

CRIMINAL CODE

CHAPTER 155

HOUSE BILL NO. 1142
(Mattson)

RED OR BLACK FLAG DISPLAY

AN ACT to amend and reenact section 12.1-07-05 of the North Dakota Century Code, relating to penalty for display of certain flags; and to repeal section 12.1-07-04 of the North Dakota Century Code, relating to display or exhibit of red or black flags.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

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

12.1-07-05. PENALTY. Any person who violates any of the provisions of ~~sections~~ section 12.1-07-03 ~~or 12.1-07-04~~ is guilty of a class B misdemeanor.

SECTION 2. REPEAL. Section 12.1-07-04 of the North Dakota Century Code is hereby repealed.

Approved February 20, 1981

CHAPTER 156

HOUSE BILL NO. 1280
(Conmy)

THEFT OFFENSE GRADES

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

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

12.1-23-05. GRADING OF THEFT OFFENSES.

1. Theft under this chapter is a class B felony if the property or services stolen exceed ten thousand dollars in value or are acquired or retained by a threat to commit a class A or class B felony or to inflict serious bodily injury on the person threatened or on any other person.
2. Theft under this chapter is a class C felony if:
 - a. The property or services stolen exceed ~~one~~ five hundred dollars in value;
 - b. The property or services stolen are acquired or retained by threat and (1) are acquired or retained by a public servant by a threat to take or withhold official action, or (2) exceed fifty dollars in value;
 - c. The property or services stolen exceed fifty dollars in value and are acquired or retained by a public servant in the course of his official duties;
 - d. The property stolen is a firearm, ammunition, explosive or destructive device, or an automobile, aircraft, or other motor-propelled vehicle;
 - e. The property consists of any government file, record, document, or other government paper stolen from any government office or from any public servant;

- f. The defendant is in the business of buying or selling stolen property and he receives, retains, or disposes of the property in the course of that business;
 - g. The property stolen consists of any implement, paper, or other thing uniquely associated with the preparation of any money, stamp, bond, or other document, instrument, or obligation of this state;
 - h. The property stolen consists of livestock taken from the premises of the owner; or
 - i. The property stolen consists of a key or other implement uniquely suited to provide access to property the theft of which would be a felony and it was stolen to gain such access.
3. All other theft under this chapter is a class A misdemeanor, unless the requirements of subsection 4 are met.
 4. Theft under this chapter of property or services of a value not exceeding two hundred fifty dollars shall be a class B misdemeanor if:
 - a. The theft was not committed by threat;
 - b. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft; and
 - c. The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of his official duties.

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

5. Notwithstanding the provisions of subsection 3 of section 12.1-06-01, an attempt to commit a theft under this chapter is punishable equally with the completed offense when the actor has completed all of the conduct which he believes necessary on his part to complete the theft except receipt of the property.
6. For purposes of grading, the amount involved in a theft under this chapter shall be the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that he was stealing, or which the actor could reasonably have

anticipated to have been the property or services involved. Thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be charged as one offense and the amounts proved to have been stolen may be aggregated in determining the grade of the offense.

Approved February 20, 1981

CHAPTER 157

SENATE BILL NO. 2238
(Reiten)

OBSCENITY DETERMINATION CIVIL PROCEEDING

AN ACT to repeal sections 12.1-27.1-04, 12.1-27.1-05, 12.1-27.1-06, 12.1-27.1-07, 12.1-27.1-08, 12.1-27.1-09, and 12.1-27.1-10 of the North Dakota Century Code, relating to the prior determination of obscenity in a separate civil proceeding before a criminal prosecution may be brought, and to related definitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 12.1-27.1-04, 12.1-27.1-05, 12.1-27.1-06, 12.1-27.1-07, 12.1-27.1-08, 12.1-27.1-09, and 12.1-27.1-10 of the North Dakota Century Code are hereby repealed.

Approved March 12, 1981

CHAPTER 158

SENATE BILL NO. 2237
(Reiten)

LOCAL CONTROL OF OBSCENITY

AN ACT to amend and reenact section 12.1-27.1-12 of the North Dakota Century Code, relating to state preemption of local laws regulating obscenity, and providing an exception relating to city zoning authority; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-27.1-12 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.1-12. STATE PREEMPTION OF LOCAL LAWS REGULATING OBSCENITY. This chapter shall be applicable and uniform throughout the state, and no political subdivision shall enact new, or enforce existing, ordinances or resolutions regulating or prohibiting the dissemination of obscene materials, or controlling obscene performances, except ordinances authorized by section 5-02-09, section 58-03-11, chapter 11-33, or chapter 40-47.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 1, 1981

CHAPTER 159

HOUSE BILL NO. 1207
(Black)

ANTIQUÉ SLOT MACHINE POSSESSION

AN ACT to amend and reenact section 12.1-28-02 of the North Dakota Century Code, relating to gambling offenses and allowing antique slot machines to be collected and possessed as a hobby.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-28-02 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-28-02. GAMBLING - RELATED OFFENSES - CLASSIFICATION OF OFFENSES. Except as permitted by law:

1. It shall be an infraction to engage in gambling.
2. It shall be a class A misdemeanor to:
 - a. Sell, purchase, receive, or transfer a chance to participate in a lottery; or
 - b. Disseminate information about a lottery with intent to encourage participation in it.
3. Subsection 2 shall apply to a lottery drawn or to be drawn outside of this state, whether or not such lottery is lawful in such other state or country.
4. A person is guilty of a class C felony if he engages or participates in the business of gambling. Without limitation, a person shall be deemed to be engaged in the business of gambling if he:
 - a. Conducts a wagering pool or lottery;
 - b. Receives wagers for or on behalf of another person;

- c. Alone or with others, owns, controls, manages, or finances a gambling business;
 - d. Knowingly leases or otherwise permits a place to be regularly used to carry on a gambling business or maintain a gambling house;
 - e. Maintains for use on any place or premises occupied by him a coin-operated gaming device; or
 - f. Is a public servant who shares in the proceeds of a gambling business whether by way of a bribe or otherwise.
5. a. As used in subsection 4 but with the exceptions provided by subdivision b of this section, the term "coin-operated gaming device" means any machine which is:
- (1) A so-called "slot" machine which operates by means of the insertion of a coin, token, or similar object and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens; or
 - (2) A machine which is similar to machines described in paragraph (1) and is operated without the insertion of a coin, token, or similar object.
- b. The term "coin-operated gaming device" does not include a bona fide vending or amusement machine in which gambling features are not incorporated as defined in section 53-04-01, or an antique "slot" machine twenty-five years old or older which is collected and possessed by a person as a hobby and is not maintained for the business of gambling.

Approved March 2, 1981

CHAPTER 160

HOUSE BILL NO. 1510
(Dietz)

DRUG PARAPHERNALIA

AN ACT to provide for the definition of drug paraphernalia, the prohibition of the manufacture, sale, or delivery of drug paraphernalia, the possession and the advertisement of drug paraphernalia, and to provide a penalty; to amend and reenact subsection 1 of section 19-03.1-36 of the North Dakota Century Code, relating to the forfeiture of drug paraphernalia; and to repeal section 12.1-31-04 of the North Dakota Century Code, relating to the manufacture, sale, or delivery of paraphernalia.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. DEFINITION - DRUG PARAPHERNALIA. In this chapter, unless the context or subject matter otherwise requires, "drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of chapter 19-03.1. Drug paraphernalia includes, but is not limited to:

1. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
2. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
3. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.

4. Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances.
5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.
6. Diluents and adulterants, such as guinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances.
7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.
8. Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances.
9. Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.
10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.
11. Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.
12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
 - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - b. Water pipes;
 - c. Carburetion tubes and devices;
 - d. Smoking and carburetion masks;
 - e. Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
 - f. Miniature cocaine spoons, and cocaine vials;
 - g. Chamber pipes;

- h. Carburetor pipes;
- i. Electric pipes;
- j. Air-driven pipes;
- k. Chillums;
- l. Bonges;
- m. Ice pipes or chillers.

SECTION 2. DRUG PARAPHERNALIA - GUIDELINES. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use.
2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance.
3. The proximity of the object, in time and space, to a direct violation of chapter 19-03.1.
4. The proximity of the object to controlled substances.
5. The existence of any residue of controlled substances on the object.
6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of chapter 19-03.1; the innocence of an owner, or of anyone in control of the object, as to a direct violation of chapter 19-03.1 shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia.
7. Instructions, oral or written, provided with the object concerning its use.
8. Descriptive materials accompanying the object which explain or depict its use.
9. National and local advertising concerning its use.
10. The manner in which the object is displayed for sale.
11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the

community, such as a licensed distributor or dealer of tobacco products.

12. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
13. The existence and scope of legitimate uses for the object in the community.
14. Expert testimony concerning its use.

SECTION 3. UNLAWFUL POSSESSION OF DRUG PARAPHERNALIA. It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class A misdemeanor.

SECTION 4. UNLAWFUL MANUFACTURE OR DELIVERY OF DRUG PARAPHERNALIA. It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class A misdemeanor.

SECTION 5. UNLAWFUL DELIVERY OF DRUG PARAPHERNALIA TO A MINOR. It shall be unlawful for any person eighteen years of age or over to deliver drug paraphernalia, in violation of this chapter, to a person under eighteen years of age who is at least three years his junior. Any person violating this section is guilty of a class C felony.

SECTION 6. UNLAWFUL ADVERTISEMENT OF DRUG PARAPHERNALIA. It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person violating this section is guilty of a class A misdemeanor.

SECTION 7. AMENDMENT. Subsection 1 of section 19-03.1-36 of the 1979 Interim Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The following are subject to forfeiture:

- a. All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter.
- b. All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter.
- c. All property which is used, or intended for use, as a container for property described in subdivision a or b.
- d. All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision a or b, but:
 - (1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter.
 - (2) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent.
 - (3) A conveyance is not subject to forfeiture for a violation of subsection 3 of section 19-03.1-23.
 - (4) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.
- e. All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.
- f. All drug paraphernalia as defined in title 12.1.

SECTION 8. REPEAL. Section 12.1-31-04 of the 1979 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 9, 1981