

CRIMINAL CODE

CHAPTER 117

SENATE BILL NO. 2171
(Senators Nalewaja, Evanson, Nelson, W. Stenehjem)
(Representatives Carlisle, Mahoney)

ENTRAPMENT

AN ACT to amend and reenact subsection 2 of section 12.1-05-11 of the North Dakota Century Code, relating to the entrapment defense.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 12.1-05-11 of the North Dakota Century Code is amended and reenacted as follows:

- ~~Entrapment occurs when a~~ A law enforcement agent induces the commission of an offense, using persuasion or other means likely to cause normally law abiding persons to commit the offense perpetrates an entrapment if, for the purpose of obtaining evidence of the commission of a crime, the law enforcement agent induces or encourages and, as a direct result, causes another person to engage in conduct constituting such a crime by employing methods of persuasion or inducement which create a substantial risk that such crime will be committed by a person other than one who is ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 118

SENATE BILL NO. 2373
 (Senators Solberg, Evanson, Naaden)
 (Representatives Boehm, Johnson, Sitz)

MURDER DEFINED

AN ACT to amend and reenact section 12.1-16-01 of the North Dakota Century Code, relating to the definition of murder.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-16-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-16-01. Murder.

1. A person is guilty of murder, a class AA felony, if ~~he~~ the person:
 - a. Intentionally or knowingly causes the death of another human being;
 - b. Causes the death of another human being under circumstances manifesting extreme indifference to the value of human life; 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, a felony offense against a child under section 12.1-20-03, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 14-09-22, or escape and, in the course of and in furtherance of such crime or of immediate flight therefrom, ~~he, or another the person or any other participant, if there be any, in the crime~~ causes the death of any person, except that in. 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 which 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 ~~shall be~~ are inapplicable in the circumstances covered by subsection 2.

2. A person is guilty of murder, a class A felony, if the person causes the death of another human being under circumstances which would be class AA felony murder, except that the person causes the death 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 ~~his~~ that person's situation under the circumstances as ~~he~~ that 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.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 119

SENATE BILL NO. 2303
(Senators Kelly, DeMers, W. Stenehjem)
(Representatives Dalrymple, Kaldor, Mahoney)

JUDICIAL PROCEEDING ASSAULT

AN ACT to amend and reenact section 12.1-17-01 of the North Dakota Century Code, relating to simple assault.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if he that person:
 - a. Willfully causes bodily injury to another human being; or
 - b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. Simple assault is a class B misdemeanor except when the victim is a peace officer or correctional institution employee acting in an official capacity, and which the actor knows that to be a fact, or any person engaged in a judicial proceeding, in which case the offense is a class C felony.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 120

HOUSE BILL NO. 1237
(Representatives Carlisle, Henegar, Ring)
(Senators DeMers, Nething, Heinrich)

STALKING PROHIBITION

AN ACT to create and enact a new section to chapter 12.1-17 and a new section to chapter 14-07.1 of the North Dakota Century Code, relating to the crime of stalking and to notification of the crime of stalking when a protection order is issued; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-17 of the North Dakota Century Code is created and enacted as follows:

Stalking.

1. As used in this section:
 - a. "Course of conduct" means a pattern of conduct consisting of two or more acts evidencing a continuity of purpose. The term does not include constitutionally protected activity.
 - b. "Stalk" means to engage in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to experience fear, intimidation, or harassment.
2. No person may intentionally stalk another person.
3. In any prosecution under this section, it is not a defense that the actor was not given actual notice that the person did not want the actor to contact or follow the person; nor is it a defense that the actor did not intend to frighten, intimidate, or harass the person. An attempt to contact or follow a person after being given actual notice that the person does not want to be contacted or followed is prima facie evidence that the actor intends to stalk that person.
4. In any prosecution under this section, it is a defense that a private investigator licensed under chapter 43-30 or a peace officer licensed under chapter 12-63 was acting within the scope of employment.
5. If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.
6. a. A person who violates this section is guilty of a class C felony if:

- (1) The person previously has been convicted of violating section 12.1-17-01, 12.1-17-01.1, 12.1-17-02, 12.1-17-04, 12.1-17-05, or 12.1-17-07 or a similar offense in another state, involving the victim of the stalking;
- (2) The stalking violates a court order issued under chapter 14-07.1 protecting the victim of the stalking, if the person had notice of the court order; or
- (3) The person previously has been convicted of violating this section.

b. If subdivision a does not apply, a person who violates this section is guilty of a class A misdemeanor.

SECTION 2. A new section to chapter 14-07.1 of the North Dakota Century Code is created and enacted as follows:

Notification of stalking law. When an order is issued under section 14-07.1-02 or 14-07.1-03, the order must include or have attached to it a copy of section 1 of this Act.

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

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 121

SENATE BILL NO. 2253
(Senators Evanson, Robinson)
(Representatives Pyle, Wentz, Kelsch)

SEX OFFENSE EVIDENCE

AN ACT to create and enact a new section to chapter 12.1-20 of the North Dakota Century Code, relating to the admissibility of evidence regarding a victim's manner of dress in sex offense cases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Admissibility of evidence of victim's manner of dress in sex offense cases. In any prosecution for a violation of this chapter, or for an attempt to commit an offense defined in this chapter, evidence of the manner in which the victim was dressed at the time of the commission of the offense is not admissible unless the court determines the evidence:

1. Is material to a fact at issue in the case and the inflammatory or prejudicial nature of the evidence does not outweigh its probative value; and
2. Is relevant and admissible. This determination may be made only after an offer of proof by the proponent; a finding by the court that the offer of proof is sufficient; a hearing out of the presence of the jury, if any, during which the victim may question the offer of proof; and, if the court finds the evidence is relevant and is not legally inadmissible, an order by the court stating what evidence may be introduced and the nature of questions to be permitted.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 122

SENATE BILL NO. 2041
(Legislative Council)
(Interim Judiciary Committee)

DEVELOPMENTAL DISABILITY GUARDIAN AD LITEM

AN ACT to amend and reenact section 12.1-20-16 of the North Dakota Century Code, relating to the appointment of a guardian ad litem to represent a person with a developmental disability in prosecution of sex offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-20-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-20-16. Appointment of a guardian ad litem in prosecution for sex offenses. A minor or a person with a developmental disability 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 minor or the person with a developmental disability. 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 must receive notice of and may attend all depositions, hearings, and trial proceedings to support the child minor or the person with a developmental disability and advocate for the protection of the child minor or the person with a developmental disability 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 supreme court 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 8 of section 27-07.1-17.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 123

HOUSE BILL NO. 1345
(Representatives Pyle, Brodshaug)

DECEPTION

AN ACT to amend and reenact subdivision a of subsection 2 of section 12.1-23-10 of the North Dakota Century Code, relating to the definition of deception.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ SECTION 1. AMENDMENT. Subdivision a of subsection 2 of section 12.1-23-10 of the North Dakota Century Code is amended and reenacted as follows:

- a. Creating or reinforcing a false impression, ~~including false impressions~~ as to fact, law, status, value, intention, or other state of mind; or obtaining or attempting to obtain public assistance by concealing a material fact, making a false statement or representation, impersonating another, concealing the transfer of property without adequate consideration, or using any other fraudulent method; but deception as to a person's intention to perform a promise ~~shall~~ may not be inferred from the fact alone that ~~he~~ the person did not substantially perform the promise unless it is part of a continuing scheme to defraud; or

Approved April 1, 1993
Filed April 2, 1993

¹ NOTE: Section 12.1-23-10 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 124

SENATE BILL NO. 2453
 (Senators W. Stenehjem, Grindberg, Schoenwald)
 (Representatives Coats, Kretschmar, Maragos, Stenehjem)

LOTTERY ADVERTISING

AN ACT to amend and reenact section 12.1-28-02 of the North Dakota Century Code, relating to gambling offenses and dissemination of information about a lottery.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-28-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-28-02. Gambling - Related offenses - Classification of Offenses. Except as permitted by law:

1. It is an infraction to engage in gambling on private premises where the total amount wagered by an individual player exceeds twenty-five dollars per individual hand, game, or event.
2. It is a class A misdemeanor to:
 - a. Sell, purchase, receive, or transfer a chance to participate in a lottery, whether the lottery is drawn in state or out of state, and whether the lottery is lawful in the other state or country;
 - b. Disseminate information about a lottery with intent to encourage participation in it, except that a legal lottery may be advertised in North Dakota; or
 - c. Engage in gambling on private premises where the total amount wagered by an individual player exceeds five hundred dollars per individual hand, game, or event.
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 that person engages or participates in the business of gambling. Without limitation, a person ~~shall be~~ is deemed to be engaged in the business of gambling if he that person:
 - 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~~ that person 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- 4. a. As used in subsection 4 3 but with the exceptions provided by subdivision b of this subsection, the term "coin-operated gaming device" means any machine ~~which~~ that is:
- (1) A so-called "slot" machine ~~which~~ that 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~~ that 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~~ that is collected and possessed by a person as a hobby and is not maintained for the business of gambling.
- c. A law enforcement officer may seize any device described in subdivision a upon probable cause to believe that the device was used or is intended to be used in violation of this chapter or chapter 53-06.1. The court shall order the device forfeited in the same manner and according to the same procedure as provided under chapter 29-31.1.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 125

HOUSE BILL NO. 1238
 (Representatives Rydell, Oban, Kelsch)
 (Senators DeMers, Robinson, Freborg)

DISORDERLY CONDUCT

AN ACT to create and enact a new chapter to title 12.1 of the North Dakota Century Code, relating to the issuance of a disorderly conduct restraining order; to amend and reenact section 12.1-31-01 of the North Dakota Century Code, relating to disorderly conduct; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-31-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-01. Disorderly conduct. ~~A person~~

1. An individual is guilty of a class B misdemeanor if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another person is harassed, annoyed, or alarmed by ~~his~~ the individual's behavior, ~~he~~ the individual:
- 1- a. Engages in fighting, or in violent, tumultuous, or threatening behavior;
- 2- b. Makes unreasonable noise;
- 3- c. In a public place, uses abusive or obscene language, or makes an obscene gesture;
- 4- d. Obstructs vehicular or pedestrian traffic, or the use of a public facility;
- 5- e. Persistently follows a person in or about a public place or places;
- 6- f. While loitering in a public place for the purpose of soliciting sexual contact, ~~he~~ the individual solicits ~~such~~ the contact; ~~or~~
- 7- g. Creates a hazardous, physically offensive, or seriously alarming condition by any act ~~which~~ that serves no legitimate purpose; ~~or~~
- h. Engages in harassing conduct by means of intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person.
2. This section does not apply to constitutionally protected activity. If an individual claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

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

Disorderly conduct restraining order - Penalty.

1. "Disorderly conduct" means intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person. Disorderly conduct does not include constitutionally protected activity.
2. A person who is a victim of disorderly conduct or the parent or guardian of a minor who is a victim of disorderly conduct may seek a disorderly conduct restraining order from any court of competent jurisdiction in the manner provided in this section.
3. A petition for relief must allege facts sufficient to show the name of the alleged victim, the name of the individual engaging in the disorderly conduct, and that the individual engaged in disorderly conduct. An affidavit made under oath stating the specific facts and circumstances supporting the relief sought must accompany the petition.
4. If the petition for relief alleges reasonable grounds to believe that an individual has engaged in disorderly conduct, the court, pending a full hearing, may grant a temporary disorderly conduct restraining order ordering the individual to cease or avoid the disorderly conduct or to have no contact with the person requesting the order. A temporary restraining order may be entered only against the individual named in the petition. The court may issue the temporary restraining order without giving notice to the respondent. The temporary restraining order is in effect until a hearing is held on the issuance of a restraining order under subsection 5.
5. The court may grant a disorderly conduct restraining order ordering the respondent to cease or avoid the disorderly conduct or to have no contact with the applicant if:
 - a. A person files a petition under subsection 3;
 - b. The sheriff serves the respondent with a copy of the temporary restraining order issued under subsection 4 and with notice of the time and place of the hearing;
 - c. The court sets a hearing for not later than fourteen days after issuance of the temporary restraining order unless the time period is extended upon written consent of the parties, or upon a showing that the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence; and
 - d. The court finds after the hearing that there are reasonable grounds to believe that the respondent has engaged in disorderly conduct. If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

6. A restraining order may be issued only against the individual named in the petition. Relief granted by the restraining order may not exceed a period of two years. The restraining order may be served on the respondent by publication pursuant to rule 4 of the North Dakota Rules of Civil Procedure.
7. A disorderly conduct restraining order must contain a conspicuous notice to the respondent providing:
 - a. The specific conduct that constitutes a violation of the order;
 - b. Notice that violation of the restraining order is punishable by imprisonment of up to one year or a fine of up to one thousand dollars or both; and
 - c. Notice that a peace officer may arrest the respondent without a warrant and take the respondent into custody if the peace officer has probable cause to believe the respondent has violated an order issued under this section.
8. If the respondent knows of an order issued under subsection 4 or 5, violation of the order is a class A misdemeanor. If the existence of an order issued under subsection 3 or 4 can be verified by a peace officer, the officer, without a warrant, may arrest and take into custody an individual whom the peace officer has probable cause to believe has violated the order.
9. The clerk of court shall transmit a copy of a restraining order by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the alleged victim of disorderly conduct. Each appropriate law enforcement agency may make available to its officers current information as to the existence and status of any restraining order involving disorderly conduct.
10. Notwithstanding subsection 5 of section 11-16-05, a state's attorney may advise and assist any person in the preparation of documents necessary to secure a restraining order under this section.

Approved April 15, 1993
Filed April 15, 1993

CHAPTER 126

HOUSE BILL NO. 1225
(Representatives Byerly, Dewitz, Torgerson)
(Senators Krebsbach, Solberg)

ELDERLY ENDANGERMENT

AN ACT to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to care of an elderly adult; 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:

Endangering an elderly adult - Penalty.

1. In this section, unless the context otherwise requires:
 - a. "Caregiver" means a person who is responsible for the care of an elderly adult as a result of a familial or legal relationship, or a person who has assumed responsibility for the care of an elderly adult.
 - b. "Elderly adult" means a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that the person is incapable of adequately providing for the person's own health or personal care.
2. Except as provided for by chapters 23-06.4, 23-06.5, and 30.1-30, a caregiver who knowingly performs an act that causes an elderly adult's life to be endangered, health to be injured, or preexisting physical or mental condition to deteriorate, or a caregiver who fails to perform acts that the caregiver knows are necessary to maintain or preserve the life or health of the elderly adult and such failure causes the elderly adult's life to be endangered, health to be injured, or preexisting physical or mental condition to deteriorate, is guilty of a class A misdemeanor.

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 127

HOUSE BILL NO. 1479
(Representative Ring)

UNAUTHORIZED PHOTOS

AN ACT to prohibit the possession or distribution of certain photographs and other visual representations; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Possession or distribution of certain photographs or other visual representations prohibited - Penalty. A person is guilty of a class A misdemeanor if, knowing of its character and content, a person surreptitiously acquires and knowingly possesses or distributes any photograph or other visual representation that exhibits a nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, without the individual's written consent. If the photograph or other visual representation is of a minor and possession does not violate section 12.1-27.2-04.1, a parent of the minor may give permission for a person to possess or distribute the photograph or other visual representation. This section does not apply to any book, as defined in section 12.1-27.1-03.1, photograph, video recording, motion picture film, or other visual representation sold in the normal course of business through wholesale or retail outlets that possess a valid sales tax permit or used by a licensed attorney, attorney's agent, or any other person obtaining evidence for a criminal investigation or pending civil action, or by a medical professional or a peace officer acting within that person's scope of employment.

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 128

HOUSE BILL NO. 1062
(Representatives Carlisle, Henegar)

SENTENCING

AN ACT to create and enact a new section to chapter 19-03.1 of the North Dakota Century Code, relating to mandatory terms of imprisonment; to amend and reenact subsection 10 of section 12.1-32-02, sections 12.1-32-02.1, 19-03.1-23, and subsection 12 of section 54-23.3-04 of the North Dakota Century Code, relating to sentencing alternatives, prison terms for certain offenders, penalties for unlawful manufacture, delivery, or possession of controlled substances, and authority to contract with other governmental agencies for prisoners and juvenile delinquents; to provide a penalty; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 10 of section 12.1-32-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10. A person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment and any term of probation imposed as part of the sentence. This subsection does not apply to a person convicted of violating subdivision b or c of subsection 1 of section 19-03.1-23.

SECTION 2. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Minimum Mandatory prison terms for armed offenders. Notwithstanding any other ~~provisions~~ provision of this title, ~~minimum terms a term~~ of imprisonment ~~shall~~ must be imposed upon an offender and served without benefit of parole when, in the course of committing an offense, ~~he the offender~~ inflicts or attempts to inflict bodily injury upon another, ~~or~~ threatens or menaces another with imminent bodily injury with a dangerous weapon, ~~an~~ explosive, destructive device, or a firearm, or possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing an offense under subsection 1 or 2 of section 19-03.1-23. ~~Such minimum penalties shall apply~~ This requirement applies only when possession of a dangerous weapon, ~~an~~ explosive, destructive device, or a firearm has been charged and admitted or found to be true in the manner provided by law, and ~~shall~~ must be imposed as follows:

1. If the offense for which the offender is convicted is a class A or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
2. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

This section applies even when being armed is an element of the offense for which the offender is convicted.

SECTION 3. AMENDMENT. Section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties.

1. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance; ~~provided, that, but any person whose conduct is in violation of who~~ violates section 12-46-24, 12-47-21, or 12-51-11 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
 - a. A controlled substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony and must be sentenced:
 - (1) For a first offense, to imprisonment for at least a year and a day.
 - (2) For a second offense, to imprisonment for at least five years.
 - (3) For a third or subsequent offense, to imprisonment for twenty years.
 - b. Any other controlled substance classified in schedule I, II, or III, is guilty of a class B felony, except that any person who delivers one hundred pounds [45.36 kilograms] or more of marijuana is guilty of a class A felony. Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:
 - (1) For a first offense, to imprisonment for at least eight months.
 - (2) For a second offense, to imprisonment for at least three years.
 - (3) For a third or subsequent offense, to imprisonment for ten years.
 - c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:
 - (1) For a second offense, to imprisonment for at least six months.
 - (2) For a third offense, to imprisonment for at least one year.
 - (3) For a fourth or subsequent offense, to imprisonment for five years.
 - d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, or possess with intent to deliver, a counterfeit substance; ~~provided, that, but any~~

- person ~~whose conduct is in violation of~~ who violates section 12-46-24, 12-47-21, or 12-51-11 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
- a. A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.
 - b. Any other counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - c. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - d. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
3. In addition to any other penalty imposed under this section, a person who violates this chapter, except a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:
- a. Any person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school is subject to a four-year term of imprisonment. For a second or subsequent offense, the sentencing term required to be imposed must be eight years.
 - b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least four years. For a second or subsequent offense, the defendant must be sentenced to imprisonment for at least eight years. It is not a defense that the defendant did not know the age of a person protected under this subdivision.
4. A person at least twenty-one years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to unlawfully transport, carry, sell, give away, prepare for sale, or peddle any controlled substance except marijuana is guilty of a class B felony and must be sentenced:
- a. For the first offense, to imprisonment for at least four years.
 - b. For a second or subsequent offense, to imprisonment for at least five years.
 - c. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.
5. A violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed

while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, 3, and 4. The prior offense must be alleged in the complaint, information, or indictment.

6. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of ~~his~~ the practitioner's professional practice, or except as otherwise authorized by this chapter; ~~provided, that, but~~ any person whose conduct is in violation of who violates section 12-46-24, 12-47-21, or 12-51-11 may not be prosecuted under this subsection. Any ~~Except as provided in this subsection, any~~ person who violates this subsection is guilty of a class C felony; ~~except that any.~~ If the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school, the person is guilty of a class B felony. Any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana, is guilty of a class A misdemeanor; ~~and any.~~ Any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana is guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle is guilty of a class A misdemeanor.
7. A person who violates this chapter must undergo a drug addiction evaluation by an appropriate licensed addiction treatment program. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. The evaluation must be submitted to the court for consideration when imposing punishment for a violation of this chapter.
- 4- 8. Notwithstanding ~~the provisions of~~ section 19-03.1-30, whenever a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall expunge that conviction from the record if the person is not subsequently convicted within two years of a further violation of this chapter and has not been convicted of any other criminal offense.

SECTION 4. A new section to chapter 19-03.1 of the North Dakota Century Code is created and enacted as follows:

Mandatory terms of imprisonment - Deferred or suspended sentence limited. Whenever a mandatory term of imprisonment is prescribed as a penalty for violation of this chapter, the court may not defer imposition of sentence, nor may the court suspend any part of a specified mandatory term, either at the time of or after the imposition of the sentence, unless the court first finds that the offense was the defendant's first violation of this chapter and that extenuating or mitigating circumstances exist which justify a suspension. The court shall announce the circumstances that justify a suspension in open court when sentence is imposed and recite these circumstances in the sentence or order suspending part of the sentence.

SECTION 5. AMENDMENT. Subsection 12 of section 54-23.3-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. To contract for correctional services, and to provide such services, with the United States, Canada, other states, and any of their governmental subdivisions and agencies and with another agency or governmental unit in this state, or with any private or public correctional or treatment facility or agency. The director shall reimburse the entity at an amount based upon the services required for the housing and treatment of inmates. The director may also contract to provide services, without cost to the state, for persons held by any of the jurisdictions mentioned in this section. ~~An adult inmate considered for transfer to another jurisdiction who does not consent to the transfer or a juvenile delinquent considered for transfer to another jurisdiction whose parent or guardian does not consent to the transfer must be given notice of the pending transfer and a review of the proposed transfer to determine the need and justification for the transfer by a board consisting of an institutional staff member, a security or housing staff member, a member of the administrative staff, and a chairman who is designated by the director of corrections. The findings of the review board must be given to the adult inmate or in the case of a juvenile delinquent, the parent or guardian. In addition, in the case of an adult inmate, the findings must be presented to the pardon board, and in the case of a juvenile, to the designated juvenile court for approval of the requested transfer. If a treaty is in effect between the United States and a foreign country for the transfer and exchange of offenders, the director of the department of corrections and rehabilitation, upon recommendation of the warden and the approval of the governor, may on behalf of the state under the terms of the treaty transfer or exchange offenders and take any action necessary for the state to participate in the treaty.~~

SECTION 6. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,890, or so much of the sum as may be necessary, to the department of corrections and rehabilitation for the purpose of this Act for the period beginning July 1, 1994, and ending June 30, 1995.

SECTION 7. EFFECTIVE DATE. This Act becomes effective on July 1, 1994.

Approved April 8, 1993
Filed April 8, 1993

CHAPTER 129

SENATE BILL NO. 2042
(Legislative Council)
(Interim Judiciary Committee)

SEX OFFENDER REPORTS

AN ACT to create and enact two new subsections to section 12.1-32-02 and a new subsection to section 54-23.3-04 of the North Dakota Century Code, relating to presentence reports in certain felony cases; to amend and reenact section 12.1-32-15 of the North Dakota Century Code, relating to the registration requirements for individuals convicted of crimes against children and individuals convicted of sexual offenses; to repeal sections 12.1-20-18, 12.1-20-19, 12.1-20-20, 12.1-20-21, 12.1-20-22, and 12.1-20-23 of the North Dakota Century Code, relating to the registration of individuals convicted of sexual offenses; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-32-02 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

A court shall order a defendant to pay fifty dollars to the department of corrections and rehabilitation at the time a presentence investigation is initiated to partially defray the costs incurred by the department for the preparation of the presentence report. The court may also order that any additional costs incurred by the department relating to the presentence investigation and report be paid by the defendant at a rate of payment up to the full costs of conducting the investigation and preparing the report as established by the department.

SECTION 2. A new subsection to section 12.1-32-02 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Before sentencing a defendant on a felony charge under sections 12.1-20-03, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report.

SECTION 3. AMENDMENT. Section 12.1-32-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-15. Crimes Offenders against children and sexual offenders - Registration requirement - Penalty.

1. As used in this section:

a. "a crime against a child" means a violation of chapter 12.1-16, 12.1-17, 12.1-18, ~~12.1-20~~, 12.1-27.2, or 12.1-29 in which the victim

is a minor or is otherwise of the age required for the act to be a crime.

- b. "Department" means the department of corrections and rehabilitation.
- c. "Sexual offender" means a person who has been convicted of a violation of section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, or 12.1-20-11.
2. After a person has been convicted of a crime against a child or an attempted crime against a child, the court may impose, or after a person has been convicted as a sexual offender, the court may shall impose, in addition to any other penalty provided by law, a requirement that the person register, within thirty days of coming into a county in which the person resides or is temporarily domiciled, with the chief of police of the city or the sheriff of the county if the person resides in an area other than a city. The court may not shall require a person to register unless the court states by stating this fact requirement on the court records.
3. ~~If~~ When the court has imposed a the requirement for registration under this section, the official in charge of a facility or institution where the person required to register is confined, or the department, shall, before the discharge, parole, or release of that person, inform the person of the duty to register pursuant to this section. The official or the department shall require the person to read and sign a form as required by the attorney general, stating that the duty of the person to register has been explained to that person. The official in charge of the place of confinement, or the department, shall obtain the address where the person expects to reside upon discharge, parole, or release and shall report the address to the attorney general. The official in charge of the place of confinement, or the department, shall give one copy of the form to the person and shall send four copies to the attorney general no later than forty-five days before the scheduled release of that person. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the person expects to reside upon discharge, parole, or release, one copy to the prosecutor who prosecuted the person, and one copy to the court in which the person was prosecuted. All forms must be transmitted and received by the law enforcement agency, prosecutor, and court thirty days before the discharge, parole, or release of the person.
4. A person who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine must, before the release or discharge, be informed of that person's duty to register under this section by the court in which that person is convicted. The court shall require the person to read and sign a form as required by the attorney general, stating that the duty of the person to register under this section has been explained to that person. The court shall obtain the address where the person expects to reside upon release or discharge and shall report the address to the attorney general within three days. The court shall give one copy of the form to the person and shall send two copies to the attorney general. The attorney general shall forward one copy to the appropriate law enforcement agency having jurisdiction where the person expects to reside upon discharge, parole, or release.

5. Registration consists of a written statement signed by the person, giving the information required by the attorney general, and the fingerprints and photograph of the person. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general. If a person required to register pursuant to this section has a change in name or address, that person shall inform in writing, within ten days, the law enforcement agency with whom that person last registered of the person's new name or 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.
6. A person required to register under this section shall comply with the registration requirement for a period of ten years after conviction or after release from incarceration, whichever is later, except that for violations of section 12.1-17-01, 12.1-17-02, 12.1-17-05, 12.1-17-06, 12.1-17-07, 12.1-18-03, 12.1-20-05, or 12.1-20-07, the person shall comply with the registration requirement for a period of five years after conviction or after release from incarceration, whichever is later.
7. A person required to register under this section who violates this section is guilty of a class A misdemeanor. A court may not relieve a person who willfully violates this section from serving a term of at least ninety days in jail and completing probation of one year.
8. When a person is released on parole or probation and is required to register pursuant to this section, but fails to do so within the time prescribed, the court shall order the probation, or the parole board shall order the parole or probation, of the person revoked. The statements, photographs, and fingerprints required by this section are ~~not open to inspection by the public or by any person other than a regularly employed law enforcement officer.~~
9. If a person required to register pursuant to this section is temporarily sent outside the facility or institution where that person is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that person is being sent must be notified within a reasonable time period before that person is released from the facility or institution. This subsection does not apply to any person temporarily released under guard from the facility or institution in which that person is confined.

SECTION 4. A new subsection to section 54-23.3-04 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

To collect the costs of any presentence investigation and report incurred under section 1 of this Act, giving due consideration to the financial obligations and resources of the defendant.

SECTION 5. REPEAL. Sections 12.1-20-18, 12.1-20-19, 12.1-20-20, 12.1-20-21, 12.1-20-22, and 12.1-20-23 of the 1991 Supplement to the North Dakota Century Code are repealed.

SECTION 6. EFFECTIVE DATE. Section 2 of this Act becomes effective on July 1, 1994.

CHAPTER 130

HOUSE BILL NO. 1044
(Legislative Council)
(Interim Judiciary Committee)

PROBATIONER FIREARM POSSESSION

AN ACT to amend and reenact sections 12.1-32-07 and 12.1-32-14 of the North Dakota Century Code, relating to a prohibition on possession of a firearm as a condition of probation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-32-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹ **12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

1. When the court imposes probation upon conviction for a felony, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. In all other cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party selected by the court.
2. The conditions of probation must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which the probation remains subject to revocation.
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.
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 vocational training that will equip the defendant for suitable employment.

¹ NOTE: Section 12.1-32-07 was also amended by sections 2 and 3 of House Bill No. 1078, chapter 132; by section 3 of Senate Bill No. 2150, chapter 114; and by sections 1 and 2 of Senate Bill No. 2144, chapter 131.

- 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 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 possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the court or probation officer.~~
- ~~h.~~ h. 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.
- ~~j.~~ i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
- ~~k.~~ 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.
- ~~m.~~ 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.
- ~~n.~~ m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
- ~~o.~~ 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.
- ~~p.~~ 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.
- ~~q.~~ p. Pay a probation supervision cost, if doing so will not materially interfere with other financial obligations.

- 4- 5. When the court imposes a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the defendant must be given a certificate explicitly setting forth the conditions on which the defendant is being released.
- 5- 6. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the probation remains conditional. If the defendant violates a condition of probation at any time ~~prior to~~ before the expiration or termination of the period, the court may continue the defendant on the existing probation, with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended execution of sentence, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.
- 6- 7. The court may continue or modify probation conditions or revoke probation for a violation of probation conditions occurring before the expiration or termination of the period of probation notwithstanding that the order of the court is imposed after the expiration or termination has occurred. The petition for revocation must be issued within sixty days of the expiration or termination of probation.
- 7- 8. Jurisdiction over a probationer may be transferred from the court that imposed the sentence to another court of this state, with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection may exercise all powers permissible under this chapter over the defendant.

SECTION 2. AMENDMENT. Section 12.1-32-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-14. Restoration of property or other work to be required of certain offenders. Other provisions of this chapter notwithstanding, whenever a person convicted of criminal mischief ~~shall be~~ is placed on probation pursuant to section 12.1-32-02 or 12.1-32-07, the court shall include as a condition of that probation the requirement that the person perform restoration or other assigned work as specified in subdivision e of subsection ~~3~~ 4 of section 12.1-32-07.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 131

SENATE BILL NO. 2144
 (Judiciary Committee)
 (At the request of the Department of Corrections and
 Rehabilitation)

CORRECTIONAL SUPERVISION AND FEES

AN ACT to create and enact two new subsections to section 54-23.3-04 of the North Dakota Century Code, relating to the authority of the director of the department of corrections and rehabilitation to accept forfeited or seized property and to collect fees from persons on correctional supervision; to amend and reenact subsection 2 of section 12.1-32-07 and subdivision q of subsection 3 of section 12.1-32-07 of the North Dakota Century Code, relating to the supervision of a probationer; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ SECTION 1. AMENDMENT. Subsection 2 of section 12.1-32-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The conditions of probation must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which the probation remains subject to revocation. The court shall order supervision costs and fees of not less than thirty dollars per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship.

² SECTION 2. AMENDMENT. Subdivision q of subsection 3 of section 12.1-32-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- q. ~~Pay a probation supervision cost, if doing so will not materially interfere with other financial obligations. Undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation.~~

¹ NOTE: Section 12.1-32-07 was also amended by section 1 of House Bill No. 1044, chapter 130; by sections 1 and 2 of House Bill No. 1078, chapter 132; and by section 3 of Senate Bill No. 2150, chapter 114.

² NOTE: Section 12.1-32-07 was also amended by section 1 of House Bill No. 1044, chapter 130; by sections 1 and 2 of House Bill No. 1078, chapter 132; and by section 3 of Senate Bill No. 2150, chapter 114.

SECTION 3. Two new subsections to section 54-23.3-04 of the 1991 Supplement to the North Dakota Century Code are created and enacted as follows:

To accept property forfeited or seized in accordance with law.

To collect costs and fees from persons on correctional supervision for the supervision services, control devices, and programs as implemented by the department to assist in making community corrections an effective alternative to incarceration. A person on active supervision is presumed able to pay assessed fees unless the director, giving due consideration to the fiscal obligations and resources of the probationer, determines otherwise. A person with the ability to pay assessed fees who refuses to pay must be returned to the court for a judicial determination.

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

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 132

HOUSE BILL NO. 1078
(Judiciary Committee)
(At the request of the Supreme Court)

INDIGENT DEFENSE COST AS PROBATION CONDITION

AN ACT to create and enact a new subdivision to subsection 3 of section 12.1-32-07 of the North Dakota Century Code, relating to conditions of probation; to amend and reenact subdivision e of subsection 3 of section 12.1-32-07, sections 12.1-32-08, and 29-07-01.1 of the North Dakota Century Code, relating to conditions of probation and reimbursement of indigent defense costs and expenses; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Subdivision e of subsection 3 of section 12.1-32-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 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.

² **SECTION 2.** A new subdivision to subsection 3 of section 12.1-32-07 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed 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 3 of section 12.1-32-08.

SECTION 3. AMENDMENT. Section 12.1-32-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-08. Hearing prior to ordering restitution or, reparation order, or reimbursement of indigent defense costs and expenses - Conditions.

¹ NOTE: Section 12.1-32-07 was also amended by section 1 of House Bill No. 1044, chapter 130; by section 3 of Senate Bill No. 2150, chapter 114; and by sections 1 and 2 of Senate Bill No. 2144, chapter 131.

² NOTE: Section 12.1-32-07 was also amended by section 1 of House Bill No. 1044, chapter 130; by section 3 of Senate Bill No. 2150, chapter 114; and by sections 1 and 2 of Senate Bill No. 2144, chapter 131.

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. 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 must be limited to 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 chapters 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 may 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 must 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 must, unless the court 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.

2. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.
3. a. Prior to imposing reimbursement of indigent defense costs and expenses as a condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney, the defendant, and the defendant's probation officer concerning the nature and amount of costs and expenses to be reimbursed. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of fifty dollars per hour for appointed counsel services plus

reasonable expenses. The court may not impose reimbursement of indigent defense costs and expenses as a condition of probation unless the court finds the defendant is or may be able to pay them. 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.

- b. A defendant who is required to reimburse indigent defense costs and expenses as a condition of probation and who is not willfully in default in that reimbursement may at any time petition the court that imposed the condition 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.
- c. If at any time the court finds that the defendant is able to reimburse costs and expenses and has willfully failed to do so, the court may continue, modify, or enlarge the conditions of probation or revoke probation as provided in subsection 5 or 6, as applicable, of section 12.1-32-07.

SECTION 4. 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.

1. Lawyers appointed to represent needy persons must be compensated at a reasonable rate to be determined by the court. Expenses necessary for the adequate defense of a needy person, when approved by the judge, must be paid by the county ~~wherein~~ in which the alleged offense took place if the action is prosecuted in county court, by the state if the action is prosecuted in district court, and by the city ~~wherein~~ in which the alleged offense took place if the action is prosecuted in municipal court. The state shall also pay the defense expenses in any felony action prosecuted in county court pursuant to subsection 9 of section 27-07.1-17. The city shall also pay the expenses in any appeal taken to district court or county court from a judgment of conviction in municipal court pursuant to section 40-18-19.
2. A defendant with appointed counsel, subject to subdivisions a through c of this subsection, shall reimburse the county, state, or city such sums as the county, state, or city expends on the defendant's behalf, ~~unless otherwise ordered by the court.~~

 - a. At the time counsel is appointed 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 the defendant is obligated to reimburse if able to do so. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of fifty dollars per hour for appointed counsel services plus reasonable expenses. Following receipt of notice under this subdivision, the defendant is entitled to 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 wherein in which the alleged offense took place, if reimbursement has not been received, shall seek civil recovery of any such sums amounts expended on the defendant's behalf any time the state's attorney or city attorney determines the person for whom counsel was appointed may have funds to repay the county, 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.

SECTION 5. AMENDMENT. Section 29-07-01.1 of the North Dakota Century Code as amended by section 110 of chapter 326 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

29-07-01.1. Payment of expenses for defense of indigents - Reimbursement of indigent defense costs and expenses.

1. Lawyers appointed to represent needy persons shall must be compensated at a reasonable rate to be determined by the court. Expenses necessary for the adequate defense of a needy person, when approved by the judge, shall must be paid by the state if the action is prosecuted in district court, and by the city wherein 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.
2. A defendant with appointed counsel, subject to subdivisions a through c of this subsection, shall reimburse the state or city such sums as the state or city expends on the defendant's behalf, unless otherwise ordered by the court.

- a. At the time counsel is appointed 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 the defendant is obligated to reimburse if able to do so. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of fifty dollars per hour for appointed counsel services plus reasonable expenses. Following receipt of notice under this subdivision, the defendant is entitled to 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 wherein in which the alleged offense took place, if reimbursement has not been received, shall seek civil recovery of any such sums amounts expended on the defendant's behalf any time 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.

SECTION 6. EFFECTIVE DATE. Section 5 of this Act becomes effective on January 2, 1995.

SECTION 7. EXPIRATION DATE. Section 4 of this Act is effective through January 1, 1995, and after that date is ineffective.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 133

SENATE BILL NO. 2298
(Senators Maxson, Sand, W. Stenehjem)
(Representatives Kretschmar, Maragos, Wanzek)

CUSTODIAL RELEASE NOTICE

AN ACT to create and enact a new subsection to section 25-03.1-43 of the North Dakota Century Code, relating to confidential records and the notification of crime victims; and to amend and reenact subsection 16 of section 12.1-34-02 of the North Dakota Century Code, relating to fair treatment standards for victims and witnesses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 16 of section 12.1-34-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16. Prompt notice of custodial release. Victims and witnesses 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 and witnesses 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.

SECTION 2. A new subsection to section 25-03.1-43 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Victims and witnesses of a crime to the extent necessary to comply with the notification requirements of subsection 16 of section 12.1-34-02.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 134

SENATE BILL NO. 2540
(Senators Mathern, Freborg)
(Representatives Clayburgh, Kerzman)
(Approved by the Delayed Bills Committee)

MINOR VICTIM OR WITNESS TESTIMONY

AN ACT to create and enact three new sections to chapter 12.1-35 and a new subsection to section 12.1-35-02 of the North Dakota Century Code, relating to testimony and proceedings involving a witness or victim who is a minor; and to amend and reenact sections 12.1-35-01 and 12.1-35-04 of the North Dakota Century Code, relating to victim and witness standards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-35-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-35-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Child" means an individual under the age of eighteen years.
2. "Child development specialist" means an individual who demonstrates educational and work experience exhibiting an understanding of child development and behavior.
3. "Court" means a forum established by law for the adjudication of juvenile petitions, criminal complaints, informations, or indictments.
- 3- 4. "Family member" means a spouse, child, sibling, parent, legal guardian, or custodian of a victim.
- 4- 5. "Prosecuting attorney" includes city attorney, state's attorney, attorney general, or their assistants.
- 5- 6. "Sex offense" includes all sex offenses defined as such in chapter 12.1-20.
- 6- 7. "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- 8. "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 2. A new subsection to section 12.1-35-02 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Information about the availability of a child development specialist to ensure questions asked of the witness are chronologically and developmentally appropriate.

SECTION 3. AMENDMENT. Section 12.1-35-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-35-04. 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 or lengthy interrogation or discovery proceedings while preserving the rights of the public, the victim, and the person charged with the violation.

SECTION 4. Three new sections to chapter 12.1-35 of the 1991 Supplement to the North Dakota Century Code are created and enacted as follows:

Assistance during proceedings. Upon request of a witness who is under the age of fourteen, the court shall permit an individual selected by the court to sit with, accompany, or be in close proximity to the witness in order to provide support to the witness while that witness is giving testimony. In order to provide support to a witness who is fourteen years of age or older, while that witness is giving testimony, the court may permit an individual selected by the court to sit with, accompany, or be in close proximity to that witness.

Confidentiality of testimony. In any criminal proceeding in which the defendant is charged with a violation of chapter 12.1-20 involving a child, the court, upon the motion of the prosecuting attorney, shall conduct a hearing to determine whether the testimony of and relating to a child may be closed to the public in order to protect the child's reputation. In making the determination to close the proceedings, the court shall consider:

1. The nature and seriousness of the offense;
2. The age of the child;
3. The extent to which the size of the community would preclude the anonymity of the victim;
4. The likelihood of public opprobrium due to the status of the victim;
5. Whether the prosecution has demonstrated a substantial probability that the identity of the witness would otherwise be disclosed to the public during the proceeding and that the disclosure would cause serious harm to the witness;
6. Whether the witness has disclosed information concerning the case to the public through press conferences, public meetings, or other means; and
7. Any other factor the court may find necessary to protect the interests of justice.

Application to discovery proceedings. This chapter applies to any criminal proceeding, including a deposition or other discovery proceeding.

CHAPTER 135

HOUSE BILL NO. 1047
(Legislative Council)
(Interim Legislative Audit and Fiscal Review Committee)

CRIME VICTIMS PROGRAM TRANSFER

AN ACT to transfer the administration of crime victims reparations program from the workers compensation bureau to the division of adult services of the department of corrections and rehabilitation; to amend and reenact subsection 5 of section 12.1-34-02, subsection 1 of section 27-20-51, sections 27-20-52, 28-22-19, and subdivision m of subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to the crime victims reparations program; and to repeal chapter 65-13 of the North Dakota Century Code, relating to the crime victims reparations program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 18 of this Act, unless the context or subject matter otherwise requires:

1. "Bodily injury" means any harm that requires medical treatment and results in economic loss and includes pregnancy and nervous shock.
2. "Claimant" means a victim, a dependent of a deceased victim, or a representative of either, who claims reparations under sections 1 through 18 of this Act.
3. "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under sections 1 through 18 of this Act which the claimant has received, or which is readily available to the claimant. Social service benefits are not a collateral source unless the claimant was receiving those benefits prior to the injury.
4. "Criminally injurious conduct" means conduct that occurs in or outside this state, results in bodily injury or death, and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct was a minor or lacked capacity to commit the crime under the laws of this state. The term does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle except when intended to cause personal injury or death or when the division determines that the conduct arose out of the use of intoxicating liquor or controlled substances as provided in section 39-08-01 or the conduct was followed by failure to stop or to give information and render aid as provided in sections 39-08-04 and 39-08-06.
5. "Dependent" means a natural person wholly or partially dependent upon a victim for care or support and includes a child of a victim born after the victim's death.

6. "Division" means the division of adult services of the department of corrections and rehabilitation.
7. "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and, if injury causes death, dependent's economic loss and dependent's replacement services loss. Noneconomic detriment is not loss. The term includes economic detriment caused by pain and suffering or physical impairment.
 - a. "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations required due to the injury, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care. The term includes a total charge not in excess of one thousand five hundred dollars for expenses in any way related to funeral, cremation, and burial. The term does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless the excess represents costs of other accommodations that are medically required.
 - b. "Dependent's economic loss" means loss after a victim's death of contributions of things of economic value to a victim's dependent, not including services the dependent would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death.
 - c. "Dependent's replacement services loss" means loss reasonably incurred by a dependent after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for the dependent's benefit if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not subtracted in calculating dependent's economic loss.
 - d. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage.
 - e. "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, not for income but for the benefit of the victim or the victim's family, if the victim had not been injured.
 - f. "Work loss" means loss of income from work the victim would have performed if the victim had not been injured, and expenses reasonably incurred by the victim in obtaining services in lieu of those the victim would have performed for income, reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work the victim was capable of performing but unreasonably failed to undertake.
8. "Victim" means a person who suffers bodily injury or death as a result of criminally injurious conduct, the good faith effort of any person to prevent criminally injurious conduct, or the good faith effort of any

person to apprehend a person suspected of engaging in criminally injurious conduct. The term does not mean a person who suffers bodily injury or death as a result of operating a motor vehicle, when, at the time of the injury or death, the person was not in compliance with applicable state laws and rules concerning motor vehicle insurance coverage and the person was at least partially at fault for causing the accident.

SECTION 2. Award of reparations. The division shall award reparations for economic loss arising directly from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for reparations have been met.

SECTION 3. No award paid to inmates. The division may not make an award of any kind under sections 1 through 18 of this Act to a victim convicted of a crime and injured while confined in any state, county, or city jail, prison, or other correctional facility.

SECTION 4. Powers and duties of the division.

1. In addition to its other powers and duties, the division shall:

- a. Establish and maintain a principal office and other necessary offices within this state, appoint employees and agents as necessary, and prescribe the duties and compensation of the employees and agents.
- b. Adopt and enforce rules necessary to implement sections 1 through 18 of this Act. All fees on claims for legal, medical, mental health, and hospital services, and the manner in which economic loss benefits are calculated, must be in accordance with the schedules of fees adopted by the division.
- c. Prescribe forms for applications for reparations.
- d. The duty to hear and determine all matters relating to claims for reparations, and the power to reinvestigate or reopen claims without regard to statutes of limitations or periods of prescription.
- e. Publicize widely the availability of reparations and information regarding the filing of reparations claims.

2. The division may:

- a. Request from prosecuting attorneys and law enforcement officers investigations and data to enable the division to determine whether, and the extent to which, a claimant qualifies for reparations. A statute providing confidentiality for a claimant's or victim's juvenile court records does not apply to proceedings under sections 1 through 18 of this Act.
- b. Take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge.

SECTION 5. Gifts, grants, and bequests - Gift fund. The division may accept on behalf of the state all gifts, grants, or bequests of property tendered to the state for any purpose pertaining to the activities of the division in implementing sections 1 through 18 of this Act. The crime victims gift fund is established as a special fund in the state treasury. All gifts, grants, and bequests of property or

money, and any interest occurring thereon, must be placed in the crime victims gift fund. Subject to legislative appropriation, the fund may be used and disbursed by the division in accordance with the terms of the donation or, if there are no terms, for costs and expenses incurred by the division in the implementation of sections 1 through 18 of this Act.

SECTION 6. Application for reparations - Awards - Limitations on awards.

1. An applicant for an award of reparations shall apply in writing in a form that conforms substantially to that prescribed by the division.
2. A claim for reparations must be filed within one year after the date of injury or death. When the division cannot determine with certainty the date of injury, then the date of injury is the first date that a reasonable person should have known that the injury resulted from criminally injurious conduct. The division may extend the time for filing when it determines that the interests of justice so require. There is no appeal from a decision of the division not to extend the filing time, not to reopen, or not to reinvestigate a claim.
3. Reparations may not be awarded to a claimant who is the offender or an accomplice of the offender, nor to any claimant if the award would unjustly benefit the offender or an accomplice.
4. Reparations may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within seventy-two hours after its occurrence or the division finds there was good cause for the failure to report within that time.
5. The division, upon finding that the claimant has not fully cooperated with appropriate law enforcement agencies, may deny, reconsider, or reduce an award of reparations.
6. Reparations otherwise payable to a claimant must be reduced or denied:
 - a. To the extent the economic loss upon which the claim is based is recouped from other persons, including collateral sources;
 - b. To the extent the division deems reasonable because of the contributory misconduct of the claimant or of a victim on whose behalf reparations are claimed; and
 - c. To the extent the division deems reasonable when it is determined that a victim was under the influence of an alcoholic beverage or a controlled substance at the time the criminally injurious conduct occurred and the victim's intoxication was a factor causing the criminally injurious conduct.
7. Reparations for work loss, replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed three hundred dollars per week.
8. Reparations payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim may not exceed twenty-five thousand dollars in the aggregate.

SECTION 7. Informal hearing - Rehearing. After an informal hearing on the papers submitted, at which the claimant need not be present, the division may accept, deny, or reduce a claim or set it for rehearing. If a claim is reduced or denied by the division, the claimant may request a rehearing or appeal the decision. The claimant must be notified of the right to rehearing or appeal.

SECTION 8. Evidence of physical condition.

1. There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical, mental, or emotional condition of the victim in a proceeding under sections 1 through 18 of this Act in which that condition is an element.
2. If the mental, physical, or emotional condition of a claimant is material to a claim, the division may order the claimant to submit to a mental or physical examination by a doctor or psychologist, and may order an autopsy of a deceased victim. The order may be made for good cause shown upon notice to the person to be examined and to all persons who have appeared. The order must specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made, and must require the person who performs the examination to file with the division a detailed written report of the examination or autopsy. The report must set out the examining person's findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions.
3. On request of the person examined, the division shall furnish that person with a copy of the examination report. If a deceased victim is autopsied, the division, on request, shall furnish the claimant a copy of the autopsy report.
4. The division may require the claimant to supplement the application with any reasonably available medical or psychological reports relating to the injury for which reparations are claimed.

SECTION 9. Enforcement of division's orders. If a person refuses to comply with an order under sections 1 through 18 of this Act or asserts a privilege, except privileges arising from the attorney-client relationship, to withhold or suppress evidence relevant to a claim, the division may make any just order including denial of the claim, but may not find the person in contempt. If necessary to carry out any of its powers and duties, the division may petition the district court for an appropriate order, but the court may not find a person in contempt for refusal to submit to a medical or physical examination.

SECTION 10. Award and payment of reparations.

1. An award may be made whether or not any person is prosecuted or convicted. Proof of conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction, or certiorari is pending, or a rehearing or new trial has been ordered.

2. The division may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but may make a tentative award under section 14 of this Act.

SECTION 11. Attorney's fees. As part of an order, the division shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the state to the attorney representing the claimant. Additional attorney's fees may be awarded by a court in the event of review. Attorney's fees may be denied on a finding that the claim or appeal is frivolous or that the appeal was unsuccessful. Attorney's fees are not allowable for assisting a claimant in filing a claim. An award of attorney's fees is in addition to an award of reparations and may be made whether or not reparations are awarded. No attorney may contract for or receive any larger sum than the amount allowed.

SECTION 12. Subrogation - Actions - Allocation of expenses.

1. If reparations are awarded, the state is subrogated to all the claimant's rights to receive or recover benefits or advantages, for economic loss for which and to the extent only that reparations are awarded, from a source that is, or, if readily available to the claimant, would be, a collateral source.
2. As a prerequisite to bringing an action to recover damages related to criminally injurious conduct for which reparations are claimed or awarded, the claimant shall give the division prior written notice of the proposed action. After receiving the notice, the division shall promptly:
 - a. Join in the action as a party plaintiff to recover reparations awarded;
 - b. Require the claimant to bring the action in the claimant's individual name, as a trustee in behalf of the state, to recover reparations awarded; or
 - c. Reserve its rights and do neither in the proposed action.

If, as requested by the division, the claimant brings the action as trustee and recovers reparations awarded by the division, the claimant may deduct from the reparations recovered in behalf of the state the reasonable expenses, including attorney's fees, allocable by the court for that recovery.

3. If a judgment or verdict indicates separately economic loss and noneconomic detriment, payments on the judgment must be allocated between them in proportion to the amounts indicated. In an action in a court of this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict, indicating separately the awards for noneconomic detriment, punitive damages, and economic loss.

SECTION 13. Manner of payment - Nonassignability and exemptions.

1. The division may provide for the payment of an award in a lump sum or in installments. The part of an award equal to the amount of economic loss accrued to the date of the award must be paid in a lump sum. An award for

allowable expense that would accrue after the award is made may not be paid in a lump sum. Except as provided in subsection 2, the part of an award that may not be paid in a lump sum must be paid in installments.

2. At the request of the claimant, the division may commute future economic loss, other than allowable expense, to a lump sum, but only upon a finding by the division that:
 - a. The award in a lump sum will promote the interests of the claimant; or
 - b. The present value of all future economic loss other than allowable expense, does not exceed one thousand dollars.
3. An award for future economic loss payable in installments may be made only for a period as to which the division can reasonably determine future economic loss. The division may reconsider and modify an award for future economic loss payable in installments, upon its finding that a material and substantial change of circumstances has occurred.
4. An assignment or agreement to assign a right to reparations for loss accruing in the future is unenforceable, except:
 - a. An assignment of a right to reparations for work loss to secure payment of alimony, maintenance, or child support; or
 - b. An assignment of a right to reparations for allowable expense to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.
5. No funds may be placed in reserve by the division on any claim.

SECTION 14. Tentative awards. If the division determines that the claimant will suffer financial hardship unless a tentative award is made, and it appears likely that a final award will be made, an amount may be paid to the claimant which must be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award.

SECTION 15. Reconsideration and review of decisions.

1. The division, on its own motion or on request of the claimant, may reconsider a decision making or denying an award or determining its amount. The division shall reconsider at least annually every award being paid in installments. An order on reconsideration of an award may not require refund of amounts previously paid unless the award was obtained by fraud.
2. The right of reconsideration does not affect the finality of a decision of the division for the purpose of judicial review.

SECTION 16. Reports. The division shall prepare and transmit biennially to the governor and the legislative assembly a report of its activities, including a brief description of the facts, the amount of reparations awarded in each case, and a statistical summary of claims and awards made and denied.

SECTION 17. Confidentiality of records. Juvenile or law enforcement records obtained under chapter 27-20 may be released to the parties, their counsel, and representatives of the parties in proceedings before the division and must be sealed at the conclusion of the proceedings. All other records of the division concerning the application for or award of reparations under this chapter are confidential and are not open to public disclosure. Inspection of these records, however, must be permitted by:

1. Law enforcement officers when necessary for the discharge of their official duties.
2. Representatives of a claimant, whether an individual or an organization, who may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant.
3. Physicians or health care providers treating or examining persons claiming benefits under this title, or physicians giving medical advice to the division regarding any claim, at the discretion of the division.
4. Any person who is rendering assistance to the division at any stage of the proceedings on any matter pertaining to the administration of sections 1 through 18 of this Act.
5. Juvenile or law enforcement records obtained under chapter 27-20 may be released to the parties, their counsel, and representatives in proceedings before the division and must be sealed at the conclusion of the proceedings.

SECTION 18. Filing false claim or false statements - Penalty. Any claimant who knowingly makes a false claim, or a false statement in connection with any claim, is guilty of a class A misdemeanor. In addition to any other penalties provided by law, the claimant who violates this section forfeits any compensation paid under sections 1 through 18 of this Act and must reimburse the program for any benefits paid.

SECTION 19. AMENDMENT. Subsection 5 of section 12.1-34-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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~~ sections 1 through 18 of this Act.

SECTION 20. AMENDMENT. Subsection 1 of section 27-20-51 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in subsection 2, all files and records of the juvenile court, whether in the office of the clerk of district court or juvenile court, of a proceeding under this chapter are confidential and may not be

disclosed to the public. Such files and records are open to inspection only by:

- a. The judge and staff of the juvenile court.
- b. The parties to the proceeding or their counsel or guardian ad litem of any party.
- c. A public or private agency or institution providing supervision or having custody of the child under order of the juvenile court, which must be given a copy of the findings and order of disposition when it receives custody of the child.
- d. Any court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to the proceeding in juvenile court.
- e. The professional staff of the uniform crime victims reparations program when necessary for the discharge of their duties pursuant to ~~chapter 65-13~~ sections 1 through 18 of this Act.

SECTION 21. AMENDMENT. Section 27-20-52 of the North Dakota Century Code is amended and reenacted as follows:

27-20-52. Law enforcement records. Law enforcement records and files concerning a child shall be kept separate from the records and files of arrests of adults. Unless a charge of delinquency is transferred for criminal prosecution under section 27-20-34, the interest of national security requires, or the court otherwise orders in the interest of the child, the records and files shall not be open to public inspection or their contents disclosed to the public; but inspection of the records and files is permitted by:

1. A juvenile court having the child before it in any proceeding;
2. Counsel for a party to the proceeding;
3. The officers of public institutions or agencies to whom the child is committed;
4. Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties;
5. A court in which he is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole or pardon board in considering his parole or discharge or in exercising supervision over him; and
6. The professional staff of the uniform crime victims reparations program when necessary for the discharge of their duties pursuant to ~~chapter 65-13~~ sections 1 through 18 of this Act.

SECTION 22. AMENDMENT. Section 28-22-19 of the North Dakota Century Code is amended and reenacted as follows:

28-22-19. Exemptions from legal process - Public pensions, assistance, and awards. The following amounts are exempt from liability for debts of the person to or on account of whom the amounts are paid, and are not subject to seizure upon execution or other process:

1. All pensions or annuities or retirement, disability, death, or other benefits paid or payable by, or amounts received as a return of contributions and interest from, a retirement system established pursuant to state law by the state except as provided by sections 15-39.1-12.2, 39-03.1-14.2, and 54-52-17.6, a state agency, a political subdivision of the state, or a firemen's relief association for retirement, annuity, pension, disability benefit, or death benefit purposes.
2. All awards made pursuant to ~~chapter 65-13~~ sections 1 through 18 of this Act as reparations for victims of crimes.
3. All payments of assistance as aid to dependent children pursuant to chapter 50-09.

¹ **SECTION 23. AMENDMENT.** Subdivision m of subsection 1 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under sections 1 through 18 of this Act.

SECTION 24. REPEAL. Chapter 65-13 of the North Dakota Century Code is repealed.

Approved March 11, 1993
Filed March 12, 1993

¹ NOTE: Subsection 1 of section 28-32-01 was also amended by House Bill Nos. 1193, 1264, 1336, and 1400 and Senate Bill Nos. 2215 and 2228, chapters 186, 328, 327, 80, 173, and 236.