

CRIMINAL CODE

CHAPTER 164

HOUSE BILL NO. 1038
(Legislative Council)
(Interim Government Administration Committee)

COMPUTER FRAUD AND CRIME

AN ACT to amend and reenact subsection 3 of section 12.1-06.1-01 and section 12.1-06.1-08 of the North Dakota Century Code, relating to computer fraud and computer crime classifications; and to provide a penalty.

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

SECTION 1. AMENDMENT. Subsection 3 of section 12.1-06.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. For the purposes of section 12.1-06.1-08:

- a. "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.
- b. "Computer" means an electronic device which performs work using programmed instruction and which has one or more of the capabilities of storage, logic, arithmetic, communication, or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities which that are connected or related to such a device in a system or network.
- c. "Computer network" means the interconnection of communication lines, including microwave, fiber optics, light beams, or other means of electronic or optic data communication, with a computer through remote terminals or a complex consisting of two or more interconnected computers.
- d. "Computer program" means a series of instructions or statements, in a form acceptable to a computer, which

- permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system.
- e. "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.
 - f. "Computer system" means a set of related, connected, or unconnected computer equipment, devices, and software.
 - g. "Financial instrument" means any credit card, debit card, or electronic fund transfer card, code, or other means of access to an account for the purpose of initiating electronic fund transfers, or any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, ~~credit eard~~, marketable security, or any other written instrument which is transferable for value.
 - h. "Property" ~~means~~ includes financial instruments, information, ~~including~~ electronically produced or stored data, supporting documentation, computer software, and computer programs in either machine or human readable form, and ~~anything~~ any other tangible or intangible item of value.
 - i. "Services" includes computer time, data processing, and storage functions, and other uses of a computer, computer system, or computer network to perform useful work.

SECTION 2. AMENDMENT. Section 12.1-06.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-06.1-08. Computer fraud - Computer crime - Classification.

1. A person ~~who~~ commits computer fraud by accessing, gaining or attempting to gain access to, altering, damaging, modifying, copying, disclosing, taking possession of, or destroying without authorization any computer, computer system, computer network, or any part of such computer, system, or network, without authorization, and with the intent to devise or execute any scheme or artifice to defraud or, deceive, prevent the authorized use of, or control property or services by means of false or fraudulent pretenses, representations, or promises. A person who commits computer fraud is guilty of a class B C felony.
2. A person ~~who~~ commits computer ~~fraud~~ crime by intentionally and either in excess of authorization given or without

authorization ~~accessing~~ gaining or attempting to gain access to, altering, damaging, ~~or~~ modifying, copying, disclosing, taking possession of, destroying, or preventing the authorized use of any computer, computer system, or computer network, or any computer software, program, or data contained in such computer, computer system, or computer network. A person who commits computer crime is guilty of a class E ~~felony~~ A misdemeanor.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 165

SENATE BILL NO. 2449
(Mutch)

RACKETEERING

AN ACT to create and enact a new subdivision to subsection 2 of section 12.1-06.1-01 of the North Dakota Century Code, relating to the definition of a pattern of racketeering activity; and to amend and reenact subsections 1 and 2 of section 12.1-06.1-03, section 12.1-06.1-04, subsections 1, 2, 4, and 5 of section 12.1-06.1-05, subsection 1 of section 12.1-06.1-06, and subsections 1 and 2 of section 12.1-06.1-07 of the North Dakota Century Code, relating to racketeer-influenced and corrupt organizations.

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

SECTION 1. A new subdivision to subsection 2 of section 12.1-06.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this Act and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity.

SECTION 2. AMENDMENT. Subsections 1 and 2 of section 12.1-06.1-03 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. A person is in illegal control of an enterprise if such person, through a pattern of racketeering activity or its proceeds, acquires or maintains, by investment or otherwise, control of any enterprise.
2. A person is illegally conducting an enterprise if the person is employed or associated with any enterprise and conducts or participates in the conduct of that enterprise's affairs through a pattern of racketeering activity.

SECTION 3. AMENDMENT. Section 12.1-06.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-06.1-04. Judicial powers over racketeering criminal cases. During the pendency of any criminal case charging an offense included in the definition of racketeering if it is shown to the satisfaction of the court when ruling upon the application for the order that such racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-03, the court may, in addition to its other powers, issue an order pursuant to subsections 1 and 2 of section 12.1-06.1-05. Upon conviction of a person for an offense included in the definition of racketeering if it is shown to the satisfaction of the court when ruling upon the application for the order that such racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-03, the court may, in addition to its other powers, issue an order pursuant to section 12.1-06.1-05.

SECTION 4. AMENDMENT. Subsections 1, 2, 4, and 5 of section 12.1-06.1-05 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. A person who sustains injury to person, business, or property by a pattern of racketeering activity or by a violation of section 12.1-06.1-03 may file an action in district court for the recovery of treble damages and the costs of the suit, including reasonable attorney fees. The state may file an action in behalf of those persons injured or to prevent, restrain, or remedy a pattern of racketeering activity or a violation of section 12.1-06.1-03.
2. The district court has jurisdiction to prevent, restrain, and remedy a pattern of racketeering activity or a violation of section 12.1-06.1-03 after making provision for the rights of all innocent persons affected by such violation and after hearing or trial, as appropriate, by issuing appropriate orders.
4. Following a determination of liability orders may include:
 - a. Ordering any person to divest himself of any interests, direct or indirect, in any enterprise.
 - b. Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the constitutions of the United States and this state permit.

- c. Ordering dissolution or reorganization of any enterprise.
- d. Ordering the payment of treble damages and appropriate restitution to those persons injured by a pattern of racketeering activity or a violation of section 12.1-06.1-03.
- e. Ordering the payment of all costs and expenses and reasonable attorneys' fees concerned with the prosecution and investigation of any offense included in the definition of racketeering if upon such application for the order it is shown to the satisfaction of the court that such racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-03, civil and criminal, incurred by the state or county as appropriate to be paid to the general fund of the state or county which brings the action.
- f. Forfeiture, pursuant to chapter 32-14, to the state school fund of the state or county as appropriate under section 29-27-02.1, to the extent not already ordered to be paid in other damages:
- (1) Any property or other interest acquired or maintained by a person in violation of section 12.1-06.1-03.
 - (2) Any interest in, security of, claims against, or property or contractual right of any kind affording a source of influence over any enterprise which a person has established, operated, controlled, conducted, or participated in the conduct of in violation of section 12.1-06.1-03.
 - (3) All proceeds traceable to an offense included in the definition of racketeering and all moneys, negotiable instruments, securities, and other things of value used or intended to be used to facilitate commission of the offense if upon application for the order it is shown to the satisfaction of the court that such racketeering offense has occurred as a part of a pattern of racketeering activity.
- g. Payment to the state school fund of the state or county as appropriate under section 29-27-02.1 of an amount equal to the gain a person has acquired or maintained through an offense included in the definition of racketeering if upon application for the order it is shown to the satisfaction of the court

that such racketeering offense has occurred as a part of a pattern of racketeering activity.

5. In addition to or in lieu of an action under this section the state may file an action for forfeiture to the state school fund of the state or county as appropriate under section 29-27-02.1, to the extent not already ordered paid pursuant to this section, of:
 - a. Any interest acquired or maintained by a person in violation of section 12.1-06.1-03.
 - b. Any interest in, security of, claims against, or property or contractual right of any kind affording a source of influence over any enterprise which a person has established, operated, controlled, conducted, or participated in the conduct of in violation of section 12.1-06.1-03.
 - c. All proceeds traceable to an offense included in the definition of racketeering and all moneys, negotiable instruments, securities, and other things of value used or intended to be used to facilitate the commission of the offense if upon application for the order it is shown to the satisfaction of the court that such racketeering offense has occurred as a part of a pattern of racketeering activity.

SECTION 5. AMENDMENT. Subsection 1 of section 12.1-06.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The state, upon filing a civil action under section 12.1-06.1-05 or upon charging an offense included in the definition of racketeering if such offense is committed as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-03, may file a racketeering lien. A filing fee or other charge is not required for filing a racketeering lien.

SECTION 6. AMENDMENT. Subsections 1 and 2 of section 12.1-06.1-07 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. A custodian of the records of a financial institution shall, at no expense to the financial institution, produce for inspection or copying the records in the custody of the financial institution when requested to be inspected by the attorney general or a state's attorney authorized by the attorney general, provided the person requesting the information signs and submits a sworn statement to the custodian that the request is made in order to investigate a pattern of racketeering activity or a violation of section 12.1-06.1-03. Records may be removed from the

premises of the financial institution only for the purpose of copying the records and must be returned within forty-eight hours. The attorney general or an authorized state's attorney or any peace officer designated by an authorized state's attorney or the attorney general is prohibited from using or releasing such information except in the proper discharge of official duties. The furnishing of records in compliance with this section by a custodian of records is a bar to civil or criminal liability against the custodian or financial institution in any action brought alleging violation of the confidentiality of the records. The fact that records have been obtained may not be released in any way by the financial institution until ninety days after the release.

2. The attorney general or the authorized state's attorney may petition the district court for enforcement of this section in the event of noncompliance with the request for inspection. Enforcement shall be granted if the request is reasonable and the attorney general or the authorized state's attorney has reasonable grounds to believe the records sought to be inspected are relevant to a civil or criminal investigation of an offense included in the definition a pattern of racketeering activity or a violation of section 12.1-06.1-03.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 166

HOUSE BILL NO. 1557
(Shockman, Melby, Rice, Marks, D. Olsen)

OFFENSES AGAINST UNBORN

AN ACT to create and enact a new chapter to title 12.1 of the North Dakota Century Code, relating to criminal offenses committed against unborn children; and to provide a penalty.

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

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

Definitions. As used in this Act:

1. "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus.
2. "Person" does not include the pregnant woman.
3. "Unborn child" means the conceived but not yet born offspring of a human being, which, but for the action of the actor would beyond a reasonable doubt have subsequently been born alive.

Murder of an unborn child.

1. A person is guilty of murder of an unborn child, a class AA felony, if the person:
 - a. Intentionally or knowingly causes the death of an unborn child;
 - b. Causes the death of an unborn child under circumstances manifesting extreme indifference to the value of the life of the unborn child or the pregnant woman; or
 - c. Acting either alone or with one or more other persons, commits or attempts to commit treason, robbery,

burglary, kidnapping, felonious restraint, arson, gross sexual imposition, or escape and, in the course of and in furtherance of such crime or of immediate flight therefrom, the person, or another participant, if any, causes the death of an unborn child; except that in any prosecution under this subsection in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

- (1) Did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid the commission thereof; and
- (2) Was not armed with a firearm, destructive device, dangerous weapon, or other weapon that under the circumstances indicated a readiness to inflict serious bodily injury; and
- (3) Reasonably believed that no other participant was armed with such a weapon; and
- (4) Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

Subdivisions a and b are inapplicable in the circumstances covered by subsection 2.

2. A person is guilty of murder of an unborn child, a class A felony, if the person causes the death of an unborn child under circumstances which would be class AA murder, except that the person causes the death of the unborn child under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse must be determined from the viewpoint of a person in the person's situation under the circumstances as the person believes them to be. An extreme emotional disturbance is excusable, within the meaning of this subsection only, if it is occasioned by substantial provocation, or a serious event, or situation for which the offender was not culpably responsible.

Manslaughter of an unborn child. A person is guilty of manslaughter of an unborn child, a class B felony, if the person recklessly causes the death of an unborn child.

Negligent homicide of an unborn child. A person is guilty of negligent homicide of an unborn child, a class C felony, if the person negligently causes the death of an unborn child.

Aggravated assault of an unborn child. A person is guilty of assault of an unborn child, a class C felony, if that person

willfully assaults a pregnant woman and inflicts serious bodily injury on an unborn child.

Assault of an unborn child. A person is guilty of assault of an unborn child, a class A misdemeanor, if the person willfully assaults a pregnant woman and inflicts bodily injury on an unborn child.

Exception. This Act does not apply to acts or omissions that cause the death or injury of an unborn child if those acts or omissions are committed during an abortion performed by or under the supervision of a licensed physician to which the pregnant woman has consented, nor does it apply to acts or omissions that are committed pursuant to usual and customary standards of medical practice during diagnostic or therapeutic treatment performed by or under the supervision of a licensed physician.

Other convictions not prohibited. A prosecution for or conviction under this Act is not a bar to conviction of or punishment for any other offense committed by a person as part of the same conduct.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 167

HOUSE BILL NO. 1221
 (Committee on Judiciary)
 (At the request of the Attorney General)

SEX OFFENSES

AN ACT to amend and reenact section 12.1-20-01 and subsection 1 of section 12.1-20-09 of the North Dakota Century Code, relating to the "marital rape" defense for all sexual assaults, the ninety-day statute of limitations for both adult and minor victims, and adultery.

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

SECTION 1. AMENDMENT. Section 12.1-20-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-20-01. General provisions.

- ~~1-~~ In sections 12.1-20-03 through 12.1-20-08:
- ~~a-~~ 1. When the criminality of conduct depends on a child's being below the age of fifteen, it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than fourteen.
- ~~b-~~ 2. When criminality depends on the victim being a minor, it is an affirmative defense that the actor reasonably believed the victim to be an adult.
- ~~2-~~ In sections ~~12-1-20-04~~ through ~~12-1-20-09~~, an offense ~~excludes conduct with an actor's spouse. The exclusion shall be inoperative as respects spouses living apart under a decree of judicial separation, a temporary or permanent adult abuse protection order, or an interim order issued in connection with a divorce or separation action. Where an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse as an accomplice in an offense which he causes another person to perform.~~

- 3- If the alleged victim was an adult, not otherwise incompetent to make complaint, no prosecution may be instituted or maintained under sections 12-1-20-03 through 12-1-20-08 or section 12-1-20-12 unless the alleged offense was brought to the notice of public authority within three months of its occurrence.
- 4- If the alleged victim was a minor or otherwise incompetent to make complaint, no prosecution may be instituted or maintained under sections 12-1-20-03 through 12-1-20-08 or section 12-1-20-12 unless the alleged offense was brought to the notice of public authority within three months after a parent, guardian, or other competent person specifically interested in the victim, learned of the offense. The three-month limitation does not begin to apply unless the person learning of the offense is someone other than the offender or a spouse, child, sibling, or parent of the offender.

SECTION 2. AMENDMENT. Subsection 1 of section 12.1-20-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A married person is guilty of a class A misdemeanor if he or she engages in a sexual act with another person, who is not his or her spouse.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 168

SENATE BILL NO. 2235
(Committee on Judiciary)
(At the request of the Attorney General)

DATE RAPE PENALTIES

AN ACT to amend and reenact subsection 3 of section 12.1-20-03 of the North Dakota Century Code, relating to the removal of the "voluntary companion" language as a consideration in the offense grading language of the crime of gross sexual imposition.

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

SECTION 1. AMENDMENT. Subsection 3 of section 12.1-20-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. An offense under this section is a class A felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, or if his conduct violates subdivision a or d of subsection 1, ~~or if the victim is not a voluntary companion of the actor and has not previously permitted him sexual liberties.~~ Otherwise the offense is a class B felony.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 169

HOUSE BILL NO. 1509
(Representatives Starke, Opedahl, Rydell)
(Senators J. Meyer, Wright)

SEXUAL EXPLOITATION BY THERAPIST

AN ACT to create and enact a new section to chapter 12.1-20 of the North Dakota Century Code, relating to sexual exploitation by a therapist; to provide a penalty; and to declare an emergency.

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

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

Sexual exploitation by therapist - Definitions - Penalty. Any person who is or who holds oneself out to be a therapist and who intentionally has sexual contact, as defined in section 12.1-20-02, with a patient or client during any treatment, consultation, interview, or examination is guilty of a class C felony. Consent by the complainant is not a defense under this section. As used in this section, unless the context or subject matter otherwise requires:

1. "Psychotherapy" means the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction.
2. "Therapist" means a physician, psychologist, psychiatrist, social worker, nurse, chemical dependency counselor, member of the clergy, or other person, whether licensed or not by the state, who performs or purports to perform psychotherapy.

SECTION 2. **EMERGENCY.** This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 170

HOUSE BILL NO. 1150
(Committee on Social Services and Veterans Affairs)
(At the request of the Governor and the Attorney General)

GUARDIAN AD LITEM IN SEX OFFENSES

AN ACT to provide for the appointment of guardians ad litem in prosecution of sex offenses.

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

SECTION 1. Appointment of a guardian ad litem in prosecution for sex offenses. A minor who is a material or prosecuting witness in a criminal proceeding involving an act in violation of sections 12.1-20-01 through 12.1-20-08, or section 12.1-20-11 may, at the discretion of the court, have the witness' interests represented by a guardian ad litem at all stages of the proceedings arising from the violation. The appointment may be made upon the order of the court on its own motion or at the request of a party to the action. The guardian ad litem may, but need not, be a licensed attorney and must be designated by the court after due consideration is given to the desires and needs of the child. A person who is also a material witness or prosecuting witness in the same proceeding may not be designated guardian ad litem. The guardian ad litem shall receive notice of and may attend all depositions, hearings, and trial proceedings to support the child and advocate for the protection of the child but may not separately introduce evidence or directly examine or cross-examine witnesses. The expenses of the guardian ad litem, when approved by the judge, must be paid by the county wherein the alleged offense took place if the action is prosecuted in county court, and by the state if the action is prosecuted in district court. The state shall also pay the expenses of the guardian ad litem in commitment proceedings held in county court pursuant to subsection 7 of section 27-07.1-17.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 171

SENATE BILL NO. 2241
(Committee on Political Subdivisions)
(At the request of the Attorney General)

GAMBLING APPARATUS

AN ACT to amend and reenact subsection 3 of section 12.1-28-01 of the North Dakota Century Code, relating to the definition of gambling apparatus.

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

SECTION 1. AMENDMENT. Subsection 3 of section 12.1-28-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Gambling apparatus" means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons, or gambling by a person involving the playing of a machine. Gambling apparatus does not include an amusement game or device as defined in section ~~53-03-01~~ 53-04-01.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 172

HOUSE BILL NO. 1242
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

ADOPTION AND PARENTAL RIGHTS

AN ACT to create and enact a new section to title 12.1 and a new chapter to title 14 of the North Dakota Century Code, relating to relinquishment of children to identified adoptive parents and the crime of child procurement; and to provide a penalty.

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

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

Child procurement - Penalty. Except with respect to fees and charges authorized by law or approved by a court in a proceeding related to the placement of a minor child for adoption or related to the adoption of a minor child, a person is guilty of child procurement, a class C felony, if the person knowingly offers, gives, or agrees to give to another or solicits, accepts, or agrees to accept from another, a thing of value as consideration for the recipient's furnishing or aiding another to furnish a minor child for the purposes of adoption.

SECTION 2. A new chapter to title 14 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Birth parent" means the woman who gave birth to a child, any man alleged by that woman to be the biological father of that child, or any man presumed by law or judicially determined to be the biological father of that child.
2. "Child-placing agency" means an agency licensed under chapter 50-12.
3. "Court" means the district court of this state.
4. "Department" means the department of human services.

5. "Identified adoptive parent" means the person or persons eligible under section 14-15-03 to adopt a child and who has been selected by a birth parent to adopt a specific child.

Petition for relinquishment - Filing - Written consent required.

1. A birth parent or identified adoptive parent may file with the court a petition to relinquish parental rights with respect to a minor child to the identified adoptive parent. The written consent of any birth parent to the adoption must accompany the petition. The written consent of the identified adoptive parent to assume custody must be filed with the petition. The petition and all documents must be served upon the department, nonpetitioning birth parents, and identified adoptive parent.
2. A petition for relinquishment, together with the written consent to adoption, may be filed before the birth of the child to whom the petition relates.

Petition for relinquishment - Hearing - Temporary custody order - Notice - Order for relinquishment.

1. The court shall set a time and place for a hearing on the petition for relinquishment. A guardian ad litem must be appointed for the child at least seven days prior to the hearing. The hearing may not be held sooner than forty-eight hours after the child's birth or the signing of all necessary consents to adoption, whichever is later. If a preplacement report is filed with the petition, the court may enter a temporary order placing the child with the identified adoptive parent pending the hearing.
2. Notice of the hearing must be served on or by any birth parent, the department, the child-placing agency, the identified adoptive parent, and the guardian ad litem.
3. The court may require any birth parent to appear personally and enter consent to the adoption on the record. The court shall determine that any written consent has been validly executed. If the court determines it is in the best interests of the child, the court shall approve the petition for relinquishment.
4. If the court approves the petition and determines, based upon the preplacement study and other evidence presented at the hearing, that placement with the identified adoptive parent is in the best interests of the child, the court shall order that the child be placed with the identified adoptive parent pending adoption. The identified adoptive parent is financially responsible for the support of the child until further order of the court.

The court shall also enter an order terminating the relationship of the birth parent and the child.

Report of child-placing agency. Prior to a hearing under this chapter, the preplacement adoptive home study report of a child-placing agency must be filed with the court. The child-placing agency shall serve a copy of the report upon the birth parent, the identified adoptive parent, the guardian ad litem, and the department at least seven days prior to the hearing. The report must include the following:

1. A recommendation as to whether the home of the identified adoptive parent is a suitable home for the placement of the child.
2. An assessment of how the identified adoptive parent's emotional maturity, finances, health, relationships, and any other relevant factors may affect the identified adoptive parent's ability to accept, care for, and provide the child with an adequate environment in which to mature.
3. The medical and social history of the birth parent including an assessment regarding the birth parent's understanding and acceptance of the proceedings.
4. If the child has been born prior to the filing of the report, a medical and developmental history of the child.

Report of agreements and disbursements. Prior to a hearing under this chapter, a report of agreements and disbursements must be filed with the court and served upon the department. The report must include the following:

1. A statement of all agreements, whether oral or written, entered into between any of the parties to an action under this chapter, which relate in any way to the future conduct of any party with respect to the child. If oral agreements are reported, the substance of such agreements must be set forth in the report and a copy of the report must be served on all parties to the oral agreement. Copies of all written agreements must be attached to the report.
2. A full accounting in a manner acceptable to the court of all disbursements of anything of value made or agreed to be made by or on behalf of the identified adoptive parent in connection with proceedings under this chapter. The report must show any expenses incurred in connection with:
 - a. The birth of the child.
 - b. Placement of the child with the identified adoptive parent.

- c. Medical or hospital care received by the birth parent or by the child prior to or after the child's birth.
 - d. Services relating to the petition for relinquishment or the placement of the child which were received by or on behalf of a birth parent, identified adoptive parent, or any other person.
3. A statement of each person furnishing information contained in the report by which that person attests to the correctness and truthfulness of the information furnished.

Fees and charges. Reasonable fees may be charged for professional services relating to the petition for relinquishment, placement of the child, and other pre-adoption services, medical care or services, prenatal costs, foster care, or other reasonable items of cost or expense if reflected in a report of agreements and disbursements filed under this Act and approved by the court.

Adoption petition - Time limit for filing. Within ninety days after entry of an order for relinquishment under this chapter, the identified adoptive parent shall file a petition for adoption under chapter 14-15. If no petition for adoption is filed within ninety days, the department shall notify the court. The court shall then set a hearing to determine whether the child's placement should be changed.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 173

HOUSE BILL NO. 1607
(Rydell)

RESTITUTION OF REPARATION HEARINGS

AN ACT to amend and reenact subsection 1 of section 12.1-32-08 of the North Dakota Century Code, relating to hearing prior to a restitution or reparation order.

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

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-32-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Prior to imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount thereof. At or following the hearing, the court shall make determinations as to The court, when sentencing a person adjudged guilty of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court, unless the court states on the record, based upon the criteria in this subsection, the reason it does not order restitution or orders only partial restitution. In determining whether to order restitution the court shall take into account:
 - a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages shall be limited to ~~fruits of~~ those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the

prescribed treatment costs for a victim of a sexual offense as defined in section 12.1-20 and 12.1-27.2.

- b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.
- c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which shall not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. Any payments made pursuant to such order shall be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may shall, if unless the court so directs otherwise, be filed, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner as civil judgments rendered by the courts of this state may be enforced.

Approved March 20, 1987

Filed March 23, 1987

CHAPTER 174

HOUSE BILL NO. 1190
(Committee on Judiciary)
(At the request of the Governor and the Attorney General)

VICTIM AND WITNESS RIGHTS

AN ACT to provide for the fair treatment of victims and witnesses.

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

SECTION 1. Legislative intent. In recognition of the civic and moral duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislative assembly declares its intent to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity; and that the rights extended in this Act to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants.

SECTION 2. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Court" means a forum established by law for the adjudication of juvenile petitions, criminal complaints, informations, or indictments.
2. "Crime" includes all felony offenses; class A misdemeanors, excluding violations of section 6-08-16.1 for no account checks; all violations of chapters 12.1-17 and 12.1-20, including all corresponding violations of municipal ordinances; and any of the offenses in this subsection that may result in adjudication of delinquency.
3. "Crime of violence" means any crime in which force, as defined by section 12.1-01-04, or threat of force was used against the victim.

4. "Custodial authority" includes city jail, county jail, juvenile detention center, regional corrections center, halfway house, state farm, state penitentiary, state hospital, or any other in-patient mental health or treatment facility to which a criminal defendant may be sentenced or referred.
5. "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon a person convicted of a crime or found delinquent or against whom a finding of sufficient facts for conviction or finding of delinquency is made.
6. "Family member" includes a spouse, child, sibling, parent, grandparent, legal guardian, or custodian of a victim.
7. "Prosecuting attorney" includes city attorney, state's attorney, attorney general, or their assistants.
8. "Victim" means a natural person who has suffered direct or threatened physical, financial, or emotional harm where there is probable cause to believe that the harm has been caused by the commission of a criminal act. The term "victim" includes the family members of a minor, incompetent, incapacitated, or deceased person.
9. "Witness" means any person who has been or is expected to be summoned to testify for the prosecution whether or not any action or proceeding has yet been commenced.

SECTION 3. Fair treatment standards for victims and witnesses.

Victims and witnesses of crime must be afforded the following rights where applicable:

1. Informed as to status of investigation. Victims and witnesses, upon request, must be informed by law enforcement authorities investigating a criminal case of the status of the investigation, except where the prosecuting attorney or law enforcement authority determines that to disclose such information would unreasonably interfere with the investigation, until such time as the alleged offender is apprehended or the investigation is closed.
2. Informed as to criminal charges filed. Victims must be promptly informed by the prosecuting attorney of any criminal charges, arising from an incident in which the person was a victim, filed against any person arrested. The prosecuting attorney shall also provide a brief statement in nontechnical language of the procedural steps involved in the processing of a criminal case. Victims must also be informed by the prosecuting attorney of the pretrial status of each person arrested, including bail and any pretrial release conditions.

3. Notice of pretrial release. Victims must be given prompt notice by the law enforcement agency that has made an arrest in any case involving a crime of violence of any hearing in which the arrested person's pretrial release status will be determined. If the alleged offender in a crime of violence is scheduled to be released prior to an appearance in court, the custodial authority shall give prompt notice to the victim and witness or, if unavailable, to the arresting law enforcement agency, that shall provide the notice. Victims and witnesses of crimes of violence must be informed by the prosecuting attorney of the methods for enforcing any pretrial release conditions including information as to the level of protection available from law enforcement in the case of harm, threats, or intimidation made to the victim or witness.
4. Notice as to victims and witnesses participation in court proceedings. Victims must be informed by the prosecuting attorney of all court proceedings in a reasonable time prior to the proceedings. Witnesses must be informed by the prosecuting attorney of all court proceedings at which their presence is required in a reasonable time prior to the proceedings and informed in nontechnical language of the procedural steps involved in the processing of a criminal case. Victims and witnesses shall be notified by the prosecuting attorney of the cancellation of any scheduled court proceeding in sufficient time to prevent an unnecessary appearance in court. All victims and witnesses must provide the prosecuting attorney with current information as to address and telephone number, such information to be kept confidential subject to other provisions of this chapter. The notice given by the prosecuting attorney to the victims and witnesses must be given by any means reasonably calculated to give prompt notice.
5. Services available. Victims and witnesses must be informed by the prosecuting attorney and arresting law enforcement agency of all appropriate and available public or private programs that provide counseling, treatment, or support for victims and witnesses, including rape crisis centers, victim and witness assistance programs, elderly victim services, victim assistance hot lines, social service agencies, and domestic violence programs. The prosecuting attorney and law enforcement authority shall advise victims eligible for services of the relevant provisions of the Crime Victims Reparations Act as provided in chapter 65-13.
6. Employer intercession. Victims and witnesses upon request must be provided by the prosecuting attorney with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the

- criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.
7. Witness fee. Witnesses must be informed by the prosecuting attorney or the court of the procedures to be followed in order to apply for and receive any witness fee to which they are entitled under law.
 8. Return of property. Victims shall have any personal property that was stolen or taken for evidentiary purposes, except contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, returned by the court, prosecuting attorney, or law enforcement agency within ten days after its taking or recovery if it is not needed for law enforcement, prosecution, or defense purposes or as expeditiously as possible when the property is no longer needed for law enforcement, prosecution, or defense purposes. If there is a defendant the prosecuting attorney shall notify the defendant of the intent to return the property to the owner. Upon a motion made by the defendant and upon good cause shown that the property contains exculpatory evidence of the defendant's innocence, the court may order the law enforcement personnel in possession of the property not to release it to the owner.
 9. Waiting area. Victims and witnesses must be provided by prosecuting attorneys and defense attorneys as assisted by the court with a waiting area separate from the defendant, defendant's relatives and friends, and defense witnesses if such an area is available and the use of the area is practical. If a separate waiting area is not available or practical, the court shall provide other safeguards to minimize the victims' and witnesses' contact with the defendant, defendant's relatives and friends, and defense witnesses during court proceedings.
 10. Protection of identifying information. Victims and witnesses may not be compelled to testify at any pretrial proceeding or at trial for purposes of identifying the victims' or witnesses' address, telephone number, place of employment, or other personal identification except for name without the victims' or witnesses' consent, unless there is a showing of good cause as determined by the court.
 11. Right to be present throughout trial. The victim must be informed by the prosecuting attorney of the victim's right to be present throughout the trial of the defendant, except as provided by rule 615 of the North Dakota Rules of Evidence.

12. Prompt disposition of case. Victims and witnesses must be informed by the prosecuting attorney of their rights to a prompt disposition of the cases in which they are involved as victims or witnesses as defined by the docket currency standards of the North Dakota supreme court.
13. Notice as to scheduling of hearing. Victims must be informed by the prosecuting attorney of the date, time, and place of hearing at which a plea of guilty or not guilty will be entered and of a sentencing hearing. The prosecuting attorney shall explain to and consult with the victim in nontechnical language details of any potential plea agreement or verdict.
14. Victim impact statement. The victim must be informed by the prosecuting attorney, prior to sentencing, of the victim's right to submit or make a written impact statement to the court in any criminal case. If a presentence investigation is ordered, the probation officer assigned the report shall include this information in the report. This statement may include an explanation by the victim of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim; an explanation of the extent of any economic loss or property damage suffered by the victim; an opinion of the need for and extent of restitution; and the victim's recommendation for an appropriate sentence. The prosecuting attorney shall advise all victims that the presentence report is subject to review by the defendant and that the report will include the victim's statement. If the sentencing court does not order a presentence investigation, the victim may submit a written impact statement, under oath, to the office of the state's attorney which statement must be submitted to the sentencing court. The victim of violent crime may appear in court to make an oral crime impact statement at the sentencing of the defendant in appropriate circumstances at the discretion of the judge. This oral statement must be made under oath and is subject to cross-examination.
15. Notice of final disposition and parole procedures. Victims and witnesses must be informed by the prosecuting attorney of the final disposition of any criminal case. The prosecuting attorney shall explain to the victim the parole process and pardon process and further advise the victim of the necessity of advising the custodial authority and the parole board and the pardon board of the victim's address in order for the victim to receive further information under other provisions of this chapter.
16. Prompt notice of custodial release. Victims must be informed by the appropriate custodial authority whenever a criminal defendant receives a temporary, provisional, or

final release from custody or whenever the defendant escapes from custody. Notification must include the transfer of the defendant to a work-release program, a community residential program, or transfer to a mental health facility. All notices to the victim concerning this release information must be within a reasonable time prior to the defendant's release or transfer. The notice given by the custodial authority must be given by any means reasonably calculated to give prompt notice.

17. Participation in parole board and pardon board decision. Victims may submit a written statement for consideration by the parole board or pardon board prior to the parole board or pardon board taking any action on a defendant's request for parole or pardon. Victims of violent crimes may at the discretion of the parole board or pardon board personally appear and address the parole board or pardon board. Notice must be given by the parole board or pardon board informing the victim of the pending review and of the victim's rights under this section. The victim must be provided notice of the decision of the parole board or pardon board and, if applicable, notice of the date of the prisoner's release on parole or the prisoner's pardon. Notice must be given within a reasonable time after the parole board or pardon board reaches its decision but in any event prior to the parolee's or pardoned prisoner's release from custody.

SECTION 4. Responsibilities of victims and witnesses. Victims and witnesses have all of the following responsibilities to aid in the prosecution of crime:

1. To make a timely report of the crime.
2. To cooperate with law enforcement authorities throughout the investigation, prosecution, and trial.
3. To testify at trial.
4. To notify law enforcement authorities, prosecuting attorney, custodial authority, parole board, pardon board, and court, where appropriate, of any change of address. The address information provided to these persons must be kept confidential.

SECTION 5. Victim and witness services. Each prosecuting attorney is responsible for securing for victims and witnesses of crime the rights and services described in this Act. Those services include all of the following:

1. Court appearance notification services, including cancellations of appearances.

2. Informational services relative to the availability of the collection of witness fees, victim compensation, or restitution.
3. Escort and other transportation services related to the investigation or prosecution of the case, if necessary.
4. Case process notification services.
5. Employer intercession services.
6. Expedited return of property services.
7. Protection services.
8. Family support services, including child and other dependent care services.
9. Waiting facilities.
10. Social service and other public or private agency referrals.

SECTION 6. Cause of action for damages or injunctive relief. Nothing in this Act may be construed as creating a cause of action for money damages or injunctive relief against the state, county, municipality, or any of their agencies, instrumentalities, or employees. Furthermore, the failure to provide a right, privilege, or notice to a victim under this Act is not grounds for the defendant to seek to have the conviction or sentence set aside. This Act does not limit any rights to which victims and witnesses of crime are otherwise entitled.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 175

HOUSE BILL NO. 1227 (Committee on Judiciary)

(At the request of the Governor and the Attorney General)

VICTIM AND WITNESS TREATMENT

AN ACT to provide for child victim and witness fair treatment standards.

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

SECTION 1. Legislative intent. The legislature finds that it is necessary to provide child victims and witnesses with additional consideration and fair treatment than that usually afforded to adults. The legislature intends, in this Act, to provide these children with additional rights and protections during their involvement with the criminal justice system.

SECTION 2. Definitions. In this Act, unless the context or subject matter otherwise requires:

1. "Child" means an individual under the age of eighteen years.
2. "Court" means a forum established by law for the adjudication of juvenile petitions, criminal complaints, informations, or indictments.
3. "Family member" means a spouse, child, sibling, parent, legal guardian, or custodian of a victim.
4. "Prosecuting attorney" includes city attorney, state's attorney, attorney general, or their assistants.
5. "Sex offense" includes all sex offenses defined as such in chapter 12.1-20.
6. "Victim" means a child who has suffered direct or threatened physical, financial, or emotional harm as a result of the commission or attempted commission of a crime.

7. "Witness" means any child who has been or is expected to be summoned to testify in a criminal case whether or not any action or proceeding has been commenced.

SECTION 3. Additional services. In addition to all rights afforded to victims and witnesses by law, state's attorneys are encouraged to provide the following additional services to children who are involved in criminal proceedings as victims or witnesses:

1. Explanations, in language understood by the child, of all legal proceedings in which the child will be involved.
2. Advice to the court concerning the ability of a child witness to cooperate with the prosecution and the potential effects of the proceedings on the child.
3. Information about, and referrals to, appropriate social services programs to assist the child and the child's family members in coping with the emotional impact of the crime and the subsequent proceedings in which the child is involved.

SECTION 4. Public record. In order to protect the child from possible trauma resulting from publicity, the name of the child victim and identifying biographical information may not appear on the indictment or any other public record. Instead, a Jane Doe or Joe Doe designation must appear in all public records. Sealed confidential records containing the child's name and necessary biographical information must be kept in order to ensure that no defendant is charged twice.

SECTION 5. Limits on interviews. The prosecuting attorney, and appropriate law enforcement personnel shall, to the extent possible, protect the child victim or child witness from the psychological damage of repeated interrogation while preserving the rights of the public, the victim, and the person charged with the violation.

SECTION 6. Prompt disposition. In all criminal cases and juvenile proceedings involving a child victim or witness, the court and the state's attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement in the proceedings. In ruling on any motion or other request for a delay or a continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

SECTION 7. Cause of action for damages and injunctive relief. Nothing in this Act may be construed as creating a cause of action for money damages or injunctive relief against the state, county, municipality, or any of their agencies, instrumentalities, or employees. Furthermore, the failure to provide a right, privilege, or notice to a child victim or witness under this Act is not grounds for the defendant to seek to have the conviction or sentence set aside. This Act does not limit any rights to which child victims and witnesses of crime are otherwise entitled.

Approved April 1, 1987
Filed April 2, 1987