence.

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 in violation of chapter 12.1-20, the court shall impose ~~a period~~ at least five years but not more than ten years 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 defendant has pled or been found guilty of a class AA felony sexual offense in violation of section 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime supervised probation on the defendant. If the defendant has pled or been found guilty of a misdemeanor sexual offense in violation of chapter 12.1-20, the court may impose an additional period of probation not to exceed two years. 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.

SECTION 5. AMENDMENT. Section 12.1-32-07.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-07.1. Release, discharge, or termination of probation.

1. Whenever a person has been placed on probation and in the judgment of the court that person has satisfactorily met the conditions of

probation, the court shall cause to be issued to the person a final discharge from further supervision.

2. Whenever a person has been placed on probation pursuant to subsection 4 of section 12.1-32-02, the court at any time, when the ends of justice will be served, and when reformation of the probationer warrants, may terminate the period of probation and discharge the person so held. A person convicted of gross sexual imposition under subdivision a of subsection 1 of section 12.1-20-03 is not entitled to early termination of probation pursuant to this section, unless the court finds after at least eight years of supervised probation that further supervision would impose a manifest injustice as defined in section 39-01-01. Every defendant who has fulfilled the conditions of probation for the entire period, or who has been discharged from probation prior to termination of the probation period, may at any time be permitted in the discretion of the court to withdraw the defendant's plea of guilty. The court may in its discretion set aside the verdict of guilty. In either case, the court may dismiss the information or indictment against the defendant. The court may, upon its own motion or upon application by the defendant and before dismissing the information or indictment, reduce to a misdemeanor a felony conviction for which the plea of guilty has been withdrawn or set aside. The defendant must then be released from all penalties and disabilities resulting from the offense or crime of which the defendant has been convicted except as provided by ~~section~~ sections 12.1-32-15 and 62.1-02-01.

Approved April 3, 2007
Filed April 4, 2007

CHAPTER 124

HOUSE BILL NO. 1472

(Representatives Clark, Berg, Dietrich, Thoreson)
(Senators Flakoll, Nelson)

SEXUAL OFFENDERS NEAR SCHOOLS PROHIBITED

AN ACT to create and enact a new section to chapter 12.1-20, a new subsection to section 12.1-20-05, and a new subsection to section 12.1-20-12.1 of the North Dakota Century Code, relating to the presence near schools of certain sexual offenders; to amend and reenact subsection 14 of section 12.1-32-15 of the North Dakota Century Code, relating to liability of school officials; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Sexual offender presence near schools prohibited.

1. Except for purposes of voting in a school building used as a public polling place or attending an open meeting under chapter 44-04 in a school building, a sexual offender, as defined in section 12.1-32-15, who has pled guilty or been found guilty of or has been adjudicated delinquent of a class A misdemeanor or felony sexual offense against a minor or is required to register under section 12.1-32-15 or equivalent law of another state may not knowingly enter upon the real property comprising a public or nonpublic elementary, middle, or high school unless allowed on school property through compliance with a written policy adopted by the school board of a public school or governing body of a nonpublic school.

2. An individual who violates this section is guilty of a class A misdemeanor.

SECTION 2. A new subsection to section 12.1-20-05 of the North Dakota Century Code is created and enacted as follows:

An adult who commits a violation 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. An adult 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.

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[70] Section 12.1-20-25 was amended by section 1 of Senate Bill No. 2256, chapter 126.

SECTION 3. A new subsection to section 12.1-20-12.1 of the North Dakota Century Code is created and enacted as follows:

A person who commits a violation 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.

[71] **SECTION 4. AMENDMENT.** Subsection 14 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

14. A state officer, law enforcement agency, or public school district or governing body of a nonpublic school or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations, allowing a sexual offender to attend a school function under section 1 of this Act, or for disclosing or for failing to disclose information as permitted by this section.

Approved April 23, 2007
Filed April 24, 2007

[71] Section 12.1-32-15 was also amended by section 1 of Senate Bill No. 2259, chapter 136.

CHAPTER 125

SENATE BILL NO. 2248

(Senators Hacker, Nelson, Stenehjem)
(Representatives Dahl, Delmore, L. Meier)

LURING MINORS BY ELECTRONIC MEANS

AN ACT to amend and reenact sections 12.1-20-05.1, 29-03-01.1, and 29-03-09 of the North Dakota Century Code, relating to the luring of a minor by electronic means, persons liable for prosecution in this state, and the venue of certain offenses; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-20-05.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-05.1. Luring minors by computer or other electronic means.

1. An adult is guilty of luring minors by computer or other electronic means when:

~~1.~~ a. The adult knows the character and content of a communication that, in whole or in part, implicitly or explicitly discusses or depicts actual or simulated nudity, sexual acts, sexual contact, sadomasochistic abuse, or other sexual performances and uses any computer communication system or other electronic means that allows the input, output, examination, or transfer of ~~computer~~ data or ~~computer~~ programs from one computer or electronic device to another to initiate or engage in such communication with a person the adult believes to be a minor; and

~~2.~~ b. By means of that communication the adult importunes, invites, or induces a person the adult believes to be a minor to engage in sexual acts or to have sexual contact with the adult, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for the adult's benefit, satisfaction, lust, passions, or sexual desires.

~~3.~~ 2. A violation of this section is a class A misdemeanor~~, but~~ if the adult is less than twenty-two years of age and reasonably believes the minor is age fifteen to seventeen. If the adult is less than twenty-two years of age and reasonably believes the minor is under age fifteen, or the adult is twenty-two years of age or older ~~or~~ and the adult reasonably believes the minor is ~~under the~~ age ~~of~~ fifteen to seventeen, violation of this section is a class C felony. If the adult is twenty-two years of age or older and the adult reasonably believes the minor is under the age of fifteen, violation of this section is a class B felony. The court shall sentence an adult convicted of a class B or class C felony under this section to serve a term of imprisonment of at least one year, except the court may sentence an individual to less than one year if the individual did not take a substantial step toward meeting with the minor.

3. The attorney general may issue an administrative subpoena compelling an internet service provider or cellular phone company to provide subscriber information to a law enforcement agency investigating a possible violation of this section.

SECTION 2. AMENDMENT. Section 29-03-01.1 of the North Dakota Century Code is amended and reenacted as follows:

29-03-01.1. When persons liable to prosecution in this state. Any person who commits one or more of the following acts ~~and is thereafter found in this state~~ is liable to prosecution under the laws of this state:

1. Commission of a robbery or theft outside this state and bringing the stolen property into this state.

2. Soliciting, while outside this state, criminal action within this state.

3. Soliciting, while outside this state, sexual contact with a person believed to be a minor who at the time of the solicitation is located in this state.

4. Commission of kidnapping or felonious restraint when the victim is brought into this state.

SECTION 3. AMENDMENT. Section 29-03-09 of the North Dakota Century Code is amended and reenacted as follows:

29-03-09. Venue of kidnapping, forcible restraint, unlawful imprisonment, electronic luring, or prostitution cases. The venue of a criminal action for any of the following offenses is in any county in which the offense is committed, or into or out of which the individual upon whom the offense was committed may have been brought, in the course of the commission of the offense, or in which an act was done by the accused in instigating, procuring, promoting, soliciting, or facilitating the commission of the offense:

1. ~~For kidnapping~~ Kidnapping, forcible restraint, or unlawful imprisonment, in violation of chapter 12.1-18; ~~or~~

2. ~~For~~ A violation of section 12.1-29-01, 12.1-29-02, or 12.1-29-03 relating to prostitution~~,~~

~~is in any county in which the offense is committed, or into or out of which the person upon whom the offense was committed may have been brought, in the course of the commission of the offense, or in which an act was done by the accused in instigating, procuring, promoting, soliciting, or facilitating the commission of the offense~~; or

3. Luring a minor by computer or other electronic means in violation of section 12.1-20-05.1.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 9, 2007
Filed April 10, 2007

CHAPTER 126

SENATE BILL NO. 2256

(Senators Fiebiger, Mathern, Nething)
(Representatives Schneider, Zaiser)

SEXUAL OFFENDERS ON SCHOOL PROPERTY

AN ACT to amend and reenact the new section to chapter 12.1-20 of the North Dakota Century Code as created by section 1 of House Bill No. 1472, as approved by the sixtieth legislative assembly, relating to sexual offenders on school property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[72] **SECTION 1.** The new section to chapter 12.1-20 of the North Dakota Century Code as created by section 1 of House Bill No. 1472, as approved by the sixtieth legislative assembly, is amended and reenacted as follows:

Sexual offender presence near schools prohibited.

1. Except for purposes of voting in a school building used as a public polling place or attending an open meeting under chapter 44-04 in a school building, a sexual offender, as defined in section 12.1-32-15, who has pled guilty or been found guilty of or has been adjudicated delinquent of a class A misdemeanor or felony sexual offense against a minor or is required to register under section 12.1-32-15 or equivalent law of another state may not knowingly enter upon the real property comprising a public or nonpublic elementary, middle, or high school unless provided by this section or allowed on school property through compliance with a written policy adopted by the school board of a public school or governing body of a nonpublic school. The school board or governing body shall provide a copy of the policy to local law enforcement upon request.

2. If a school board or a governing body does not have a written policy on sexual offenders on school property, subsection 1 does not apply under the following circumstances:

   a. The offender is a parent or guardian of a student attending the school and the offender, with the written permission of the school board or governing body of the school, or designee of the board or body, is attending a conference at the school with school personnel to discuss the progress of the student academically or socially, participating in a child review conference in which evaluation and placement decisions may be made regarding special education services, or attending a conference to discuss other student issues, including retention and promotion.

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[72] Section 12.1-20-25 was created by section 1 of House Bill No. 1472, chapter 124.

b. The offender is a parent, guardian, or relative of a student attending or participating in a function at the school and the offender has requested advance permission from the school board or governing body, or designee of the board or body, and received permission allowing the offender's presence at the school function.

c. The offender is a student at the school with the written permission of the school board or governing body, or designee of the board or body.

d. The school board or governing body, or designee of the board or body, allows the offender on school property under other circumstances on a case-by-case basis.

3. An individual who violates this section is guilty of a class A misdemeanor.

Approved April 26, 2007
Filed April 27, 2007

CHAPTER 127

HOUSE BILL NO. 1500

(Representatives Dosch, L. Meier, Porter, Weiler)
(Senator Hacker)

CRIMINAL TRESPASS

AN ACT to amend and reenact section 12.1-22-03 of the North Dakota Century Code, relating to criminal trespass.

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.

1. ~~A person~~ An individual is guilty of a class C felony if, knowing that ~~he~~ that individual is not licensed or privileged to do so, ~~he~~ the individual enters or remains in a dwelling or in highly secured premises.

2. ~~A person~~ An individual is guilty of a class A misdemeanor if, knowing that ~~he~~ that individual is not licensed or privileged to do so, ~~he~~ 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 person~~ An individual is guilty of a class B misdemeanor if, knowing that that ~~person~~ individual is not licensed or privileged to do so, ~~that person~~ the individual enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the ~~person~~ individual in charge of the premises or other authorized ~~person~~ 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. ~~A person~~ An individual who violates this subsection is guilty of a class A misdemeanor for the second or subsequent offense within a two-year period.

4. ~~A person~~ An individual is guilty of a class B misdemeanor if that ~~person~~ individual remains upon the property of another after being requested to leave the property by a duly authorized ~~person~~ individual. ~~A person~~ 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. This section does not apply to a peace officer in the course of discharging the peace officer's official duties.

Approved March 9, 2007
Filed March 12, 2007

CHAPTER 128

HOUSE BILL NO. 1357

(Representatives Dahl, Heller, Owens)
(Senators Freborg, Hacker, J. Lee)

SEXUAL CONDUCT BY MINOR MATERIAL POSSESSION

AN ACT to amend and reenact section 12.1-27.2-04.1 of the North Dakota Century Code, relating to the penalty for possession of materials that include sexual conduct by a minor; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-27.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-27.2-04.1. 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.

Approved March 21, 2007
Filed March 21, 2007

CHAPTER 129

HOUSE BILL NO. 1040

(Representatives Grande, DeKrey, Klein, Metcalf)
(Senators Dever, Lyson)

FUNERAL DISORDERLY CONDUCT

AN ACT to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to disorderly conduct at a funeral; 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:

Disorderly conduct at a funeral - Penalty.

1. For purposes of this section:

   a. "Funeral" means the ceremonies, rituals, processions, and memorial services held at a funeral site in connection with the burial, cremation, or memorial of a deceased individual.

   b. "Funeral site" means a church, synagogue, mosque, funeral home, mortuary, cemetery, gravesite, mausoleum, or other place at which a funeral is conducted or is scheduled to be conducted within the next hour or has been conducted within the last hour.

2. An individual is guilty of disorderly conduct at a funeral if the individual:

   a. Engages, with knowledge of the existence of a funeral site, in any loud singing, playing of music, chanting, whistling, yelling, or noisemaking within three hundred feet [91.44 meters] of any ingress or egress of that funeral site if the volume of the singing, music, chanting, whistling, yelling, or noisemaking is likely to be audible at and disturbing to the funeral site; or

   b. Displays, with knowledge of the existence of a funeral site and within three hundred feet [91.44 meters] of any ingress or egress of that funeral site, any visual images that convey fighting words or actual or veiled threats against any other individual.

3. Disorderly conduct at a funeral is a class B misdemeanor. A second or subsequent violation of this section is a class A misdemeanor.

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

Approved January 25, 2007
Filed January 25, 2007

CHAPTER 130

HOUSE BILL NO. 1358

(Representatives Carlson, Delmore, Weiler)
(Senators Nething, O'Connell, Tollefson)

TOBACCO SALES AND USE BY MINORS

AN ACT to create and enact section 12.1-31-03.1 of the North Dakota Century Code, relating to limitation of sales of cigarettes or other tobacco products through vending machines; to amend and reenact section 12.1-31-03 of the North Dakota Century Code, relating to sales to and use by minors of tobacco products; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

12.1-31-03. Sale of tobacco to minors and use by minors prohibited.

1. It is an infraction for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. As used in this subsection, "sell" includes dispensing from a vending machine under the control of the actor.

2. It is a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. However, an individual under eighteen years of age may purchase and possess tobacco as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.

3. It is a noncriminal offense for a minor to present or offer to another individual a purported proof of age which is false, fraudulent, or not actually the minor's own proof of age, for the purpose of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing.

4. A city or county may adopt an ordinance or resolution regarding the sale of tobacco to minors and use of tobacco by minors which includes prohibitions in addition to those in subsection 1, 2, or ~~2~~ 3. Any ordinance or resolution adopted must include provisions deeming a violation of subsection 2 or 3 a noncriminal violation and must provide for a fee of not less than twenty-five dollars for a minor fourteen years of age or older who has been charged with an offense under subsection 2 or 3. The failure to post a required bond or pay an assessed fee by an individual found to have violated the ordinance or resolution is

punishable as a contempt of court, except a minor may not be imprisoned for the contempt.

~~4.~~ 5. A minor fourteen years of age or older found to have violated subsection 2 or 3 must pay a fee of twenty-five dollars.

a. Any individual who has been cited for a violation of subsection 2 or 3 may appear before a court of competent jurisdiction and pay the fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the fee or bond, or both. If the individual cited follows the procedures of this subdivision, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court must be identical to the fee. This subdivision does not allow a citing officer to receive the fee or bond.

b. If an individual cited for a violation of subsection 2 or 3 does not choose to follow the procedures provided under subdivision a, that individual may request a hearing on the issue of the commission of the violation cited. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance. At the time of a request for a hearing on the issue on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.

c. The failure to post bond or to pay an assessed fee is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.

~~5.~~ 6. The prosecution must prove the commission of a cited violation under subsection 2 or 3 by a preponderance of the evidence.

~~6.~~ 7. A law enforcement officer that cites a minor for violation of this section shall mail a notice of the violation to the parent or legal guardian of the minor within ten days of the citation.

~~7.~~ 8. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or to an alternative sentence or sanction including community service.

SECTION 2. Section 12.1-31-03.1 of the North Dakota Century Code is created and enacted as follows:

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

1. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through a vending machine, except as provided in subsection 2.

2. Subsection 1 does not apply to:

   a. A vending machine that is located in an area in which minors are not permitted access; or

   b. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through the operation of a device that requires a salesperson to control the dispensation of such product.

3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through any vending machine, if those products are placed together with any nontobacco product, other than matches, in the vending machine.

Approved March 21, 2007
Filed March 21, 2007

CHAPTER 131

SENATE BILL NO. 2138

(Senators Potter, Hacker, Nelson)
(Representatives Delmore, Ekstrom, N. Johnson)

UNLAWFUL COHABITATION REPEAL

AN ACT to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to false representation of marital status; to amend and reenact subsection 1 of section 23-07-07.5 and section 23-07.7-01 of the North Dakota Century Code, relating to sexual offense medical testing; to repeal section 12.1-20-10 of the North Dakota Century Code, relating to an individual's living arrangements; and to provide a penalty.

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:

False representation of marital status. An individual is guilty of a class B misdemeanor if the individual lives openly and notoriously with an individual of the opposite sex as a married couple without being married to the other individual and falsely represents the couple's status as being married to each other.

SECTION 2. AMENDMENT. Subsection 1 of section 23-07-07.5 of the North Dakota Century Code is amended and reenacted as follows:

1. The following individuals must be examined or tested for the presence of antibodies to or antigens of the human immunodeficiency virus:

   a. Every individual convicted of a crime who is imprisoned for fifteen days or more in a grade one or grade two jail, a regional correctional facility, or the state penitentiary;

   b. Every individual, whether imprisoned or not, who is convicted of a sexual offense under chapter 12.1-20, except for those convicted of violating sections ~~12.1-20-10,~~ 12.1-20-12.1~~,~~ and 12.1-20-13; and

   c. Every individual, whether imprisoned or not, who is convicted of an offense involving the use of a controlled substance, as defined in chapter 19-03.1, and the offense involved the use of paraphernalia, including any type of syringe or hypodermic needle, that creates an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus.

[73] **SECTION 3. AMENDMENT.** Section 23-07.7-01 of the North Dakota Century Code is amended and reenacted as follows:

23-07.7-01. Court-ordered sexual offense medical testing. The court may order any defendant charged with a sex offense under chapter 12.1-20 and any alleged juvenile offender with respect to whom a petition has been filed in a juvenile court alleging violation of chapter 12.1-20 to undergo medical testing to determine whether the defendant or alleged juvenile offender has any sexually transmitted diseases, including a test for infection with the human immunodeficiency virus or any other identified positive agent of acquired immunodeficiency syndrome. The court may not order a defendant charged with violating section ~~12.1-20-10,~~ 12.1-20-12.1~~,~~ or 12.1-20-13 or an alleged juvenile offender with respect to when a petition has been filed in a juvenile court alleging violation of section ~~12.1-20-10,~~ 12.1-20-12.1~~,~~ or 12.1-20-13 to undergo the testing authorized by this section. The court may order the testing only if the court receives a petition from the alleged victim of the offense or from the prosecuting attorney if the alleged victim has made a written request to the prosecuting attorney to petition the court for an order authorized under this section. On receipt of a petition, the court shall determine, without a hearing, if probable cause exists to believe that a possible transfer of a sexually transmitted disease or human immunodeficiency virus took place between the defendant or alleged juvenile offender and the alleged victim. If the court determines probable cause exists, the court shall order the defendant or alleged juvenile offender to submit to testing and that a copy of the test results be released to the defendant's or alleged juvenile offender's physician and each requesting victim's physician. The physicians for the defendant or alleged juvenile offender and requesting victim must be specifically named in the court order, and the court order must be served on the physicians before any test.

SECTION 4. REPEAL. Section 12.1-20-10 of the North Dakota Century Code is repealed.

Approved April 27, 2007
Filed April 27, 2007

[73] Section 23-07.7-01 was also amended by section 1 of Senate Bill No. 2358, chapter 239.

CHAPTER 132

HOUSE BILL NO. 1466

(Representatives Kerzman, Metcalf)
(Senators Christmann, Erbele)

ABORTION PROHIBITION

AN ACT to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to the prohibition of the performance of abortions; to provide a penalty; and to provide an effective date.

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:

Abortion - Affirmative defenses.

1. As used in this section:

   a. "Abortion" means the use or prescription of any substance, device, instrument, medicine, or drug to intentionally terminate the pregnancy of an individual known to be pregnant. The term does not include an act made with the intent to increase the probability of a live birth; preserve the life or health of a child after live birth; or remove a dead, unborn child who died as a result of a spontaneous miscarriage, an accidental trauma, or a criminal assault upon the pregnant female or her unborn child.

   b. "Physician" means an individual licensed to practice medicine under chapter 43-17.

   c. "Professional judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

2. It is a class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion.

3. The following are affirmative defenses under this section:

   a. That the abortion was necessary in professional judgment and was intended to prevent the death of the pregnant female.

   b. That the abortion was to terminate a pregnancy that resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20.

   c. That the individual was acting within the scope of that individual's regulated profession and under the direction of or at the direction of a physician.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on the date the legislative council approves by motion the recommendation of the attorney general to the legislative council that it is reasonably probable that this Act would be upheld as constitutional.

Approved April 26, 2007
Filed April 27, 2007

CHAPTER 133

SENATE BILL NO. 2352

(Senators Wanzek, J. Lee, Robinson, Wardner)
(Representatives Headland, Hunskor)

TATTOOING AND PIERCING OF MINORS

AN ACT to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to limitations on tattooing, branding, subdermal implantation, scarifying, and body piercing of minors; to amend and reenact the new section to chapter 23-01 of the North Dakota Century Code as created by section 1 of House Bill No. 1505, as approved by the sixtieth legislative assembly, relating to the regulation of tattooing, body piercing, branding, subdermal implants, and scarification; and to provide a penalty.

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:

Tattooing, branding, subdermal implants, scarifying, and piercing - Minors.

1. As used in this section:

   a. "Brand" means the use of heat, cold, or any chemical compound to imprint permanent markings on an individual's skin.

   b. "Pierce" means the puncture of any part of an individual's body to insert studs, pins, rings, chains, or other jewelry or adornment.

   c. "Scarify" means to cut, tear, or abrade an individual's skin for the purpose of creating a permanent mark or design on the skin.

   d. "Subdermal implant" means to insert a foreign object beneath the skin to decorate an individual's body.

   e. "Tattoo" means to mark the skin of an individual by insertion of permanent colors through puncture of the skin.

2. It is a class B misdemeanor for a person, other than a licensed health care professional acting within that professional's scope of practice, to tattoo, brand, subdermal implant, scarify, or pierce an individual who is under eighteen years of age unless the tattooing, branding, subdermal implanting, scarifying, or piercing takes place in the presence of and with the written consent of the individual's parent or legal guardian.

3. It is a class B misdemeanor for a person to sell, trade, or otherwise provide materials or kits for tattooing, self-tattooing, branding, self-branding, scarifying, self-scarifying, subdermal implanting, self-subdermal implanting, body piercing, or self-body piercing to an individual who is under eighteen years of age.

4. A political subdivision may enact and enforce an ordinance restricting tattooing, branding, subdermal implanting, scarifying, and piercing or restricting the sale of tattooing, branding, subdermal implanting, scarifying, and piercing materials and kits if the ordinance is equal to or more stringent than this section.

[74] **SECTION 2. AMENDMENT.** The new section to chapter 23-01 of the North Dakota Century Code as created by section 1 of House Bill No. 1505, as approved by the sixtieth legislative assembly, is amended and reenacted as follows:

Tattooing, body piercing, branding, subdermal implants, and scarification - Permit - Fee - Adoption of rules - Exemptions - Injury reports.

1. A person may not operate a facility providing tattooing, body piercing, branding, subdermal implant, ~~and~~ or scarification services without a permit issued by the department under this section. The holder of a permit shall display the permit in a conspicuous place at the facility for which the permit is issued. A permit issued under this section expires annually. An applicant for a permit shall submit an application for a permit to the department, on a form provided by the department, with a permit fee established by the department. The application must include the name and complete mailing address and street address of the facility and any other information reasonably required by the department for the administration of this section.

2. The health council shall adopt rules to regulate any person that receives compensation for engaging in the practice of tattooing, body piercing, branding, subdermal implants, or scarification. The rules must establish health and safety requirements and limitations with respect to the age of an individual who may receive a tattoo, body piercing, or scarification and may prohibit any practice that the health council deems unsafe or a threat to public health.

3. A facility is exempt from subsection 1 if the facility provides body piercing that is limited to the piercing of the noncartilaginous perimeter or lobe of the ear and the facility does not provide tattooing, branding, scarification, or subdermal implants. A person is exempt from regulation under subsection 2 if the person's practice under this section is limited to piercing of the noncartilaginous perimeter or lobe of the ear. A licensed health care professional acting within that professional's scope of practice and the associated medical facility are exempt from this section.

4. If a customer of a facility regulated under this section reports to the facility an injury the customer or operator of the facility believes to have resulted from the tattooing, body piercing, branding, subdermal implanting, or scarification provided at the facility, the operator of the facility shall provide the customer with written information on how to report the alleged injury to the state department of health. If a licensed health care professional treats a patient for an injury the professional determines, in the exercise of professional judgment, occurred as a

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[74] Section 23-01-35 was created by section 1 of House Bill No. 1505, chapter 233.

result of a service regulated under this section, the professional shall report the circumstances to the state department of health. A licensed health care professional is immune from liability for making or not making a report under this subsection.

5. The fees established by the department must be based on the cost of conducting routine and complaint inspections and enforcement actions and preparing and sending license renewals. Fees collected under this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly. The department shall waive all or a portion of the fee for any facility that is subject to local jurisdiction.

Approved May 4, 2007
Filed May 4, 2007

CHAPTER 134

HOUSE BILL NO. 1075

(Judiciary Committee)
(At the request of the Department of Corrections and Rehabilitation)

CREDIT AT SENTENCING

AN ACT to amend and reenact subsection 2 of section 12.1-32-02 of the North Dakota Century Code, relating to sentencing and credit for time spent in custody.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 must be stated in the criminal judgment.

Approved March 6, 2007
Filed March 7, 2007

CHAPTER 135

SENATE BILL NO. 2241

(Senators Anderson, Lyson)
(Representative Williams)

PROBATION CONDITIONS

AN ACT to amend and reenact subsection 3 of section 12.1-32-07 of the North Dakota Century Code, relating to the conditions of probation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[75] **SECTION 1. 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 ~~and~~. 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;

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[75] Section 12.1-32-07 was also amended by section 5 of House Bill No. 1015, chapter 15, and section 3 of House Bill No. 1122, chapter 119.

g. Residential halfway house; or

h. Intensive supervision program.

Approved April 4, 2007
Filed April 5, 2007

CHAPTER 136

SENATE BILL NO. 2259

(Senators Dever, Flakoll, Freborg)
(Representatives Delmore, Headland, Thoreson)

SEXUAL OFFENDER REGISTRATION

AN ACT to amend and reenact subsections 1, 2, 3, 7, 8, and 9 of section 12.1-32-15 of the North Dakota Century Code, relating to registration requirements for sexual offenders and offenders against children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[76] **SECTION 1. AMENDMENT.** Subsections 1, 2, 3, 7, 8, and 9 of section 12.1-32-15 of the North Dakota Century Code are amended and reenacted as follows:

1. As used in this section:

   a. "A crime against a child" means a violation of chapter 12.1-16, section 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04, subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01, 12.1-18-02, 12.1-18-05, chapter 12.1-29, or subdivision a of subsection 1 or subsection 2 of section 14-09-22, or an equivalent ~~ordinance~~ 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 to commit these offenses.

   b. "Department" means the department of corrections and rehabilitation.

   c. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.

   d. "Predatory" means an act directed at a stranger or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

   e. "Sexual offender" means a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-07 except for subdivision a, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2, chapter

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[76] Section 12.1-32-15 was created by section 4 of House Bill No. 1472, chapter 124.

12.1-27.2, or subsection 2 of section 12.1-22-03.1, or an equivalent ~~ordinance~~ offense from another court in the United States, a tribal court, or court of another country, or an attempt to commit these offenses.

f. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.

g. "Temporarily domiciled" means staying or being physically present in this state for more than thirty days in a calendar year or at a location for longer than ten consecutive days, attending school for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence.

2. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within ~~ten~~ three days of coming into a county in which the individual resides or is 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. 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.

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 finds the individual demonstrated mental abnormality or sexual predatory conduct in the commission of the offense 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 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 found guilty of, an offense in a court of this state for which registration is mandatory under this section or ~~another state or the federal government~~ 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.

7. Registration consists of a written statement signed by the individual, giving the information required by the attorney general, and the fingerprints and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized data base of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register pursuant to this section has a change in name, school, or address, that individual shall inform in writing, at least ten days before the change, the law enforcement agency with whom that individual last registered of the individual's new name, school, residence address, or employment address. 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 ~~ten~~ three days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval determined by the attorney general. A law enforcement agency that has previously registered an offender may omit the fingerprint portion of the registration if that agency has a set of fingerprints on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration.

8. An individual required to register under this section shall comply with the registration requirement for the longer of the following periods:

   a. A period of ~~ten~~ 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; ~~or~~

   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~~, or an equivalent offense of another state or the federal government~~. 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 ~~of another state or the federal government~~ from another court in the United States, a tribal court, or court of another country; or

      (3) ~~Has been civilly committed as a sexually dangerous individual under chapter 25-03.3, under the laws of another state, or by the federal government~~ 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 ~~A misdemeanor~~ C felony. 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. ~~An individual who violates this section who previously has pled guilty or been found guilty of violating this section is guilty of a class C felony.~~

Approved April 30, 2007
Filed May 1, 2007

CHAPTER 137

HOUSE BILL NO. 1219

(Representatives Delmore, Dahl, DeKrey, Kretschmar)
(Senators Lyson, Nelson)

VICTIM INFORMATION AND NOTIFICATION SYSTEM

AN ACT to create and enact a new section to chapter 12.1-34 of the North Dakota Century Code, relating to establishment and administration of a statewide automated victim information and notification system; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-34 of the North Dakota Century Code is created and enacted as follows:

Statewide automated victim information and notification system.

1. The information technology department may establish a statewide automated victim information and notification system that may be administered by the department of corrections and rehabilitation and 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 web site.

   b. Notify a registered victim by telephone, mail, or e-mail when any of the following events affect an offender under the supervision or in the custody of the department of corrections and rehabilitation or other correctional facility in the state:

      (1) The offender is transferred or assigned to another facility.

      (2) The offender is transferred to the custody of another agency outside the state.

      (3) The offender is given a different security classification.

      (4) The offender is released on temporary leave or otherwise.

      (5) The offender is discharged.

      (6) The offender has escaped.

      (7) The offender has been served with a protective order that was requested by the victim.

   c. Notify a registered victim by telephone, mail, or e-mail when the offender has a scheduled court proceeding at which the victim is entitled to be present, a scheduled parole or pardon hearing, 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, or e-mail when a registered sexual offender has updated the offender's registration information or failed to comply with any registration requirement.

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 or for a registered sexual offender by calling the system on a toll-free telephone number or by accessing the system through a public web site.

2. If a statewide automated victim information and notification system is established, the provision of offender and case data on a timely basis to the automated victim information and notification system satisfies any obligation under this chapter to notify a registered victim of an offender's custody and the status of the offender's scheduled court proceedings.

3. If a statewide automated victim information and notification system is established, the system operator shall ensure that an offender's information contained in the system is updated to timely notify a victim that an offender has been released or discharged or has escaped. The failure of the system to provide notice to the victim does not establish a cause of action by the victim against the state or any custodial authority.

4. Custodial authorities shall cooperate with the system operator in establishing and maintaining the statewide automated victim information and notification system.

SECTION 2. LEGISLATIVE COUNCIL STUDY - STATEWIDE AUTOMATED VICTIM INFORMATION AND NOTIFICATION SYSTEM. The legislative council shall consider studying, during the 2007-08 interim, the feasibility and desirability of establishing a statewide automated victim information and notification system to provide information and notify registered victims regarding the status of an offender. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 11, 2007
Filed April 13, 2007

CHAPTER 138

SENATE BILL NO. 2103

(Senators Lyson, Dever, Heckaman)
(Representatives Carlisle, Porter)

SEXUAL ASSAULT EXAMINATION COSTS

AN ACT to create and enact a new section to chapter 12.1-34 of the North Dakota Century Code, relating to the cost of acute forensic medical examinations for alleged victims of sexual assault; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-34 of the North Dakota Century Code is created and enacted as follows:

Acute forensic medical examinations costs - Reimbursement by attorney general - Use of evidence.

1. An acute forensic medical examination is an examination performed on an alleged victim of criminal sexual conduct for the purpose of gathering evidence of an alleged crime and is performed within ninety-six hours after the alleged crime unless good cause is shown for the delay in performing the examination. When an acute forensic medical examination is performed, the costs incurred by a health care facility or health care professional for performing the examination may not be charged, either directly or through a third-party payer, to the alleged victim.

2. Upon submission of appropriate documentation, the attorney general, within the limits of legislative appropriations, shall reimburse the health care facility or a health care professional for the reasonable costs incurred in performing an examination.

3. Evidence obtained during an acute forensic medical examination may not be used against an alleged victim for the prosecution of the alleged victim for a separate offense.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the insurance regulatory trust fund in the state treasury, not otherwise appropriated, the sum of $500,000, or so much of the sum as may be necessary, to the attorney general for the purpose of reimbursing health care facilities and health care professionals for the costs of performing acute forensic medical examinations on alleged victims of criminal sexual conduct, for the biennium beginning July 1, 2007, and ending June 30, 2009.

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

Approved April 26, 2007
Filed April 27, 2007