

## **Title: title-12-1**

### **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-01 - Application - Purposes - Proof - Definitions**

#### TITLE 12.1

#### CRIMINAL CODE

#### CHAPTER 12.1-01

#### APPLICATION - PURPOSES - PROOF - DEFINITIONS

12.1-01-01. Title - Retroactivity - Application - Contempt power.

1. Title 12.1 of the Century Code may be cited as the North Dakota Criminal Code.

2. This title, except as provided in subsection 3, shall not apply to offenses committed prior to its effective date. Prosecutions for such offenses shall be governed by prior law, which is continued in effect for that purpose. For the purposes of this section, an offense was committed prior to the effective date of this title if any of the elements of the offense occurred prior thereto.

3. In cases pending on or after the effective date of this title, and involving offenses committed prior thereto:

a. The provisions of this title according a defense or mitigation shall apply, with the consent of the defendant.

b. The court, with the consent of the defendant, may impose sentence under the provisions of this title which are applicable to the offense and the offender.

4. This section does not affect the power of a court or legislative assembly to punish for contempt, or to employ any enforcement sanction authorized by law, nor does this section affect any power conferred by law upon military authority to impose punishment upon offenders.

12.1-01-02. General purposes.

The general purposes of this title are to establish a system of prohibitions, penalties, and correctional measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which governmental protection is appropriate. To this end, the provisions of this title are intended, and shall be construed, to achieve the following objectives:

1. To ensure the public safety through: a. vindication of public norms by the imposition of merited punishment; b. the deterrent influence of the penalties hereinafter provided; c. the rehabilitation of those convicted of violations of this title; and d. such confinement as may be necessary to prevent likely recurrence of serious criminal behavior.

2. By definition and grading of offenses, to define the limits and systematize the exercise of discretion in punishment and to give fair warning of what is prohibited and of the consequences of violation.

3. To prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders.

4. To safeguard conduct that is without guilt from condemnation as criminal and to condemn conduct that is with guilt as criminal.

5. To prevent arbitrary or oppressive treatment of persons accused or convicted of offenses.

6. To define the scope of state interest in law enforcement against specific offenses and to systematize the exercise of state criminal jurisdiction.

12.1-01-03. Proof and presumptions.

1. No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. An accused is presumed innocent until proven guilty. The fact that the accused has been arrested, confined, or charged with the offense gives rise to no inference of guilt at the accused's trial. "Element of an offense" means:

a. The forbidden conduct;

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b. The attendant circumstances specified in the definition and grading of the offense;

c. The required culpability;

d. Any required result; and

e. The nonexistence of a defense as to which there is evidence in the case sufficient

to give rise to a reasonable doubt on the issue.

2.Subsection 1 does not require negating a defense:

a.By allegation in the charging document; or

b.By proof, unless the issue is in the case as a result of evidence sufficient to raise a reasonable doubt on the issue.

Unless it is otherwise provided or the context plainly requires otherwise, if a statute outside this title defining an offense, or a related statute, or a rule or regulation thereunder, contains a provision constituting an exception from criminal liability for conduct which would otherwise be included within the prohibition of the offense, that the defendant came within such exception is a defense.

3.Subsection 1 does not apply to any defense which is explicitly designated an "affirmative defense". An affirmative defense must be proved by the defendant by a preponderance of evidence.

4.When a statute establishes a presumption, it has the following consequences:

a.If there is sufficient evidence of the facts which gave rise to the presumption, the presumed fact is deemed sufficiently proved to warrant submission of the issue to a jury unless the court is satisfied that the evidence as a whole clearly negates the presumed fact.

b.In submitting the issue of the existence of the presumed fact to a jury, the court shall charge that, although the evidence as a whole must establish the presumed fact beyond a reasonable doubt, the jury may arrive at that judgment on the basis of the presumption alone, since the law regards the facts giving rise to the presumption as strong evidence of the fact presumed.

5.When a statute declares that given facts constitute a prima facie case, proof of such facts warrants submission of a case to the jury with the usual instructions on burden of proof and without additional instructions attributing any special probative force to the facts proved.

12.1-01-03.1. Presumption of age.

1.In determining an individual's age for purposes of this title, the individual's date of birth as provided by any of the following is presumed to be the individual's legal date of birth:

a.A state government in the form of a birth certificate, other state -issued identification, or a certified copy of a birth certificate that includes the individual's date of birth;

b.The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth; or

c.A foreign government in the form of a passport, driver's license, or other foreign government-issued identity document that includes the individual's date of birth. If there is a conflict between government issued forms, a government issued birth certificate or a certified copy of a birth certificate takes precedence.

2.The presumption in subsection 1 may be rebutted by clear and convincing evidence to the contrary.

12.1-01-04. General definitions.

As used in this title, unless a different meaning plainly is required:

1."Act" or "action" means a bodily movement, whether voluntary or involuntary.

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2."Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act".

3."Actor" includes, where relevant, a person guilty of an omission.

4."Bodily injury" means any impairment of physical condition, including physical pain.

5."Court" means any of the following courts: the supreme court, a district court, and where relevant, a municipal court.

6."Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring,

compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO 2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.

7. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade, mine, rocket, missile, or similar device.

8. "Explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material, or any part thereof may cause an explosion.

9. "Firearm" means any weapon that will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such weapon, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.

10. "Force" means physical action.

11. "Government" means:

- a. The government of this state or any political subdivision of this state;
- b. Any agency, subdivision, or department of the state or any political subdivision of the state, including the executive, legislative, and judicial branches;
- c. Any corporation or other entity established by law to carry on any governmental function; and
- d. Any commission, corporation, or agency established by statute, compact, or contract between or among governments for the execution of intergovernmental programs.

12. "Governmental function" includes any activity that one or more public servants are legally authorized to undertake on behalf of government.

13. "Harm" means loss, disadvantage, or injury to the person affected, and includes loss, disadvantage, or injury to any other person in whose welfare the person affected is interested.

14. "Included offense" means an offense:

- a. That is established by proof of the same or less than all the facts required to establish commission of the offense charged;
- b. That consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or
- c. That differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission.

15. "Includes" should be read as if the phrase "but is not limited to" were also set forth.

16. "Law enforcement officer" or "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.

17. "Local" means of or pertaining to any political subdivision of the state.

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18. "Manifest injustice" means a specific finding by the court that the imposition of sentence is unreasonably harsh or shocking to the conscience of a reasonable individual, with due consideration of the totality of circumstances .

19. "Offense" means conduct for which a term of imprisonment or a fine is authorized by statute after conviction.

20. "Official action" includes a decision, opinion, recommendation, vote, or other exercise of discretion by any government agency.

21. "Official proceeding" means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.

22. "Omission" means a failure to act.

23. As used in this title and in sections outside this title which define offenses, "person" includes, where relevant, a corporation, limited liability company, partnership,

unincorporated association, or other legal entity. When used to designate a party whose property may be the subject of action constituting an offense, the word "person" includes a government that may lawfully own property in this state.

24. "Political subdivision" as used in this title and in any statute outside this title which defines an offense means a county, city, school district, township, and any other local governmental entity created by law.

25. "Possesses" means an individual has:

- a. Direct physical control of something on or around the individual's person; or
- b. The power and intention to exercise control over something accessible to but not on or around the individual's person.

26. "Public servant" as used in this title and in any statute outside this title which defines an offense means any officer or employee of government, including law enforcement officers, whether elected or appointed, and any person participating in the performance of a governmental function. The term does not include witnesses.

27. "Risk assessment" means an initial phase with a secondary process approved by the department of health and human services for the evaluation of the likelihood a person that committed an offense will commit another similar offense. The initial phase is an assessment tool that is administered by a trained probation and parole officer. A predetermined score on the initial phase initiates the secondary process that includes a clinical interview, psychological testing, and verification through collateral information or psychophysiological testing, or both. The department of health and human services shall perform the secondary process of the risk assessment.

28. "Serious bodily injury" means bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of the function of any bodily member or organ, a bone fracture, or impediment of air flow or blood flow to the brain or lungs.

29. "Signature" includes any name, mark, or sign written or affixed with intent to authenticate any instrument or writing.

30. "Substantial bodily injury" means a substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ.

31. "Thing of value" or "thing of pecuniary value" means a thing of value in the form of money, tangible or intangible property, commercial interests, or anything else the primary significance of which is economic gain to the recipient.

32. "Tier 1 mental health professional" has the same meaning as provided under section 25-01-01.

12.1-01-05. Crimes defined by state law shall not be superseded by city or county ordinance or by home rule city's or county's charter or ordinance.

Except as provided in section 40-05-06, an offense defined in this title or elsewhere by law may not be superseded by any city or county ordinance, or city or county home rule charter, or by an ordinance adopted pursuant to such a charter, and all such offense definitions shall have full force and effect within the territorial limits and other jurisdiction of home rule cities or  
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counties. This section does not preclude any city or county from enacting any ordinance containing penal language when otherwise authorized to do so by law.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-03 - Accomplices - Corporations - Agents**

### **CHAPTER 12.1-03**

#### **ACCOMPLICES - CORPORATIONS - AGENTS**

##### **12.1-03-01. Accomplices.**

1. A person may be convicted of an offense based upon the conduct of another person when:

- a. Acting with the kind of culpability required for the offense, he causes the other to engage in such conduct;
- b. With intent that an offense be committed, he commands, induces, procures, or aids the other to commit it, or, having a statutory duty to prevent its commission, he fails to make proper effort to do so; or
- c. He is a coconspirator and his association with the offense meets the requirements of either of the other subdivisions of this subsection.

A person is not liable under this subsection for the conduct of another person when he is either expressly or by implication made not accountable for such conduct by the statute defining the offense or related provisions because he is a victim of the offense or otherwise.

2. Unless otherwise provided, in a prosecution in which the liability of the defendant is based upon the conduct of another person, it is no defense that:

a. The defendant does not belong to the class of persons who, because of their official status or other capacity or characteristic, are by definition of the offense the only persons capable of directly committing it; or

b. The person for whose conduct the defendant is being held liable has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

12.1-03-02. Corporate and limited liability company criminal responsibility.

1. A corporation or a limited liability company may be convicted of:

a. Any offense committed by an agent of the corporation or limited liability company within the scope of the agent's employment on the basis of conduct authorized, requested, or commanded, by any of the following or a combination of them:

(1) The board of directors or the board of governors.

(2) An executive officer, executive manager, or any other agent in a position of comparable authority with respect to the formulation of policy or the supervision in a managerial capacity of subordinate employees.

(3) Any person, whether or not an officer of the corporation, who controls the corporation or is responsibly involved in forming its policy.

(4) Any person, whether or not a manager of the limited liability company, who controls the limited liability company or is responsibly involved in forming its policy.

(5) Any other person for whose act or omission the statute defining the offense provides corporate or limited liability company responsibility for offenses.

b. Any offense consisting of an omission to discharge a specific duty of affirmative conduct imposed on a corporation or a limited liability company by law.

c. Any misdemeanor committed by an agent of the corporation or the limited liability company within the scope of the agent's employment.

d. Any offense for which an individual may be convicted without proof of culpability, committed by an agent of the corporation or the limited liability company within the scope of the agent's employment.

2. It is no defense that an individual upon whose conduct liability of the corporation or the limited liability company for an offense is based has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

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12.1-03-03. Individual accountability for conduct on behalf of organizations.

1. A person is legally accountable for any conduct he performs or causes to be performed in the name of an organization or in its behalf to the same extent as if the conduct were performed in his own name or his behalf.

2. Except as otherwise expressly provided, whenever a duty to act is imposed upon an organization by a statute or regulation thereunder, any agent of the organization having primary responsibility for the subject matter of the duty is legally accountable for an omission to perform the required act to the same extent as if the duty were imposed directly upon himself.

3. When an individual is convicted of an offense as an accomplice of an organization, he is subject to the sentence authorized when a natural person is convicted of that offense.

12.1-03-04. Definitions and general provisions.

1. In this chapter:

a. "Agent" means any partner, director, officer, governor, manager, servant, employee, or other person authorized to act in behalf of an organization.

b. "Organization" means any legal entity, whether or not organized as a corporation, limited liability company, or unincorporated association, but does not include an

entity organized as or by a governmental agency for the execution of a governmental program.

2.Nothing in this chapter shall limit or extend the criminal liability of an unincorporated association.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-04.1 - Criminal Responsibility and Post-Trial Responsibility Act**

### **CHAPTER 12.1-04.1**

#### **CRIMINAL RESPONSIBILITY AND POST -TRIAL RESPONSIBILITY ACT**

12.1-04.1-01. Standard for lack of criminal responsibility.

1.An individual is not criminally responsible for criminal conduct if, as a result of mental disease or defect existing at the time the conduct occurs:

a.The individual lacks substantial capacity to comprehend the harmful nature or consequences of the conduct, or the conduct is the result of a loss or serious distortion of the individual's capacity to recognize reality; and

b.It is an essential element of the crime charged that the individual act willfully.

2.For purposes of this chapter, repeated criminal or similar antisocial conduct, or impairment of mental condition caused primarily by voluntary use of alcoholic beverages or controlled substances immediately before or contemporaneously with the alleged offense, does not constitute in itself mental illness or defect at the time of the alleged offense. Evidence of the conduct or impairment may be probative in conjunction with other evidence to establish mental illness or defect.

12.1-04.1-02. Court authorization of state -funded mental health services for certain defendants.

A defendant who is unable to pay for the services of a tier 1a mental health professional, and to whom those services are not otherwise available, may apply to the court for assistance.

Upon a showing of a likely need for examination on the question of lack of criminal responsibility or lack of requisite state of mind as a result of the defendant's mental condition, the court shall authorize reasonable expenditures from public funds for the defendant's retention of the services of one or more tier 1a mental health professionals. Upon request by the defendant, the application and the proceedings on the application must be ex parte and in camera, but any order under this section authorizing expenditures must be made part of the public record.

12.1-04.1-03. Notice of defense of lack of criminal responsibility.

1.If the defendant intends to assert the defense of lack of criminal responsibility, the defendant shall notify the prosecuting attorney in writing and file a copy of the notice with the court. The notice must indicate whether the defendant intends to introduce at trial evidence obtained from examination of the defendant by a tier 1a mental health professional after the time of the alleged offense.

2.The defendant shall file the notice within the time prescribed for pretrial motions or at such earlier or later time as the court directs. For cause shown, the court may allow late filing of the notice and grant additional time to the parties to prepare for trial or may make other appropriate orders.

3.If the defendant fails to give notice in accordance with this section, lack of criminal responsibility may not be asserted as a defense.

12.1-04.1-04. Notice regarding expert testimony on lack of state of mind as element of alleged offense.

1.If the defendant intends to introduce at trial evidence obtained from examination of the defendant by a tier 1a mental health professional after the time of the alleged offense to show the defendant lacked the state of mind required for the alleged offense, the defendant shall notify the prosecuting attorney in writing and file a copy of the notice with the court.

2.The defendant shall file the notice within the time prescribed for pretrial motions or at such earlier or later time as the court directs. For cause shown, the court may allow late filing of the notice and grant additional time to the parties to prepare for trial or may make other appropriate orders.

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12.1-04.1-05. Examination at request of prosecuting attorney.

1.If the defendant has given notice under section 12.1 -04.1-03 or 12.1-04.1-04 of intent

to introduce evidence obtained from examination of the defendant by a tier 1a mental health professional after the time of the alleged offense, the court, upon application by the prosecuting attorney and after opportunity for response by the defendant, shall order the defendant be examined by one or more tier 1a mental health professionals retained by the prosecuting attorney. The court shall include in the order provisions as to the time, place, and conditions of the examination.

2.If the parties agree to examination of the defendant by a tier 1a mental health professional retained by the prosecuting attorney without order of the court, sections 12.1-04.1-06, 12.1-04.1-07, 12.1-04.1-08, 12.1-04.1-10, 12.1-04.1-11, 12.1-04.1-12, 12.1-04.1-13, 12.1-04.1-14, and 12.1-04.1-15 apply to that examination.

12.1-04.1-06. Explanation to defendant.

At the beginning of each examination conducted under section 12.1 -04.1-05, the tier 1a mental health professional shall inform the defendant the examination is being made at the request of the prosecuting attorney; the purpose of the examination is to obtain information about the defendant's mental condition at the time of the alleged offense; and information obtained from the examination may be used at trial and, if the defendant is found not guilty by reason of lack of criminal responsibility, in subsequent proceedings concerning commitment or other disposition.

12.1-04.1-07. Scope of examination.

An examination of the defendant conducted under section 12.1 -04.1-05 may consist of such interviewing, clinical evaluation, and psychological testing the tier 1a mental health professional considers appropriate, within the limits of nonexperimental, generally accepted medical, psychiatric, or psychological practices.

12.1-04.1-08. Recording of examination.

1.An examination of the defendant conducted under section 12.1 -04.1-05 must be audio-recorded and, if ordered by the court, video -recorded. The manner of recording may be specified by rule or by court order in individual cases.

2.Within seven days after completion of an examination conducted under section 12.1-04.1-05, the tier 1a mental health professional conducting the examination shall deliver a copy of the recording of the examination, under seal, to the court and a copy of the recording to the defendant. The recording may not be disclosed except in accordance with this chapter.

12.1-04.1-09. Consequence of deliberate failure of defendant to cooperate.

If the defendant without just cause deliberately fails to participate or to respond to questions in an examination conducted under section 12.1 -04.1-05, the prosecuting attorney may apply before trial to the court for appropriate relief. The court may consider the recording of the examination as evidence on the application, but proceedings under this section involving consideration of the recording must be in camera and out of the presence of counsel.

12.1-04.1-10. Reports by tier 1a mental health professionals and expert witnesses.

A tier 1a mental health professional retained by the prosecuting attorney and a tier 1a mental health professional whom the defendant intends to call to testify at trial shall prepare a written report concerning any examination of the defendant and other pretrial inquiry by or under the supervision of the tier 1a mental health professional. Any other individual whom either party intends to call at trial as an expert witness on any aspect of the defendant's mental condition shall prepare a written report. A report under this section must contain:

- 1.The specific issues addressed.
- 2.The identity of individuals interviewed and records or other information used.
- 3.The procedures, tests, and techniques used.

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4.The date and time of examination of the defendant, the explanation concerning the examination given to the defendant, and the identity of each individual present during an examination.

5.The relevant information obtained and findings made.

6.Matters concerning which the mental health professional was unable to obtain relevant information and the reasons therefor.

7.The conclusions reached and the reasoning on which the conclusions were based.

12.1-04.1-11. Exchange of reports and production of documents.

Not less than fifteen days before trial, the prosecuting attorney shall furnish to the defendant reports prepared pursuant to section 12.1 -04.1-10, and the defendant shall furnish to the

prosecuting attorney reports by each tier 1a mental health professional or other expert on any aspect of the defendant's mental condition whom the defendant intends to call at trial. Upon application by either party and after hearing, the court may require production of documents prepared, completed, or used in the examination or inquiry by the tier 1a mental health professional or other expert.

12.1-04.1-12. Use of reports at trial.

Use at trial of a report prepared by a tier 1a mental health professional or other expert is governed by the North Dakota Rules of Evidence. A report of a tier 1a mental health professional or other expert furnished by the defendant pursuant to section 12.1 -04.1-10 may not be used at trial unless the tier 1a mental health professional or other expert who prepared the report has been called to testify by the defendant.

12.1-04.1-13. Notice of expert witnesses.

Not less than twenty days before trial, each party shall give written notice to the other of the name and qualifications of each tier 1a mental health professional or other individual the respective party intends to call as an expert witness at trial on the issue of lack of criminal responsibility or requisite state of mind as an element of the crime charged. For good cause shown, the court may permit later addition to or deletion from the list of individuals designated as expert witnesses.

12.1-04.1-14. Use of evidence obtained from examination.

1.Except as provided in subsection 2 and in sections 12.1 -04.1-09 and 12.1-04.1-26, information obtained as a result of examination of a defendant by a tier 1a mental health professional conducted under section 12.1 -04.1-05 is not admissible over objection of the defendant in any proceeding against the defendant.

2.Subject to the limitation in section 12.1 -04.1-15, information obtained from an examination of the defendant by a tier 1a mental health professional conducted under section 12.1-04.1-05 is admissible at trial to rebut evidence introduced by the defendant obtained from an examination of the defendant by a tier 1a mental health professional or to impeach the defendant on the defendant's testimony as to mental condition at the time of the alleged offense.

12.1-04.1-15. Use of recording of examination.

Except as provided in section 12.1 -04.1-09, recording of an examination of the defendant concerning the defendant's mental condition at the time of the alleged offense may be referred to or otherwise used only on cross -examination for the purpose of impeachment of the tier 1a mental health professional who conducted the examination and then on redirect examination of that witness to the extent permitted by the North Dakota Rules of Evidence. The defendant must make the recording available to the prosecuting attorney before any use of it pursuant to this section. If the recording is so used, this section does not preclude its use for the purpose of impeachment of the defendant in any other criminal, civil, or administrative proceeding.

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12.1-04.1-16. Bifurcation of issue of lack of criminal responsibility.

Upon application of the defendant, the court may order that issues as to the commission of the alleged offense be tried separately from the issue of lack of criminal responsibility.

12.1-04.1-17. Jury instruction on disposition following verdict of lack of criminal responsibility.

On request of the defendant in a trial by jury of the issue of lack of criminal responsibility for the alleged offense, the court shall instruct the jury as to the dispositional provisions applicable to the defendant if the jury returns a verdict of not guilty by reason of lack of criminal responsibility.

12.1-04.1-18. Form of verdict or finding.

If the issue of lack of criminal responsibility is submitted to the trier of fact:

1.In a unitary trial, the trier of fact must first determine whether the prosecuting attorney has proven that the defendant committed the crime charged. In a bifurcated trial, the trier of fact must first determine whether the prosecuting attorney has proven that the defendant committed the crime charged and, if so, whether the defendant is criminally responsible. Each determination must be made at the conclusion of the phase of the trial at which the respective issue is tried. If the trier of fact concludes that the prosecuting attorney failed to prove that the defendant committed the crime charged, the appropriate verdict or finding is "not guilty".

2.If the trier of fact determines that the defendant committed the crime charged and the

defendant was criminally responsible for that crime, the appropriate verdict or finding is "guilty".

3.If the trier of fact determines that the defendant committed the crime charged, but was not criminally responsible for that crime, the appropriate verdict or finding is a statement that the defendant committed the crime charged but that the defendant is "not guilty by reason of lack of criminal responsibility".

12.1-04.1-19. Post-trial motions and appeal from verdict or finding of not guilty by reason of lack of criminal responsibility.

1.A defendant found not guilty by reason of lack of criminal responsibility may seek post-trial relief in the trial court and may appeal to the supreme court on issues pertaining to the verdict or finding that the defendant committed the crime charged.

2.If the verdict or finding is not guilty by reason of lack of criminal responsibility, and a new trial is ordered on the issue of whether the defendant committed the crime charged, unless defendant elects to waive the defense, the verdict or finding of lack of criminal responsibility is conclusive on that issue in the retrial.

12.1-04.1-20. Jurisdiction of court.

1.Unless earlier discharged by order of the court pursuant to section 12.1 -04.1-22, 12.1-04.1-24, or 12.1-04.1-25, an individual found not guilty by reason of lack of criminal responsibility is subject to the jurisdiction of the court for a period equal to the maximum term of imprisonment that could have been imposed for the most serious crime of which the individual was charged but found not guilty by reason of lack of criminal responsibility.

2.Upon expiration of its jurisdiction under this chapter or earlier discharge by its order, the court may order that a proceeding for involuntary commitment be initiated pursuant to chapter 25-03.1.

12.1-04.1-21. Proceeding following verdict or finding.

After entry of a verdict, finding, or an unresisted plea, that an individual committed the crime charged, but is not guilty by reason of lack of criminal responsibility, the court shall:

1.Make a finding, based upon the verdict or finding provided in section 12.1 -04.1-18, of the expiration date of the court's jurisdiction; and

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2.Order the individual committed to a treatment facility, as defined under chapter 25-03.1, for examination. The order of the court may set terms of custody during the period of examination.

12.1-04.1-22. Initial order of disposition - Commitment to treatment facility - Conditional release - Discharge.

1.The court shall conduct a dispositional hearing within ninety days after an order of commitment pursuant to section 12.1 -04.1-21 is entered, unless the court, upon application of the prosecuting attorney or the individual committed, for cause shown, extends the time for the hearing. The court shall enter an initial order of disposition within ten days after the hearing is concluded.

2.In a proceeding under this section, unless excused by order of the court, defense counsel at the trial shall represent the individual committed.

3.If the court finds the individual lacks sufficient financial resources to retain the services of a tier 1a mental health professional and that those services are not otherwise available, the court shall authorize reasonable expenditures from public funds for the individual's retention of the services of one or more tier 1a mental health professionals to examine the individual and make other inquiry concerning the individual's mental condition.

4.In a proceeding under this section, the individual committed has the burden of proof by a preponderance of the evidence. The court shall enter an order in accordance with the following requirements:

a.If the court finds the individual is not mentally ill or defective or that there is not a substantial risk, as a result of mental illness or defect, that the individual will commit a criminal act, the court shall order the individual discharged from further constraint under this chapter.

b.If the court finds the individual is mentally ill or defective and there is a substantial risk, as a result of mental illness or defect, that the individual will commit a criminal act of violence threatening another individual with bodily injury or

inflicting property damage and that the individual is not a proper subject for conditional release, the court shall order the individual committed to a treatment facility for custody and treatment. If the court finds the risk the individual will commit an act of violence threatening another individual with bodily injury or inflicting property damage will be controlled adequately with supervision and treatment if the individual is conditionally released and that necessary supervision and treatment are available, the court shall order the individual released subject to conditions it considers appropriate for the protection of society.

c.If the court finds the individual is mentally ill or defective and there is a substantial risk, as a result of mental illness or defect, that the individual will commit a criminal act not included in subdivision b, the court shall order the individual to report to a treatment facility for noncustodial evaluation and treatment and to accept nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility.

12.1-04.1-23. Terms of commitment - Periodic review of commitment.

1.Unless an order of commitment of an individual to a treatment facility provides for special terms as to custody during commitment, the director or superintendent of the treatment facility may determine from time to time the nature of the constraints necessary within the treatment facility to carry out the court's order. In an order of commitment, the court may authorize the director or superintendent to allow the individual a limited leave of absence from the treatment facility on terms the court may direct.

2.In an order of commitment of an individual to a treatment facility under this chapter, the court shall set a date for review of the status of the individual. The date set must be within one year after the date of the order.

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3.At least sixty days before a date for review fixed in a court order, the director or superintendent of the treatment facility shall inquire as to whether the individual is presently represented by counsel and file with the court a written report of the facts ascertained. If the individual is not represented by counsel, counsel must be provided at public expense to consult with the individual and, if the individual is indigent, to seek arrangement of counsel at public expense to represent the individual in a proceeding for conditional release or discharge.

4.If the court finds in a review the individual lacks sufficient financial resources to retain the services of a tier 1a mental health professional and those services are otherwise not available, the court shall authorize reasonable expenditures from public funds for the individual's retention of the services of one or more tier 1a mental health professionals to examine the individual and make other inquiry concerning the individual's mental condition. In proceedings brought before the next date for review, the court may authorize expenditures from public funds for that purpose.

5.If an application for review of the status of the individual has not been filed by the date for review, the director or superintendent shall file a motion for a new date for review to be set by the court. The date set must be within one year after the previous date for review.

12.1-04.1-24. Modification of order of commitment - Conditional release or discharge - Release plan.

1.After commitment of an individual to a treatment facility under this chapter, the director or superintendent may apply to the court for modification of the terms of an order of commitment or for an order of conditional release or discharge. The application must be accompanied by a report setting forth the facts supporting the application and, if the application is for conditional release, a plan for supervision and treatment of the individual.

2.An individual who has been committed to a treatment facility under this chapter, or another person acting on the individual's behalf, may apply to the court for modification of the terms of a commitment order or for an order of conditional release or discharge. If the application is being considered by the court at the time of the review of the order of commitment, the court shall require a report from the director or superintendent of the treatment facility.

3.The court shall consider and dispose of an application under this section promptly. In a

proceeding under this section, the applicant has the burden of proof by a preponderance of the evidence. The court shall enter an order in accordance with the following requirements:

a.If the court finds that the individual committed is not mentally ill or defective or that there is not a substantial risk that the individual will commit, as a result of mental illness or defect, a criminal act, it shall order the individual discharged from further constraint under this chapter.

b.If the court finds that the individual is mentally ill or defective, but that there is not a substantial risk that the individual will commit, as a result of mental illness or defect, a criminal act of violence threatening another individual with bodily injury or inflicting property damage, it shall vacate the order committing the individual to a treatment facility. If the court finds that there is a substantial risk that the individual will commit, as a result of mental illness or defect, a nonviolent criminal act, it may order the individual to report to any treatment facility for noncustodial evaluation and treatment and to accept nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility.

c.If the court finds that the individual is mentally ill or defective, but that the risk that the individual will commit, as a result of mental illness or defect, a criminal act of violence threatening another individual with bodily injury or inflicting property damage will be controlled adequately with supervision and treatment and that necessary supervision and treatment are available, it shall order the individual

released subject to conditions it considers appropriate for the protection of society.

4.In any proceeding for modification of an order of commitment to a treatment facility, if the individual has been represented by counsel and the application for modification of the order of commitment is denied after a plenary hearing, the court shall set a new date for periodic review of the status of the individual. The date set must be within one year after the date of the order.

12.1-04.1-25. Conditional release - Modification - Revocation - Discharge.

1.In an order for conditional release of an individual, the court shall designate a treatment facility or a person to be responsible for supervision of the individual.

2.As a condition of release, the court may require the individual released to report to any treatment facility for evaluation and treatment, require the individual to accept nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility, and impose other conditions reasonably necessary for protection of society.

3.The person or the director or superintendent of a treatment facility responsible for supervision of an individual released shall furnish reports to the court, at intervals prescribed by the court, concerning the mental condition of the individual. Copies of reports submitted to the court must be furnished to the individual and to the prosecuting attorney.

4.If there is reasonable cause to believe that the individual released presents an imminent threat to cause bodily injury to another, the person or the director or superintendent of the treatment facility responsible for supervision of the individual pursuant to an order of conditional release may take the individual into custody or request that the individual be taken into custody. An individual taken into custody under this subsection must be accorded an emergency hearing before the court not later than the next court day to determine whether the individual should be retained in custody pending a further order pursuant to subsection 5.

5.Upon application by an individual conditionally released, by the director or superintendent of the treatment facility or person responsible for supervision of an individual pursuant to an order of conditional release, or by the prosecuting attorney, the court shall determine whether to continue, modify, or terminate the order. The court shall consider and dispose of an application promptly. In a proceeding under this section, the applicant has the burden of proof by a preponderance of the evidence. The court shall enter an order in accordance with the following requirements:

a.If the court finds that the individual is not mentally ill or defective or that there is

not a substantial risk that the individual will commit, as a result of mental illness or defect, a criminal act, it shall order that the individual be discharged from further constraint under this chapter.

b.If the court finds that the individual is mentally ill or defective, but that there is not a substantial risk that the individual will commit, as a result of mental illness or defect, a criminal act of violence threatening another individual with bodily injury or inflicting property damage, it may modify the conditions of release as appropriate for the protection of society.

c.If the court finds that the individual is mentally ill or defective and that there is a substantial risk that the individual will commit, as a result of mental illness or defect, a criminal act of violence threatening another individual with bodily injury or inflicting property damage and that the individual is no longer a proper subject for conditional release, it shall order the individual committed to a treatment facility for custody and treatment. If the court finds that the individual is mentally ill or defective and that there is a substantial risk that the individual, as a result of mental illness or defect, will commit a nonviolent criminal act, it may order the individual to report to any treatment facility for noncustodial evaluation and treatment and to accept nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility.

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12.1-04.1-26. Procedures.

1.An applicant for a court order under sections 12.1 -04.1-20 through 12.1-04.1-25 shall deliver a copy of the application and any accompanying documents to the individual committed, the prosecuting attorney, the director or superintendent of the treatment facility to which the individual has been committed, or the person or the director or superintendent of a treatment facility responsible for supervision of an individual conditionally released. The North Dakota Rules of Civil Procedure, adapted by the court to the circumstances of a postverdict proceeding, apply to a proceeding under sections 12.1-04.1-20 through 12.1-04.1-25.

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

3.In a proceeding under sections 12.1 -04.1-20 through 12.1-04.1-25, the North Dakota Rules of Evidence do not apply. If relevant, evidence adduced in the criminal trial of the individual and information obtained by court -ordered examinations of the individual pursuant to section 12.1 -04.1-04 or 12.1-04.1-22 are admissible.

4.A final order of the court is appealable to the supreme court.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-05 - Justification - Excuse - Affirmative Defenses**

### **CHAPTER 12.1-05**

#### **JUSTIFICATION - EXCUSE - AFFIRMATIVE DEFENSES**

##### **12.1-05-01. Justification.**

1.Except as otherwise expressly provided, justification or excuse under this chapter is a defense.

2.If a person is justified or excused in using force against another, but he recklessly or negligently injures or creates a risk of injury to other persons, the justifications afforded by this chapter are unavailable in a prosecution for such recklessness or negligence.

3.That conduct may be justified or excused within the meaning of this chapter does not abolish or impair any remedy for such conduct which is available in any civil action.

##### **12.1-05-02. Execution of public duty.**

1.Conduct engaged in by a public servant in the course of the person's official duties is justified when it is required or authorized by law.

2.A person who has been directed by a public servant to assist that public servant is justified in using force to carry out the public servant's direction, unless the action

directed by the public servant is plainly unlawful.

3. A person is justified in using force upon another to effect that person's arrest or prevent that person's escape when a public servant authorized to make the arrest or prevent the escape is not available if the other person has committed, in the presence of the actor, any crime which the actor is justified in using force to prevent, or if the other person has committed a felony involving force or violence.

4. Conduct engaged in by an individual at the direction of a public servant, known by that individual to be a law enforcement officer, to assist in the investigation of a criminal offense is justified unless the individual knows or has a firm belief, unaccompanied by substantial doubt, that the conduct is not within the law enforcement officer's official duties or authority. For purposes of this subsection, conduct "not within the law enforcement officer's official duties or authority" is conduct in which the law enforcement officer alone could not lawfully engage in that officer's official capacity. When practicable, permission must be obtained from a parent or guardian of a minor who is under the age of eighteen years and is neither married nor in the military service of the United States before the minor may engage in conduct, other than the providing of information, to assist in a criminal investigation under the direct supervision of a public servant.

5. A member of the armed forces is justified in using deadly force when it reasonably appears to be necessary to prevent the loss, theft, destruction, sabotage, or unauthorized control of a nuclear weapon, critical nuclear component, or nuclear explosive device.

12.1-05-03. Self-defense.

A person is justified in using force upon another person to defend himself against danger of imminent unlawful bodily injury, sexual assault, or detention by such other person, except that:

1. A person is not justified in using force for the purpose of resisting arrest, execution of process, or other performance of duty by a public servant under color of law, but excessive force may be resisted.

2. A person is not justified in using force if:

a. He intentionally provokes unlawful action by another person to cause bodily injury or death to such other person; or

b. He has entered into a mutual combat with another person or is the initial aggressor unless he is resisting force which is clearly excessive in the circumstances. A person's use of defensive force after he withdraws from an encounter and indicates to the other person that he has done so is justified if the latter nevertheless continues or menaces unlawful action.

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12.1-05-04. Defense of others.

A person is justified in using force upon another person in order to defend anyone else if:

1. The person defended would be justified in defending himself; and

2. The person coming to the defense has not, by provocation or otherwise, forfeited the right of self-defense.

12.1-05-05. Use of force by persons with parental, custodial, or similar responsibilities.

The use of force upon an individual is justified under any of the following circumstances:

1. Except as provided in section 15.1 -19-02, a parent, guardian, or other person responsible for the care and supervision of a minor, or other person responsible for the care and supervision of a minor for a special purpose, or person acting at the direction of any of the foregoing persons, may use reasonable force upon the minor for the purpose of safeguarding or promoting the minor's welfare, including prevention and punishment of the minor's misconduct, and the maintenance of proper discipline.

a. If the person using reasonable force for the prevention and punishment of the minor's misconduct or the maintenance of proper discipline is a paid caregiver, that person must be acting under written direction of the parent or guardian of the minor.

b. The reasonable force may be used for this purpose, regardless of whether the reasonable force is "necessary" as required by subsection 1 of section

12.1-05-07.

c. The reasonable force used may not create a substantial risk of death, serious

bodily injury, disfigurement, or gross degradation.

2.A guardian or other person responsible for the care and supervision of an individual who is incompetent, or a person acting at the direction of the guardian or responsible person, may use reasonable force upon the individual for the purpose of safeguarding or promoting the welfare of the individual, including the prevention of the individual's misconduct or, if the individual is in a hospital or other institution for care and custody, for the purpose of maintaining reasonable discipline in the institution.

a.The force may be used for these purposes, regardless of whether the force is "necessary" as required by subsection 1 of section 12.1 -05-07.

b.The force used may not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.

3.A person responsible for the maintenance of order in a vehicle, train, vessel, aircraft, or other carrier, or in a place in which others are assembled, or a person acting at the responsible person's direction, may use force to maintain order.

4.A duly licensed physician, or a person acting at a duly licensed physician's direction, may use force in order to administer a recognized form of treatment to promote the physical or mental health of a patient if the treatment is administered:

a.In an emergency;

b.With the consent of the patient, or, if the patient is a minor or an individual who is incompetent, with the consent of the patient's parent, guardian, or other person entrusted with the patient's care and supervision; or

c.By order of a court of competent jurisdiction.

5.A person may use force upon an individual about to commit suicide or suffer serious bodily injury, to prevent the death or serious bodily injury of that individual.

12.1-05-06. Use of force in defense of premises and property.

Force is justified if it is used to prevent or terminate an unlawful entry or other trespass in or upon premises, or to prevent an unlawful carrying away or damaging of property.

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

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

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2.Deadly force is justified in the following instances:

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

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

(1)A public servant justified in using force in the performance of the public servant's duties or an individual justified in using force in assisting the public servant need not desist from the public servant's or individual's efforts because of resistance or threatened resistance by or on behalf of the other individual against whom the public servant's or individual's action is directed; and

(2)An individual who is not engaged in an unlawful activity that gives rise to the need for the use of deadly force and has not provoked the individual against whom the deadly force is used, unless the circumstances in subdivision b of subsection 2 of section 12.1-05-03 apply, is not required to retreat within or from any place the individual otherwise is legally allowed to be .

c.When used by an individual in possession or control of a dwelling, place of work, motor vehicle, or an occupied motor home or travel trailer as defined in section 39-01-01, or by an individual who is licensed or privileged to be there, if the force is necessary to prevent commission of arson, burglary, robbery, or a felony involving violence upon or in the dwelling, place of work, motor vehicle, or occupied motor home or travel trailer, and the use of force other than deadly force

for these purposes would expose any individual to substantial danger of serious bodily injury.

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

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

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

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

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12.1-05-07.1. Use of deadly force - Presumption of fear of death or serious bodily injury.

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

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

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

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

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

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

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

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

d. The individual against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, place of work, or occupied motor home or travel trailer as defined in section 39 -01-01 in the performance of official duties and the officer provided identification, if required, in accordance with any

applicable law or warrant from a court, or if the individual using force knew or reasonably should have known that the individual entering or attempting to enter was a law enforcement officer.

12.1-05-07.2. Immunity from civil liability for justifiable use of force.

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

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

12.1-05-08. Excuse.

A person's conduct is excused if he believes that the facts are such that his conduct is necessary and appropriate for any of the purposes which would establish a justification or excuse under this chapter, even though his belief is mistaken. However, if his belief is negligently or recklessly held, it is not an excuse in a prosecution for an offense for which negligence or recklessness, as the case may be, suffices to establish culpability. Excuse under Page No. 4

this section is a defense or affirmative defense according to which type of defense would be established had the facts been as the person believed them to be.

12.1-05-09. Mistake of law.

Except as otherwise expressly provided, a person's good faith belief that conduct does not constitute a crime is an affirmative defense if he acted in reasonable reliance upon a statement of the law contained in:

1. A statute or other enactment.

2. A judicial decision, opinion, order, or judgment.

3. An administrative order or grant of permission.

4. An official interpretation of the public servant or body charged by law with responsibility for the interpretation, administration, or enforcement of the law defining the crime.

12.1-05-10. Duress.

1. In a prosecution for any offense, it is an affirmative defense that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or to another. In a prosecution for an offense which does not constitute a felony, it is an affirmative defense that the actor engaged in the proscribed conduct because he was compelled to do so by force or threat of force. Compulsion within the meaning of this section exists only if the force, threat, or circumstances are such as would render a person of reasonable firmness incapable of resisting the pressure.

2. The defense defined in this section is not available to a person who, by voluntarily entering into a criminal enterprise, or otherwise, willfully placed himself in a situation in which it was foreseeable that he would be subjected to duress. The defense is also unavailable if he was negligent in placing himself in such a situation, whenever negligence suffices to establish culpability for the offense charged.

12.1-05-11. Entrapment.

1. It is an affirmative defense that the defendant was entrapped into committing the offense.

2. A law enforcement agent 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.

3. In this section "law enforcement agent" includes personnel of federal and local law enforcement agencies as well as state agencies, and any person cooperating with

such an agency.

12.1-05-12. Definitions.

In this chapter:

1. "Deadly force" means force which a person uses with the intent of causing, or which he knows creates a substantial risk of causing, death or serious bodily injury. A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor's intent is limited to creating an apprehension that he will use deadly force if necessary, does not constitute deadly force.

2. "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being a person's home or place of lodging.

3. "Force" means physical action, threat, or menace against another, and includes confinement.

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4. "Premises" means all or any part of a building or real property, or any structure, vehicle, or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-06.1 - Racketeer Influenced and Corrupt Organizations**

### **CHAPTER 12.1-06.1**

#### **RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS**

12.1-06.1-01. Definitions.

1. For the purpose of section 12.1 -06.1-02:

a. "Combination" means persons who collaborate in carrying on or furthering the activities or purposes of a criminal association even though those persons may not know each other's identity or membership in the combination may change from time to time or one or more members may stand in a wholesaler -retailer or other arm's-length relationship with others as to activities or dealings between or among themselves in an illicit operation.

b. "Criminal association" means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct which violates any one or more provisions of any felony statute of this state or which is the willful and illegal transportation or disposal of radioactive waste material or hazardous waste.

2. For the purposes of sections 12.1 -06.1-02 through 12.1-06.1-07, unless the context otherwise requires:

a. "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

b. "Enterprise" means any corporation, limited liability company, association, labor union, or other legal entity or any group of persons associated in fact although not a legal entity.

c. "Financial institution" means any bank, trust company, savings and loan association, credit union, or moneylender under the jurisdiction of the state department of financial institutions or its commissioner, or the state banking board, or the state credit union board.

d. "Illegal transportation or disposal of radioactive waste material or hazardous waste" means the transportation or disposal into a nonhazardous waste landfill or the intentional and unlawful dumping into or on any land or water of radioactive waste material in violation of chapter 38-23 or the rules adopted pursuant to that chapter, or hazardous waste in willful violation of chapter 23.1-04 or the rules adopted pursuant to that chapter .

e. "Pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after July 8, 1987, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity.

f. "Racketeering" means any act including any criminal attempt, facilitation, solicitation, or conspiracy, committed for financial gain, which is chargeable or indictable under the laws of the state in which the act occurred and, if the act

occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable by imprisonment for more than one year, regardless of whether such act is charged or indicted, involving:

- (1)Homicide.
- (2)Robbery.
- (3)Kidnapping.
- (4)Forgery.
- (5)Theft.
- (6)Bribery.
- (7)Gambling.
- (8)Usury.
- (9)Extortion.
- (10)Unlawful delivery of controlled substances.
- (11)Trafficking in explosives, weapons, or stolen property.
- (12)Leading a criminal association.

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- (13)Obstructing or hindering criminal investigations or prosecutions.
- (14)Asserting false claims including, but not limited to, false claims asserted through fraud or arson.
- (15)Fraud.
- (16)Sale of unregistered securities or real property securities and transactions involving such securities by unregistered dealers or salesmen.
- (17)Obscenity.
- (18)Child pornography.
- (19)Prostitution.
- (20)Human trafficking.

g."Records" means any book, paper, writing, record, computer program, or other material.

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

- a."Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.
- b."Computer" means an electronic device which performs work using programmed instruction and which has one or more of the capabilities of storage, logic, arithmetic, communication, or memory and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network.
- c."Computer network" means the interconnection of communication lines, including microwave, fiber optics, light beams, or other means of electronic or optic data communication, with a computer through remote terminals or a complex consisting of two or more interconnected computers.
- d."Computer program" means a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system.
- e."Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.
- f."Computer system" means a set of related, connected, or unconnected computer equipment, devices, and software.
- g."Financial instrument" means any credit card, debit card, or electronic fund transfer card, code, or other means of access to an account for the purpose of initiating electronic fund transfers, or any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, marketable security, or any other written instrument which is transferable for value.
- h."Property" includes financial instruments, information, electronically produced or stored data, supporting documentation, computer software, and computer programs in either machine or human readable form, and any other tangible or intangible item of value.
- i."Services" includes computer time, data processing, storage functions, and other

uses of a computer, computer system, or computer network to perform useful work.

12.1-06.1-02. Leading a criminal association - Classification.

1.A person is guilty of an offense by any of the following:

a.Intentionally organizing, managing, directing, supervising, or financing a criminal association.

b.Knowingly inciting or inducing others to engage in violence or intimidation to promote or further the criminal objectives of a criminal association.

c.Willfully furnishing advice, assistance, or direction in the conduct, financing, or management of a criminal association's affairs with the intent to promote or further the criminal objectives of a criminal association.

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d.Intentionally promoting or furthering the criminal objectives of a criminal association by inducing or committing any act or omission by a public servant in violation of official duty.

2.No person shall be convicted pursuant to this section on the basis of accountability as an accomplice unless that person aids or participates in violating this section in one of the ways specified.

3.Leading a criminal association is a class B felony.

12.1-06.1-03. Illegal control of an enterprise - Illegally conducting an enterprise.

1.A person is guilty of an offense if such person, through a pattern of racketeering activity or its proceeds, acquires or maintains, by investment or otherwise, control of any enterprise.

2.A person is guilty of an offense if the person is employed or associated with any enterprise and conducts or participates in the conduct of that enterprise's affairs through a pattern of racketeering activity.

3.A knowing violation of this section is a class B felony.

12.1-06.1-04. Judicial powers over racketeering criminal cases.

During the pendency of any criminal case charging an offense included in the definition of racketeering if it is shown to the satisfaction of the court when ruling upon the application for the order that the racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1 -06.1-02 or 12.1-06.1-03, the court may, in addition to its other powers, issue an order pursuant to subsections 1 and 2 of section 12.1-06.1-05. Upon conviction of a person for an offense included in the definition of racketeering if it is shown to the satisfaction of the court when ruling upon the application for the order that the racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1 -06.1-02 or 12.1-06.1-03, the court may, in addition to its other powers, issue an order pursuant to section 12.1-06.1-05.

12.1-06.1-05. Racketeering - Civil remedies.

1.A person who sustains injury to person, business, or property by a pattern of racketeering activity or by a violation of section 12.1 -06.1-02 or 12.1-06.1-03 may file an action in district court for the recovery of treble damages and the costs of the suit, including reasonable attorney fees. The state may file an action in behalf of those persons injured or to prevent, restrain, or remedy a pattern of racketeering activity or a violation of section 12.1 -06.1-02 or 12.1-06.1-03.

2.The district court has jurisdiction to prevent, restrain, and remedy a pattern of racketeering activity or a violation of section 12.1 -06.1-02 or 12.1-06.1-03 after making provision for the rights of all innocent persons affected by the violation and after hearing or trial, as appropriate, by issuing appropriate orders.

3.Prior to a determination of liability, orders may include entering restraining orders, receivership orders or prohibitions or other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture, or other restraints pursuant to this section.

4.Following a determination of liability, orders may include:

a.Ordering any person to divest himself of any interests, direct or indirect, in any enterprise.

b.Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of

this state, to the extent the constitutions of the United States and this state permit.

c. Ordering dissolution or reorganization of any enterprise.

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d. Ordering the payment of treble damages and appropriate restitution to those persons injured by a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03.

e. Ordering the payment of all costs and expenses and reasonable attorneys' fees concerned with the prosecution and investigation of any offense included in the definition of racketeering if upon application for the order it is shown to the satisfaction of the court that the racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03, civil and criminal, incurred by the state or county as appropriate to be paid to the general fund of the state or county that brings the action.

f. Forfeiture, pursuant to chapter 32 -14, to the state school fund of the state or county as appropriate under section 29 -27-02.1, to the extent not already ordered to be paid in other damages:

(1) Any property or other interest acquired or maintained by a person in violation of section 12.1-06.1-02 or 12.1-06.1-03.

(2) Any interest in, security of, claims against, or property or contractual right of any kind affording a source of influence over any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of in violation of section 12.1-06.1-02 or 12.1-06.1-03.

(3) All proceeds traceable to an offense included in the definition of racketeering and all moneys, negotiable instruments, securities, and other things of value used or intended to be used to facilitate commission of the offense if upon application for the order it is shown to the satisfaction of the court that the racketeering offense has occurred as a part of a pattern of racketeering activity.

g. Payment to the state school fund of the state or county as appropriate under section 29-27-02.1 of an amount equal to the gain a person has acquired or maintained through an offense included in the definition of racketeering if upon application for the order it is shown to the satisfaction of the court that the racketeering offense has occurred as a part of a pattern of racketeering activity.

5. In addition to or in lieu of an action under this section the state may file an action for forfeiture to the state school fund of the state or county as appropriate under section 29-27-02.1, to the extent not already ordered paid pursuant to this section, of:

a. Any interest acquired or maintained by a person in violation of section 12.1-06.1-02 or 12.1-06.1-03.

b. Any interest in, security of, claims against, or property or contractual right of any kind affording a source of influence over any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of in violation of section 12.1-06.1-02 or 12.1-06.1-03.

c. All proceeds traceable to an offense included in the definition of racketeering and all moneys, negotiable instruments, securities, and other things of value used or intended to be used to facilitate the commission of the offense if upon application for the order it is shown to the satisfaction of the court that such racketeering offense has occurred as a part of a pattern of racketeering activity.

6. A defendant convicted in any criminal proceeding shall be precluded from subsequently denying the essential allegations of the criminal offense of which he was convicted in any civil proceeding. For purposes of this subsection, a conviction may result from a verdict or plea including a no contest plea.

7. Notwithstanding any law to the contrary, the initiation of civil proceedings related to violations of any offense included in the definition of racketeering or a violation of section 12.1-06.1-02 or 12.1-06.1-03 must be commenced within seven years of actual discovery of the violation.

8. This state may, in a civil action brought pursuant to this section, file with the clerk of the district court a certificate stating that the case is of special public importance. A copy of that certificate shall be furnished immediately by the clerk to the presiding

judge of the district court in which the action is pending and, upon receipt of the copy,  
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the judge shall immediately designate a judge to hear and determine the action. The judge designated shall promptly assign the action for hearing, participate in the hearings and determination, and cause the action to be expedited.

9. The standard of proof in actions brought pursuant to this section is the preponderance of the evidence.

10. A person other than the attorney general or state's attorney who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the district court. The notice shall identify the action, the person, and the person's attorney. Service of the notice does not limit or otherwise affect the right of the state to maintain an action under this section or intervene in a pending action nor does it authorize the person to name the state or the attorney general as a party to the action.

11. Except in cases filed by a state's attorney, the attorney general may, upon timely application, intervene in any civil action or proceeding brought pursuant to this section if the attorney general certifies that in his opinion the action is of special public importance. Upon intervention, the attorney general may assert any available claim and is entitled to the same relief as if the attorney general had instituted a separate action.

12. In addition to the state's right to intervene as a party in any action under this section, the attorney general may appear as amicus curiae in any proceeding in which a claim under this section has been asserted or in which a court is interpreting any provisions of this chapter.

13. A civil action under this section is remedial and does not limit any other civil or criminal action. Civil remedies provided under this section are supplemental and not mutually exclusive.

12.1-06.1-06. Racketeering lien - Content - Filing - Notice - Effect.

1. The state, upon filing a civil action under section 12.1 -06.1-05 or upon charging an offense included in the definition of racketeering if the offense is committed as a part of a pattern of racketeering activity or a violation of section 12.1 -06.1-02 or 12.1-06.1-03, may file a racketeering lien. A filing fee or other charge is not required for filing a racketeering lien.

2. A racketeering lien shall be signed by the attorney general or the state's attorney representing the state in the action and set forth the following information:

a. The name of the defendant whose property, interests in property, or other interests are to be subject to the lien.

b. In the discretion of the attorney general or state's attorney filing the lien, any aliases or fictitious names of the defendant named in the lien.

c. If known to the attorney general or state's attorney filing the lien, the present residence or principal place of business of the person named in the lien.

d. A reference to the proceeding pursuant to which the lien is filed, including the name of the court, the title of the action, and the court's file number for the proceeding.

e. The name and address of the attorney representing the state in the proceeding pursuant to which the lien is filed.

f. A statement that the notice is being filed pursuant to this section.

g. The amount which the state claims in the action or, with respect to property or other interests which the state has requested forfeiture to the state or county, a description of the property or interests sought to be paid or forfeited.

h. If known to the attorney general or state's attorney filing the lien, a description of property which is subject to forfeiture to the state or property in which the defendant has an interest which is available to satisfy a judgment entered in favor of the state.

i. Such other information as the attorney general or state's attorney filing the lien deems appropriate.

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3. The attorney general or the state's attorney filing the lien may amend a lien filed under this section at any time by filing an amended racketeering lien in accordance with this

section which identifies the prior lien amended.

4.The attorney general or the state's attorney filing the lien shall, as soon as practical after filing a racketeering lien, furnish to any person named in the lien a notice of the filing of the lien. Failure to furnish notice under this subsection does not invalidate or otherwise affect a racketeering lien filed in accordance with this section.

5.A racketeering lien is perfected against interests in personal property by filing the lien with the secretary of state, except that in the case of titled motor vehicles it shall be filed with the director of the department of transportation. A racketeering lien is perfected against interests in real property by filing the lien with the county recorder of the county in which the real property is located. The state may give additional notice of the lien.

6.The filing of a racketeering lien in accordance with this section creates a lien in favor of the state in:

a.Any interest of the defendant in real property situated in the county in which the lien is filed, then maintained or later acquired in the name of the defendant identified in the lien.

b.Any interest of the defendant in personal property situated in this state, then maintained or later acquired in the name of the defendant identified in the lien.

c.Any property identified in the lien to the extent of the defendant's interest in the property.

7.The filing of a racketeering lien under this section is notice to all persons dealing with the person or property identified in the lien of the state's claim. The lien created in favor of the state in accordance with this section is superior and prior to the claims or interests of any other person, except a person possessing:

a.A valid lien perfected prior to the filing of the racketeering lien.

b.In the case of real property, an interest acquired and recorded prior to the filing of the racketeering lien.

c.In the case of personal property, an interest acquired prior to the filing of the racketeering lien.

8.Upon entry of judgment in favor of the state, the state may proceed to execute the judgment as in the case of any other judgment, except that in order to preserve the state's lien priority as provided in this section the state shall, in addition to notice as required by law, give at least thirty days' notice of execution to any person possessing at the time notice is given, an interest recorded after the date the state's lien was perfected.

9.Upon the entry of a final judgment in favor of the state providing for forfeiture of property to the state, the title of the state to the property:

a.In the case of real property, or a beneficial interest in real property, relates back to the date of filing the racketeering lien with the county recorder of the county where the real property is located, or if no racketeering lien is filed, then to the date of recording of the final judgment with the county recorder of the county where the real property is located.

b.In the case of personal property or a beneficial interest in personal property, relates back to the date the personal property was seized by the state, or the date of filing of a racketeering lien in accordance with this section, whichever is earlier, but if the property was not seized and no racketeering lien was filed then to the date the final judgment was filed with the secretary of state, or in the case of a titled motor vehicle, with the director of the department of transportation.

10.This section does not limit the right of the state to obtain any order or injunction, receivership, writ, attachment, garnishment, or other remedy authorized under section 12.1-06.1-05 or available under other applicable law.

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12.1-06.1-07. Racketeering - Investigation of records - Confidentiality - Court enforcement - Classification.

1.A custodian of the records of a financial institution shall, at no expense to the financial institution, produce for inspection or copying the records in the custody of the financial institution when requested to be inspected by the attorney general or a state's attorney authorized by the attorney general, if the person requesting the information signs and submits a sworn statement to the custodian that the request is made to investigate a

pattern of racketeering activity or a violation of section 12.1 -06.1-02 or 12.1-06.1-03. Records may be removed from the premises of the financial institution only for the purpose of copying the records and must be returned within forty -eight hours. The attorney general or an authorized state's attorney or any peace officer designated by an authorized state's attorney or the attorney general may not use or release the information except in the proper discharge of official duties. The furnishing of records in compliance with this section by a custodian of records is a bar to civil or criminal liability against the custodian or financial institution in any action brought alleging violation of the confidentiality of the records. The fact that records have been obtained may not be released in any way by the financial institution until ninety days after the release.

2.The attorney general or the authorized state's attorney may petition the district court for enforcement of this section upon noncompliance with the request for inspection. Enforcement must be granted if the request is reasonable and the attorney general or the authorized state's attorney has reasonable grounds to believe the records sought to be inspected are relevant to a civil or criminal investigation of a pattern of racketeering activity or a violation of section 12.1 -06.1-02 or 12.1-06.1-03.

3.The investigation authority granted pursuant to the provisions of this section may not be exercised by a state's attorney in the absence of authorization by the attorney general.

4.Any person releasing information obtained pursuant to this section, except in the proper discharge of official duties, is guilty of a class B misdemeanor.

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

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

2.A person commits computer crime by intentionally and either in excess of authorization given or without authorization gaining or attempting to gain access to, altering, damaging, modifying, copying, disclosing, taking possession of, introducing a computer contaminant into, destroying, or preventing the authorized use of any computer, computer system, or computer network, or any computer software, program, or data contained in the computer, computer system, or computer network. A person who commits computer crime is guilty of a class A misdemeanor.

3.In addition to any other remedy available, the owner or lessee of a computer, computer system, computer network, or any part of the computer, computer system, or computer network may bring a civil action for damages, restitution, and attorney's fees for damages incurred as a result of the violation of this section.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-06.2 - Criminal Street Gangs**

### **CHAPTER 12.1-06.2**

#### **CRIMINAL STREET GANGS**

##### **12.1-06.2-01. Definitions.**

As used in this chapter, the term:

1."Crime of pecuniary gain" means any violation of state law that directly results or was intended to result in the defendant alone, or in association with others, receiving income, benefit, property, money, or anything of value.

2."Crime of violence" means any violation of state law where a person purposely or knowingly causes or threatens to cause death or physical bodily injury to another person or persons.

3."Criminal street gang" means any ongoing organization or group of three or more persons, whether formal or informal, that acts in concert or agrees to act in concert with a purpose that any of those persons alone or in any combination commit or will commit two or more predicate gang crimes one of which occurs after August 1, 1995,

and the last of which occurred within five years after the commission of a prior predicate gang crime.

4. "Participate in a criminal street gang" means to act in concert with a criminal street gang with intent to commit or with the intent that any other person associated with the criminal street gang will commit one or more predicate gang crimes.

5. "Predicate gang crime" means the commission, attempted commission, or solicitation of any felony, misdemeanor crime of violence, or misdemeanor crime of pecuniary gain.

12.1-06.2-02. Criminal street gang crime - Penalty.

Any person who commits a felony or class A misdemeanor crime of violence or crime of pecuniary gain for the benefit of, at the direction of, or in association with any criminal street gang, with the intent to promote, further, or assist in the affairs of a criminal gang, or obtain membership into a criminal gang, is guilty of a class C felony.

12.1-06.2-03. Encouraging minors to participate in criminal street gang - Penalty.

1. Any person eighteen years of age or older who knowingly or willfully causes, aids, abets, encourages, solicits, or recruits a person under the age of eighteen years to participate in a criminal street gang is upon conviction guilty of a class C felony.

2. Nothing in this section may be construed to limit prosecution under any other provision of law.

12.1-06.2-04. Local ordinances not preempted.

Nothing in this chapter may be construed as preventing a local governing body from adopting and enforcing ordinances relating to gangs and gang -related violence.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-06 - Criminal Attempt - Facilitation - Solicitation - Conspiracy**

### **CHAPTER 12.1-06**

#### **CRIMINAL ATTEMPT - FACILITATION - SOLICITATION - CONSPIRACY**

12.1-06-01. Criminal attempt.

1. A person is guilty of criminal attempt if, acting with the kind of culpability otherwise required for commission of a crime, he intentionally engages in conduct which, in fact, constitutes a substantial step toward commission of the crime. A "substantial step" is any conduct which is strongly corroborative of the firmness of the actor's intent to complete the commission of the crime. Factual or legal impossibility of committing the crime is not a defense, if the crime could have been committed had the attendant circumstances been as the actor believed them to be.

2. A person who engages in conduct intending to aid another to commit a crime is guilty of criminal attempt if the conduct would establish his complicity under section 12.1-03-01 were the crime committed by the other person, even if the other is not guilty of committing or attempting the crime, for example, because he has a defense of justification or entrapment.

3. Criminal attempt is an offense of the same class as the offense attempted, except that (a) an attempt to commit a class AA felony is a class A felony and an attempt to commit a class A felony is a class B felony; and (b) whenever it is established by a preponderance of the evidence at sentencing that the conduct constituting the attempt did not come dangerously close to commission of the crime, an attempt to commit a class B felony shall be a class C felony and an attempt to commit a class C felony shall be a class A misdemeanor.

12.1-06-02. Criminal facilitation.

1. A person is guilty of criminal facilitation if he knowingly provides substantial assistance to a person intending to commit a felony and that person, in fact, commits the crime contemplated, or a like or related felony, employing the assistance so provided. The ready lawful availability from others of the goods or services provided by a defendant is a factor to be considered in determining whether or not his assistance was substantial. This section does not apply to a person who is either expressly or by implication made not accountable by the statute defining the felony facilitated or related statutes.

2. Except as otherwise provided, it is no defense to a prosecution under this section that the person whose conduct the defendant facilitated has been acquitted, has not been

prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

3. Facilitation of a class A felony is a class C felony. Facilitation of a class B or class C felony is a class A misdemeanor.

12.1-06-03. Criminal solicitation.

1. A person is guilty of criminal solicitation if he commands, induces, entreats, or otherwise attempts to persuade another person to commit a particular felony, whether as principal or accomplice, with intent to promote or facilitate the commission of that felony, under circumstances strongly corroborative of that intent, and if the person solicited commits an overt act in response to the solicitation.

2. It is a defense to a prosecution under this section that, if the criminal object were achieved, the defendant would be a victim of the offense, or the offense is so defined that his conduct would be inevitably incident to its commission, or he otherwise would not be guilty under the statute defining the offense or as an accomplice under section 12.1-03-01.

3. It is no defense to a prosecution under this section that the person solicited could not be guilty of the offense because of lack of responsibility or culpability, or other incapacity or defense.

4. Criminal solicitation is an offense of the class next below that of the offense solicited.

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12.1-06-04. Criminal conspiracy.

1. A person commits conspiracy if he agrees with one or more persons to engage in or cause conduct which, in fact, constitutes an offense or offenses, and any one or more of such persons does an overt act to effect an objective of the conspiracy. The agreement need not be explicit but may be implicit in the fact of collaboration or existence of other circumstances.

2. If a person knows or could expect that one with whom he agrees has agreed or will agree with another to effect the same objective, he shall be deemed to have agreed with the other, whether or not he knows the other's identity.

3. A conspiracy shall be deemed to continue until its objectives are accomplished, frustrated, or abandoned. "Objectives" includes escape from the scene of the crime, distribution of booty, and measures, other than silence, for concealing the crime or obstructing justice in relation to it. A conspiracy shall be deemed abandoned if no overt act to effect its objectives has been committed by any conspirator during the applicable period of limitations.

4. It is no defense to a prosecution under this section that the person with whom such person is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

5. Accomplice liability for offenses committed in furtherance of the conspiracy is to be determined as provided in section 12.1-03-01.

6. Conspiracy is an offense of the same class as the crime which was the objective of the conspiracy.

12.1-06-05. General provisions.

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

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

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

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

c. A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by (1) a belief that a circumstance exists which increases the probability of detection or apprehension of the defendant or another participant in the criminal operation, or which makes more difficult the consummation of the crime, or (2) a decision to postpone the criminal conduct until another time or to substitute another victim, or another but similar objective.

4. An individual is immune from prosecution under this chapter if:

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

b. The individual is a student enrolled in an elementary school, middle school, or a high school in this state or is enrolled at an institution of higher education in this state;

c. The offense would have resulted in:

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

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(2) Harm to another student enrolled in an institution of higher education in this state;

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

(4) Harm to an employee of an institution of higher education in this state; or

(5) Damage to property of a school district in this state or property of an institution of higher education in this state; and

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

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-08 - Obstruction of Law Enforcement - Escape**

### **CHAPTER 12.1-08**

#### **OBSTRUCTION OF LAW ENFORCEMENT - ESCAPE**

##### **12.1-08-01. Physical obstruction of government function.**

1. A person is guilty of a class A misdemeanor if he intentionally obstructs, impairs, impedes, hinders, prevents, or perverts the administration of law or other governmental function.

2. This section does not apply to the conduct of a person obstructing arrest of himself, but such conduct is subject to section 12.1-08-02. This section does apply to the conduct of a person obstructing arrest of another. Inapplicability under this subsection is a defense.

3. It is a defense to a prosecution under this section that the administration of law or other government function was not lawful, but it is no defense that the defendant mistakenly believed that the administration of law or other government function was not lawful. For the purposes of this subsection, the conduct of a public servant acting in good faith and under color of law in the execution of a warrant or other process for arrest or search and seizure shall be deemed lawful.

##### **12.1-08-02. Preventing arrest or discharge of other duties.**

1. A person is guilty of a class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another for a misdemeanor or infraction, or from discharging any other official duty, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty. A person is guilty of a class C felony if, with intent to prevent a public servant from effecting an arrest of himself or another for a class A, B, or C felony, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting such an arrest.

2. It is a defense to a prosecution under this section that the public servant was not acting lawfully, but it is no defense that the defendant mistakenly believed that the public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully.

12.1-08-03. Hindering law enforcement.

1.A person is guilty of hindering law enforcement if he intentionally interferes with, hinders, delays, or prevents the discovery, apprehension, prosecution, conviction, or punishment of another for an offense by:

- a.Harboring or concealing the other;
- b.Providing the other with a weapon, money, transportation, disguise, or other means of avoiding discovery or apprehension;
- c.Concealing, altering, mutilating, or destroying a document or thing, regardless of its admissibility in evidence;
- d.Warning the other of impending discovery or apprehension other than in connection with an effort to bring another into compliance with the law; or
- e.Giving false information or a false report to a law enforcement officer knowing such information or report to be false.

2.Hindering law enforcement is a class C felony if the actor:

- a.Knows of the conduct of the other and such conduct constitutes a class AA, class A, or class B felony; or
- b.Knows that the other has been charged with or convicted of a crime and such crime is a class AA, class A, or class B felony.

Otherwise hindering law enforcement is a class A misdemeanor.

3.A person who commits the crime of hindering law enforcement is subject to prosecution in this state if the conduct interferes with or hinders an investigation of a  
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crime occurring within this state. The venue of a criminal action involving the crime of hindering law enforcement is in any county in which the conduct of hindering is committed or in any county in which a criminal offense is being investigated which is hindered by the false information or other interfering conduct.

12.1-08-04. Aiding consummation of crime.

1.A person is guilty of aiding consummation of crime if he intentionally aids another to secrete, disguise, or convert the proceeds of a crime or otherwise profit from a crime.

2.Aiding consummation of a crime:

- a.Is a class C felony if the actor knows of the conduct of the other and such conduct constitutes a class A or class B felony.
- b.Is a class A misdemeanor if the actor knows of the conduct of the other and such conduct constitutes a class C felony or class A misdemeanor.

Otherwise aiding consummation of a crime is a class B misdemeanor.

12.1-08-05. Failure to appear after release - Bail jumping.

1.A person is guilty of an offense if, after having been released upon condition or undertaking that he will subsequently appear before a court or judicial officer as required, he willfully fails to appear as required.

2.The offense is a class C felony if the actor was released in connection with a charge of felony or while awaiting sentence or pending appeal after conviction of any crime.

Otherwise it is a class A misdemeanor.

12.1-08-06. Escape.

1.A person is guilty of escape if, without lawful authority, the person removes or attempts to remove himself from official detention or fails to return to official detention following temporary leave granted for a specified purpose or limited period. A person who is subject to official detention under this section is guilty of escape, if while outside the state of North Dakota and without lawful authority, the person removes or attempts to remove himself from official detention, or fails to return to official detention following temporary leave granted for a specified purpose or limited period, when at the time the person is in the legal custody of a warden of the penitentiary, department of corrections and rehabilitation, or other competent authority by virtue of a lawful commitment to official detention.

2.Escape is a class B felony if the actor uses a firearm, destructive device, or other dangerous weapon in effecting or attempting to effect the actor's removal from official detention. Escape is a class C felony if:

- a.The actor uses any other force or threat of force against another in effecting or attempting to effect the actor's removal from official detention; or
- b.The person escaping was in official detention by virtue of the person's arrest for,

or on charge of, a felony, or pursuant to the person's conviction of any offense.

Otherwise escape is a class A misdemeanor.

3. In this section:

a. "Conviction of an offense" does not include an adjudication of juvenile delinquency.

b. "Official detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of an offense or alleged or found to be delinquent, detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance, detention for extradition, home detention as authorized by chapter 12 -67, or custody for purposes incident to the foregoing, including transportation, medical diagnosis or treatment, court appearances, work, and recreation, or being absent without permission from any release granted while under custody of a sentence such as work or education release, community confinement, or other temporary leaves from a correctional or

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placement facility. "Official detention" does not include supervision on probation or parole or constraint incidental to release.

4. Irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, shall not be a defense to a prosecution under this section if the escape is from the penitentiary or other facility used for official detention or from detention pursuant to commitment by an official proceeding. In the case of other detentions, irregularity or lack of jurisdiction shall be an affirmative defense if:

a. The escape involved no substantial risk of harm to the person or property of anyone other than the detainee; or

b. The detaining authority did not act in good faith under color of law.

5. The jurisdiction of a violation of this section when the person is in the legal custody of a warden of the penitentiary, the department of corrections and rehabilitation, or other lawful authority is in the county where the violation occurred if the violation occurred within this state, and is in Burleigh County or in the county in which the order committing the person to official detention was entered if the violation occurred outside this state.

12.1-08-07. Public servants permitting escape.

A public servant concerned in official detention pursuant to process issued by a court, judge, or magistrate is guilty of a class A misdemeanor if he recklessly permits an escape and is guilty of a class B misdemeanor if he negligently permits an escape. "Official detention" has the meaning prescribed in subsection 3 of section 12.1-08-06.

12.1-08-08. Inciting or leading riot in detention facilities.

1. A person is guilty of a class C felony if, with intent to cause, continue, or enlarge a riot, he solicits a group of five or more persons to engage in a riot in a facility used for official detention or engages in conduct intended to serve as the beginning of or signal for such riot, or participates in planning such riot, or, in the course of such riot, issues commands or instructions in furtherance thereof.

2. In this section:

a. "Official detention" has the meaning prescribed in subsection 3 of section 12.1-08-06.

b. "Riot" means a disturbance involving an assemblage of five or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs the operation of the facility or other government function.

12.1-08-09. Introducing or possessing contraband useful for escape.

1. A person is guilty of a class C felony if he unlawfully provides an inmate of an official detention facility with any tool, weapon, or other object which may be useful for escape. Such person is guilty of a class B felony if the object is a firearm, destructive device, or other dangerous weapon.

2. An inmate of an official detention facility is guilty of a class C felony if he unlawfully procures, makes, or otherwise provides himself with, or has in his possession, any tool, weapon, or other object which may be useful for escape. Such person is guilty of a class B felony if the object is a firearm, destructive device, or other dangerous

weapon.

3. In this section:

a. "Official detention" has the meaning prescribed in subsection 3 of section 12.1-08-06.

b. "Unlawfully" means surreptitiously or contrary to a statute or regulation, rule, or order issued pursuant thereto.

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12.1-08-10. Harboring a runaway minor - Penalty.

A person who willfully harbors a runaway minor with knowledge that the child is being sought by a law enforcement authority is guilty of a class A misdemeanor. This section does not apply to a person who provides temporary sanctuary, not exceeding seventy-two hours, to a runaway minor who is seeking refuge from a physically, sexually, or mentally abusive person. For the purposes of this section, a "runaway minor" is an unemancipated minor who is voluntarily absent from the minor's home without the consent of a minor's parent entitled to legal custody of the minor or legal guardian with the intention of evading the direction or control of the parent or guardian. This section does not apply to persons providing temporary sanctuary to minors accompanied by a parent or legal guardian in a domestic violence shelter or safe home.

12.1-08-11. Refusing to halt.

Any person, other than the driver of a motor vehicle under section 39-10-71, who willfully fails or refuses to stop or who otherwise flees or attempts to elude, in any manner, a pursuing peace officer, when given a visual or audible signal to stop, is guilty of a class B misdemeanor for a first or second offense and a class A misdemeanor for a subsequent offense. A signal to stop complies with this section if the signal is perceptible to the person and:

1. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the vehicle is appropriately marked showing it to be an official law enforcement vehicle; or

2. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-09 - Tampering and Unlawful Influence**

### **CHAPTER 12.1-09**

#### **TAMPERING AND UNLAWFUL INFLUENCE**

12.1-09-01. Tampering with witnesses and informants in proceedings.

1. A person is guilty of a class C felony if he uses force, threat, deception, or bribery:

a. With intent to influence another's testimony in an official proceeding; or

b. With intent to induce or otherwise cause another:

(1) To withhold any testimony, information, document, or thing from an official proceeding, whether or not the other person would be legally privileged to do so;

(2) To violate section 12.1-09-03;

(3) To elude legal process summoning him to testify in an official proceeding; or

(4) To absent himself from an official proceeding to which he has been summoned.

2. A person is guilty of a class C felony if he solicits, accepts, or agrees to accept from another a thing of pecuniary value as consideration for:

a. Influencing the actor's testimony in an official proceeding; or

b. The actor's engaging in the conduct described in paragraphs 1 through 4 of subdivision b of subsection 1.

3. a. It is a defense to a prosecution under this section for use of threat with intent to influence another's testimony that the threat was not of unlawful harm and was used solely to influence the other to testify truthfully.

b. In a prosecution under this section based on bribery, it shall be an affirmative defense that any consideration for a person's refraining from instigating or pressing the prosecution of an offense was to be limited to restitution or indemnification for harm caused by the offense.

c. It is no defense to a prosecution under this section that an official proceeding was not pending or about to be instituted.

4. This section shall not be construed to prohibit the payment or receipt of witness fees

provided by statute, or the payment, by the party upon whose behalf a witness is called, and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time spent in attendance at an official proceeding, or in the case of expert witnesses, a reasonable fee for preparing and presenting an expert opinion.

12.1-09-02. Tampering with informants in criminal investigations.

A person is guilty of a class C felony if, believing another may have information relating to an offense, he deceives such other person or employs force, threat, or bribery with intent to hinder, delay, or prevent communication of such information to a law enforcement officer. The affirmative defense in subdivision b of subsection 3 of section 12.1 -09-01 applies to this section.

12.1-09-03. Tampering with physical evidence.

1.A person is guilty of an offense if, believing an official proceeding is pending or about to be instituted, or believing process, demand, or order has been issued or is about to be issued, he alters, destroys, mutilates, conceals, or removes a record, document, or thing with intent to impair its verity or availability in such official proceeding or for the purposes of such process, demand, or order.

2.The offense is a class C felony if the actor substantially obstructs, impairs, or perverts prosecution for a felony. Otherwise it is a class A misdemeanor.

3.In this section, "process, demand, or order" means process, demand, or order authorized by law for the seizure, production, copying, discovery, or examination of a record, document, or thing.

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12.1-09-04. Harassment of and communication with jurors.

1.A person is guilty of a class A misdemeanor if, with intent to influence the official action of another as juror, that person communicates directly or indirectly with the juror, other than as part of the proceedings in a case, or harasses or alarms the juror. A person is guilty of a class A misdemeanor if, with the intent to harass or annoy a former juror because of the verdict returned by the jury or the participation of the juror in the verdict, that person communicates directly or indirectly with the juror in a manner that intimidates the juror or conveys a threat of injury or damage to the juror's property or person. Conduct directed against the juror's spouse or other relative residing in the same household with the juror shall be deemed conduct directed against the juror.

2.In this section, "juror" means a grand juror or a petit juror and includes a person who has been drawn or summoned to attend as a prospective juror, and any referee, arbitrator, umpire, or assessor authorized by law to hear and determine any controversy.

12.1-09-05. Eavesdropping on jury deliberations.

1.A person is guilty of a class A misdemeanor if he intentionally:

- a.Records the proceedings of a jury while such jury is deliberating or voting; or
- b.Listens to or observes the proceedings of any jury of which he is not a member while such jury is deliberating or voting.

2.This section shall not apply to the taking of notes by a juror in connection with and solely for the purpose of assisting him in the performance of his official duties. Nor does this section apply to a person studying the jury process in the manner provided by statute, and under the control and supervision of the court. Inapplicability under this subsection is a defense.

3.In this section, "jury" means grand jury or petit jury, and "juror" means grand juror or petit juror.

12.1-09-06. Nondisclosure of retainer in criminal matter.

1.A person employed for compensation to influence the official action of a public servant with respect to:

- a.The initiation, conduct, or dismissal of a prosecution;
- b.The imposition or modification of a sentence; or
- c.The granting of parole or probation is guilty of a class A misdemeanor if he privately addresses to such public servant any representation, entreaty, argument, or other communication intended to influence official action without disclosing the fact of such employment, knowing that the public servant is unaware of it.

2.This section does not apply to an attorney at law or to a person authorized by statute

or regulation to act in a representative capacity with respect to the official action when he is acting in such capacity and makes known to the public servant or has indicated in any manner authorized by law that he is acting in such capacity. Inapplicability under this subsection is a defense.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-11 - Perjury - Falsification - Breach of Duty**

### **CHAPTER 12.1-11**

#### **PERJURY - FALSIFICATION - BREACH OF DUTY**

##### **12.1-11-01. Perjury.**

1. A person is guilty of perjury, a class C felony, if, in an official proceeding, the person makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a false statement previously made, when the statement is material and the person does not believe the statement to be true.

2. Commission of perjury need not be proved by any particular number of witnesses or by documentary or other types of evidence.

3. If in the course of one or more official proceedings, the defendant made a statement under oath or equivalent affirmation inconsistent with another statement made by the defendant under oath or equivalent affirmation to the degree that one of them is necessarily false, both having been made within the period of the statute of limitations, the prosecution may set forth the statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant to be true. Proof that the defendant made such statements constitutes a prima facie case that one or the other of the statements was false, but in the absence of sufficient proof of which statement was false, the defendant may be convicted under this section only if each of such statements was material to the official proceeding in which it was made.

4. For purposes of this section, "false statement under oath or equivalent affirmation" includes a writing made in accordance with chapters 31 -14 and 31-15.

##### **12.1-11-02. False statements.**

1. A person is guilty of a class A misdemeanor if, in an official proceeding, he makes a false statement, whether or not material, under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, if he does not believe the statement to be true.

2. A person is guilty of a class A misdemeanor if, in a governmental matter, he:

- a. Makes a false written statement, when the statement is material and he does not believe it to be true;
- b. Intentionally creates a false impression in a written application for a pecuniary or other benefit, by omitting information necessary to prevent a material statement therein from being misleading;
- c. Submits or invites reliance on any material writing which he knows to be forged, altered, or otherwise lacking in authenticity;
- d. Submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false in a material respect; or
- e. Uses a trick, scheme, or device which he knows to be misleading in a material respect.

3. This section does not apply to information given during the course of an investigation into possible commission of an offense unless the information is given in an official proceeding or the declarant is otherwise under a legal duty to give the information. Inapplicability under this subsection is a defense.

4. A matter is a "governmental matter" if it is within the jurisdiction of a government office or agency, or of an office, agency, or other establishment in the legislative or the judicial branch of government.

##### **12.1-11-03. False information or report to law enforcement officers or security officials.**

A person is guilty of a class A misdemeanor if that person:

1. Gives false information or a false report to a law enforcement officer which that person knows to be false, and the information or report may interfere with an investigation or may materially mislead a law enforcement officer; or

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2. Falsely reports to a law enforcement officer or other security official the occurrence of a crime of violence or other incident calling for an emergency response when that person knows that the incident did not occur. "Security official" means a public servant responsible for averting or dealing with emergencies involving public safety.

12.1-11-04. General provisions.

1. Falsification is material under sections 12.1-11-01, 12.1-11-02, and 12.1-11-03 regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the official proceeding or the disposition of the matter in which the statement is made. Whether a falsification is material in a given factual situation is a question of law. It is no defense that the declarant mistakenly believed the falsification to be immaterial.

2. It is no defense to a prosecution under sections 12.1-11-01 or 12.1-11-02 that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at a time when the actor represents it as being so verified shall be deemed to have been duly sworn or affirmed.

3. It is a defense to a prosecution under sections 12.1-11-01, 12.1-11-02, or 12.1-11-03 that the actor retracted the falsification in the course of the official proceeding or matter in which it was made, if in fact he did so before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding or the matter.

4. In sections 12.1-11-01 and 12.1-11-02, "statement" means any representation but includes a representation of opinion, belief, or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

12.1-11-05. Tampering with public records.

1. A person is guilty of an offense if he:

- a. Knowingly makes a false entry in or false alteration of a government record; or
- b. Knowingly, without lawful authority, destroys, conceals, removes, or otherwise impairs the verity or availability of a government record.

2. The offense is:

- a. A class C felony if committed by a public servant who has custody of the government record.
- b. A class A misdemeanor if committed by any other person.

3. In this section "government record" means:

- a. Any record, document, or thing belonging to, or received or kept by the government for information or record.
- b. Any other record, document, or thing required to be kept by law, pursuant, in fact, to a statute which expressly invokes the sanctions of this section.

12.1-11-06. Public servant refusing to perform duty.

Any public servant who knowingly refuses to perform any duty imposed upon him by law is guilty of a class A misdemeanor.

12.1-11-07. Fraudulent practice in urine testing.

A person is guilty of a class A misdemeanor if that person willfully defrauds a urine test and the test is designed to detect the presence of a chemical substance or a controlled substance. A person is guilty of a class A misdemeanor if that person knowingly possesses, distributes, or assists in the use of a device, chemical, or real or artificial urine advertised or intended to be used to alter the outcome of a urine test.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-12 - Bribery - Unlawful Influence of Public Servants**

### **CHAPTER 12.1-12**

#### **BRIBERY - UNLAWFUL INFLUENCE OF PUBLIC SERVANTS**

12.1-12-01. Bribery.

1. A person is guilty of bribery, a class C felony, if he knowingly offers, gives, or agrees to give to another, or solicits, accepts, or agrees to accept from another, a thing of value as consideration for:

- a. The recipient's official action as a public servant; or

b.The recipient's violation of a known legal duty as a public servant.

2.It is no defense to a prosecution under this section that a recipient was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

3.A prima facie case is established under this section upon proof that the actor knew that a thing of pecuniary value was offered, given, or agreed to be given by, or solicited, accepted, or agreed to be accepted from, a person having an interest in an imminent or pending: a. examination, investigation, arrest, or judicial or administrative proceeding; or b. bid, contract, claim, or application, and that interest could be affected by the recipient's performance or nonperformance of his official action or violation of his known legal duty as a public servant.

12.1-12-02. Illegal influence between legislators or between legislators and governor.

Any person who violates the provisions of section 9 of article IV or section 10 of article V of the Constitution of North Dakota is guilty of a class C felony.

12.1-12-03. Unlawful compensation for assistance in government matters.

1.A public servant is guilty of a class A misdemeanor if he solicits, accepts, or agrees to accept a thing of pecuniary value from nongovernmental sources:

a.As compensation for advice or other assistance in preparing or promoting a bill, contract, claim, or other matter which is or is likely to be subject to his official action;

b.As compensation for omitting or delaying official action; or

c.As a fee or compensation for services not rendered or to which he was not legally entitled.

2.A person is guilty of a class A misdemeanor if he knowingly offers, gives, or agrees to give a thing of pecuniary value to a public servant, receipt of which is prohibited by this section.

12.1-12-04. Trading in public office and political endorsement.

1.A person is guilty of a class A misdemeanor if he solicits, accepts, or agrees to accept, or offers, gives, or agrees to give, a thing of pecuniary value as consideration for approval or disapproval by a public servant or party official of a person for:

a.Appointment, employment, advancement, or retention as a public servant; or

b.Designation or nomination as a candidate for elective office.

2.In this section:

a."Approval" includes recommendation, failure to disapprove, or any other manifestation of favor or acquiescence.

b."Disapproval" includes failure to approve or any other manifestation of disfavor or nonacquiescence.

c."Party official" means a person who holds a position or office in a political party, whether by election, appointment, or otherwise.

3.Any appointment of a public servant made in violation of this section is void, but any official action taken by the appointee prior to conviction under this section is valid.

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12.1-12-05. Trading in special influence.

A person is guilty of a class A misdemeanor if he knowingly offers, gives, or agrees to give, or solicits, accepts, or agrees to accept, a thing of pecuniary value for exerting, or procuring another to exert, special influence upon a public servant with respect to his legal duty or official action as a public servant. "Special influence" means power to influence through kinship or by reason of position as a public servant or party official, as defined in section 12.1 -12-04.

12.1-12-06. Threatening public servants.

1.A person is guilty of a class C felony if that person threatens harm to a public servant with intent to influence the public servant's official action as a public servant in a pending or prospective judicial or administrative proceeding held before the public servant, or with intent to influence the public servant to violate the public servant's duty as a public servant.

2.A person is guilty of a class C felony if, with intent to influence another's official action as a public servant, the person threatens:

a.To commit any crime or to do anything unlawful;

b.To accuse anyone of a crime; or

c.To expose a secret or publicize an asserted fact, whether true or false, tending to

subject any individual, living or deceased, to hatred, contempt, or ridicule, or to impair another's credit or business repute.

3.a.A person is guilty of an offense if the person files any lien or encumbrance against real or personal property of a public servant if that person knows or has reason to know the lien or encumbrance is false or contains any materially false or fraudulent statement or representation.

b.An offense under this subsection is a class A misdemeanor, unless the person previously pled guilty or had been convicted under this subsection on two or more occasions, in which event the offense is a class C felony.

4.It is not a defense to a prosecution under this section that an individual whom the actor sought to influence was not qualified to act in the desired way whether because the individual had not yet assumed office, or lacked jurisdiction, or for any other reason.

12.1-12-07. Sports bribery.

1.A person is guilty of a class C felony if, with intent to prevent a publicly exhibited sporting contest from being conducted in accordance with the rules and usages purporting to govern it, he:

a.Confers, offers, or agrees to confer any benefit upon, or threatens any harm to, a participant, official, or other person associated with the contest; or

b.Tampers with any person, animal, or thing.

2.A person is guilty of a class C felony if he knowingly solicits, accepts, or agrees to accept any benefit, the giving of which is prohibited under subsection 1.

3.A "publicly exhibited sporting contest" is any contest in any sport, between individual contestants or teams of contestants, the occurrence of which is publicly announced in advance of the event.

4.The status of the contestant as amateur or professional is not material to the commission of the offense described in this section.

12.1-12-08. Commercial bribery.

1.A person is guilty of a class C felony if he:

a.Confers, agrees, or offers to confer any benefit upon an employee or agent without the consent of the latter's employer or principal, with intent to influence his conduct in relation to his employer's or principal's affairs; or

b.Confers, agrees, or offers to confer any benefit upon any fiduciary without the consent of the beneficiary, with intent to influence the fiduciary to act or conduct himself contrary to his fiduciary obligation.

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2.A person is guilty of a class C felony if he knowingly solicits, accepts, or agrees to accept any benefit, the giving of which is prohibited under subsection 1.

12.1-12-09. Definitions for chapter.

In this chapter, "thing of value" and "thing of pecuniary value" do not include (1) salary, fees, and other compensation paid by the government in consideration for which the official action or legal duty is performed; or (2) concurrence in official action in the course of legitimate compromise among public servants, except as provided in section 9 of article IV or section 10 of article V of the Constitution of North Dakota.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-13 - Confidential Information - Conflict of Interest - Impersonation**

### **CHAPTER 12.1-13**

#### **CONFIDENTIAL INFORMATION - CONFLICT OF INTEREST - IMPERSONATION**

12.1-13-01. Disclosure of confidential information provided to government.

A person is guilty of a class C felony if, in knowing violation of a statutory duty imposed on him as a public servant, he discloses any confidential information which he has acquired as a public servant. "Confidential information" means information made available to the government under a governmental assurance of confidence as provided by statute.

12.1-13-02. Speculating or wagering on official action or information.

1.A person is guilty of a class A misdemeanor if during employment as a public servant, or within one year thereafter, in contemplation of official action by himself as a public servant or by a government agency with which he is or has been associated as a public servant, or in reliance on information to which he has or had access only in his

capacity as a public servant, he:

- a.Acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action;
- b.Speculates or wagers on the basis of such information or official action; or
- c.Aids another to do any of the foregoing.

2.A person is guilty of a class A misdemeanor if as a public servant he takes official action which is likely to benefit him as a result of an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a speculation or wager, which he made, or caused or aided another to make, in contemplation of such official action.

12.1-13-03. Public servant's interest in public contracts.

1.Every public servant authorized to sell or lease any property, or to make any contract in his official capacity, alone or in conjunction with other public servants, who voluntarily becomes interested individually in the sale, lease, or contract, directly or indirectly, is guilty of a class A misdemeanor.

2.Subsection 1 shall not apply to:

a.Contracts of purchase or employment between a political subdivision and an officer of that subdivision, if the contracts are first unanimously approved by the other members at a meeting of the governing body of the political subdivision, and a unanimous finding is entered in the official minutes of that body that the contract is necessary because the services or property contracted for are not otherwise obtainable at equal cost.

b.Sales, leases, or contracts entered into between school boards and school board members or school officers.

12.1-13-04. Impersonating officials.

1.A person is guilty of an offense if he falsely pretends to be:

- a.A public servant, other than a law enforcement officer, and acts as if to exercise the authority of such public servant.
- b.A public servant or a former public servant and thereby obtains a thing of value.
- c.A law enforcement officer.

2.It is no defense to prosecution under this section that the pretended capacity did not exist or the pretended authority could not legally or otherwise have been exercised or conferred.

3.An offense under subdivision b or c of subsection 1 is a class A misdemeanor. An offense under subdivision a of subsection 1 is a class B misdemeanor.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-14 - Official Oppression - Elections - Civil Rights**

### **CHAPTER 12.1-14**

#### **OFFICIAL OPPRESSION - ELECTIONS - CIVIL RIGHTS**

12.1-14-01. Official oppression.

A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity is guilty of a class A misdemeanor if, knowing that his conduct is illegal, he:

- 1.Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or
- 2.Denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity.

12.1-14-02. Interference with elections.

A person is guilty of a class A misdemeanor if, whether or not acting under color of law, the person, by force or threat of force or by economic coercion, intentionally:

- 1.Injures, intimidates, or interferes with another because the other individual is or has been voting for any candidate or issue or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as an election official or an election observer, in any primary, special, or general election.
- 2.Injures, intimidates, or interferes with another in order to prevent that individual or any other individual from voting for any candidate or issue or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as an election official or an election observer, in any primary, special, or general election.

12.1-14-03. Safeguarding elections.

A person is guilty of a class A misdemeanor if, in connection with any election, he:

1. Makes or induces any false voting registration;
2. Offers, gives, or agrees to give a thing of pecuniary value to another as consideration for the recipient's voting or withholding his vote or voting for or against any candidate or issue or for such conduct by another;
3. Solicits, accepts, or agrees to accept a thing of pecuniary value as consideration for conduct prohibited under subsection 1 or 2; or
4. Otherwise obstructs or interferes with the lawful conduct of such election or registration therefor.

As used in this section, "thing of pecuniary value" shall include alcoholic beverages, by the drink or in any other container.

12.1-14-04. Discrimination in public places.

A person is guilty of a class B misdemeanor if, whether or not acting under color of law, he, by force, or threat of force or by economic coercion, intentionally:

1. Injures, intimidates, or interferes with another because of his sex, race, color, religion, or national origin and because he is or has been exercising or attempting to exercise his right to full and equal enjoyment of any facility open to the public.
2. Injures, intimidates, or interferes with another because of his sex, race, color, religion, or national origin in order to intimidate him or any other person from exercising or attempting to exercise his right to full and equal enjoyment of any facility open to the public.

12.1-14-05. Preventing exercise of civil rights - Hindering or preventing another aiding third person to exercise civil rights.

A person is guilty of a class B misdemeanor if, whether or not acting under color of law, he, by force or threat of force or by economic coercion, intentionally:

1. Injures, intimidates, or interferes with another because he is or is about to exercise his civil rights, or because he has exercised his civil rights.
2. Intimidates or prevents another from aiding a third person to exercise his civil rights.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-15 - Defamation - Interception of Communications**

### **CHAPTER 12.1-15**

#### **DEFAMATION - INTERCEPTION OF COMMUNICATIONS**

12.1-15-01. Criminal defamation.

1. A person is guilty of a class A misdemeanor if he willfully publishes defamatory matter or knowingly procures such publication or in any way knowingly aids or assists in the same being done.

2. It is a defense to a prosecution under this section that:

- a. The matter alleged to be defamatory is true; or
- b. The matter alleged to be defamatory was contained in a privileged communication.

3. In this section:

- a. "Defamatory matter" means any written or oral communication concerning a natural person made public with actual malice or with reckless disregard of the truth by any utterance, printing, writing, sign, picture, representation, or effigy tending to expose such person to public hatred, contempt, or ridicule or to deprive him of the benefits of public confidence and social intercourse or any written or oral communication concerning a natural person made public as aforesaid designed to blacken and vilify the memory of one who is dead and tending to scandalize or provoke his surviving relatives and friends.
- b. "Privileged communication" means a communication made to a person entitled to or interested in the communication by one who is also entitled to or interested or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent.
- c. "Publication" means a knowing display of defamatory matter, or the parting with its immediate custody under circumstances which exposed the defamatory matter to be read or seen or understood by a person other than the publisher of the defamatory matter, although it is not necessary that the matter complained of should have been seen or read by another.

12.1-15-02. Interception of wire or oral communications - Eavesdropping.

1.A person is guilty of a class C felony if he:

- a.Intentionally intercepts any wire or oral communication by use of any electronic, mechanical, or other device; or
- b.Intentionally discloses to any other person or intentionally uses the contents of any wire or oral communication, knowing that the information was obtained through the interception of a wire or oral communication.

2.A person is guilty of a class A misdemeanor if he secretly loiters about any building with intent to overhear discourse or conversation therein and to repeat or publish the same with intent to vex, annoy, or injure others.

3.It is a defense to a prosecution under subsection 1 that:

a.The actor was authorized by law to intercept, disclose, or use, as the case may be, the wire or oral communication.

b.The actor was:

(1)A person acting under color of law to intercept a wire or oral communication, and

(2)He was a party to the communication or one of the parties to the communication had given prior consent to such interception.

c.(1)The actor was a party to the communication or one of the parties to the communication had given prior consent to such interception, and

(2)Such communication was not intercepted for the purpose of committing a crime or other unlawful harm.

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12.1-15-03. Traffic in intercepting devices.

1.A person is guilty of a class C felony if, within this state, he manufactures, assembles, possesses, transports, or sells an electronic, mechanical, or other device, knowing that the design of such device renders it primarily useful to the purpose of the surreptitious interception of wire or oral communications.

2.A person is guilty of a class A misdemeanor if he places, in a newspaper, magazine, handbill, or other publication published in this state, an advertisement of an electronic, mechanical, or other device, knowing that the design of such device renders it primarily useful for surreptitious interception of wire or oral communications, or knowing that such advertisement promotes the use of such device for surreptitious interception of wire or oral communications.

3.It is a defense to a prosecution under this section that the actor was:

a.An officer, agent, or employee of, or a person under contract with, a communications common carrier, acting within the normal course of the business of the communications common carrier; or

b.A public servant acting in the course of his official duties or a person acting within the scope of a government contract made by a person acting in the course of his official duties.

12.1-15-04. Definitions.

In sections 12.1-15-02 through 12.1-15-04:

1."Communications common carrier" shall have the meaning prescribed for the term "common carrier" by section 8 -07-01.

2."Contents", when used with respect to any wire or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

3."Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire or oral communication other than:

a.Any telephone or telegraph instrument, equipment, or facility, or any component thereof, (1) furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or (2) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties.

b.A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

4."Intercept" means the aural acquisition of the contents of any wire or oral

communication through the use of an electronic, mechanical, or other device, or by secretly overhearing the communication.

5. "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.

6. "Wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of communications.

12.1-15-05. Interception of correspondence.

1. A person is guilty of a class A misdemeanor if, knowing that a letter, postal card, or other written private correspondence has not yet been delivered to the person to whom it is directed, and knowing that he does not have the consent of the sender or receiver of the correspondence, he:

a. Damages or destroys the correspondence with intent to prevent its delivery;

b. Opens or reads sealed correspondence with intent to discover its contents; or

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c. Knowing that sealed correspondence has been opened or read in violation of subdivision b, intentionally divulges its contents, in whole or in part, or a summary of any portion thereof.

12.1-15-06. Implanting microchips prohibited.

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

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-16 - Homicide**

### **CHAPTER 12.1-16**

#### **HOMICIDE**

12.1-16-01. Murder.

1. A person is guilty of murder, a class AA felony, if 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, the person or any other participant in the crime causes the death of any person. 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;

(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;

(3) Reasonably believed that no other participant was armed with such a weapon; and

(4) Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

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

2. A person is guilty of murder, 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 that person's situation under the circumstances as 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.

12.1-16-02. Manslaughter.

A person is guilty of manslaughter, a class B felony, if he recklessly causes the death of another human being.

12.1-16-03. Negligent homicide.

A person is guilty of a class C felony if he negligently causes the death of another human being.

12.1-16-04. Assisting the commission of suicide - Causing death by suicide - Penalties.

1. Any person who intentionally or knowingly aids, abets, facilitates, solicits, or incites another person to commit suicide, or who provides to, delivers to, procures for, or prescribes for another person any drug or instrument with knowledge that the other person intends to attempt to commit suicide with the drug or instrument is guilty of a class C felony.

2. Any person who, through deception, coercion, or duress, willfully causes the death of another person by suicide is guilty of a class AA felony.

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12.1-16-05. Injunctive relief.

1. A claim for relief for an injunction may be maintained against any person who has attempted or will attempt to violate subsection 1 of section 12.1-16-04 by any person who is entitled to inherit from the person who would commit suicide or who is the spouse, parent, child, sibling, or health care provider of such person.

2. Any public official with jurisdiction to prosecute or enforce the laws of this state may maintain a claim for relief for an injunction against any present or future violation or attempted violation of subsection 1 of section 12.1-16-04.

12.1-16-06. Construction.

Sections 12.1-16-04 through 12.1-16-06 do not preclude the use of medications or procedures necessary to relieve a person's pain or discomfort if the use of the medications or procedures is not intentionally or knowingly prescribed or administered to cause the death of that person. In addition, sections 12.1-16-04 through 12.1-16-06 do not preclude the withholding or withdrawal of life-prolonging treatment pursuant to state or federal law.

12.1-16-07. Civil damages.

Any person given standing under subsection 1 of section 12.1-16-05, except the health care provider, may maintain a claim for relief for compensatory and punitive damages against any person who violates or attempts to violate section 12.1-16-04. Prior knowledge of or consent to the violation by the plaintiff does not preclude a claim for relief under this section. This section does not preclude any claim under any other provision of law.

12.1-16-08. Suspension or revocation of license of health care provider.

If the person who assists in a suicide in violation of section 12.1-16-04 is a person who is licensed, certified, or otherwise authorized by title 43 to administer health care in the ordinary course of business or professional practice, the licensing agency that issued the license or certification to that person may suspend or revoke the license or certification of that person upon receipt of:

1. A copy of the record of criminal conviction or plea of guilty to a felony in violation of section 12.1-16-04;

2. A copy of the record of a judgment of contempt of court for violating an injunction issued under section 12.1-16-05; or

3. A copy of the record of a judgment assessing damages under section 12.1-16-07.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-17.1 - Offenses Against Unborn Children**

### **CHAPTER 12.1-17.1**

#### **OFFENSES AGAINST UNBORN CHILDREN**

12.1-17.1-01. Definitions.

As used in this chapter:

1. "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus.

2. "Person" does not include the pregnant woman.

3. "Unborn child" means the conceived but not yet born offspring of a human being, which, but for the action of the actor would beyond a reasonable doubt have subsequently been born alive.

12.1-17.1-02. Murder of an unborn child.

1. A person is guilty of murder of an unborn child, a class AA felony, if the person:

a. Intentionally or knowingly causes the death of an unborn child;

b. Causes the death of an unborn child under circumstances manifesting extreme indifference to the value of the life of the unborn child or the pregnant woman; or

c. Acting either alone or with one or more other persons, commits or attempts to commit treason, robbery, burglary, kidnapping, felonious restraint, arson, gross sexual imposition, or escape and, in the course of and in furtherance of such crime or of immediate flight therefrom, the person, or another participant, if any, causes the death of an unborn child; except that in any prosecution under this subsection in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

(1) Did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid the commission thereof;

(2) Was not armed with a firearm, destructive device, dangerous weapon, or other weapon that under the circumstances indicated a readiness to inflict serious bodily injury;

(3) Reasonably believed that no other participant was armed with such a weapon; and

(4) Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

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

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

12.1-17.1-03. Manslaughter of an unborn child.

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

12.1-17.1-04. Negligent homicide of an unborn child.

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

12.1-17.1-05. Aggravated assault of an unborn child.

A person is guilty of assault of an unborn child, a class C felony, if that person willfully assaults a pregnant woman and inflicts serious bodily injury on an unborn child.

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12.1-17.1-06. Assault of an unborn child.

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

12.1-17.1-07. Exception.

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

12.1-17.1-08. Other convictions not prohibited.

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

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**2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-17 - Assaults - Threats - Coercion - Harassment**

**CHAPTER 12.1-17**

**ASSAULTS - THREATS - COERCION - HARASSMENT**

**12.1-17-01. Simple assault.**

1. A person is guilty of an offense if 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. The offense is:

a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25 -03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.

b. A class B misdemeanor except as provided in subdivision a.

**12.1-17-01.1. Assault.**

A person is guilty of a class A misdemeanor, except if the victim is under the age of twelve years in which case the offense is a class C felony, if that person:

1. Willfully causes substantial bodily injury to another human being; or
2. Negligently causes substantial 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.

**12.1-17-01.2. Domestic violence.**

1. For purposes of this section "family or household member" means family or household member as defined in section 14 -07.1-01.

2. A person is guilty of an offense if that person willfully causes:

- a. Bodily injury to the actor's family or household member;
- b. Substantial bodily injury to the actor's family or household member; or
- c. Serious bodily injury to the actor's family or household member.

3. The offense is:

a. A class B misdemeanor for the first offense under subdivision a of subsection 2 and a class A misdemeanor for a second or subsequent offense under this section or sections 12.1 -17-01, 12.1-17-01.1, or 12.1-17-02 involving the commission of domestic violence, as defined in section 14 -07.1-01. For purposes of this subdivision, a prior conviction includes a conviction of any assault offense in which a finding of domestic violence was made under a law or ordinance of another state which is equivalent to this section.

b. A class A misdemeanor for an offense under subdivision b of subsection 2 and a class C felony for an offense under subdivision c of subsection 2.

c. A class B felony for an offense under subdivision b or c of subsection 2 if the victim is under twelve years of age.

4. A person charged with an offense under this section must be prosecuted in district court.

**12.1-17-02. Aggravated assault.**

1. Except as provided in subsection 2, a person is guilty of a class C felony if that person:

- a. Willfully causes serious bodily injury to another human being;

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- b. Knowingly causes bodily injury or substantial bodily injury to another human being with a dangerous weapon or other weapon, the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury;
- c. Causes bodily injury or substantial bodily injury to another human being while attempting to inflict serious bodily injury on any human being; or
- d. Fires a firearm or hurls a destructive device at another human being.

2. The person is guilty of a class B felony if the person violates subsection 1 and the victim:

- a. Is under twelve years of age;
- b. Is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; or
- c. Suffers permanent loss or impairment of the function of a bodily member or organ.

12.1-17-03. Reckless endangerment.

A person is guilty of an offense if he creates a substantial risk of serious bodily injury or death to another. The offense is a class C felony if the circumstances manifest his extreme indifference to the value of human life. Otherwise it is a class A misdemeanor. There is risk within the meaning of this section if the potential for harm exists, whether or not a particular person's safety is actually jeopardized.

12.1-17-04. Terrorizing.

A person is guilty of a class C felony if, with intent to place another human being in fear for that human being's or another's safety or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious disruption or public inconvenience, or in reckless disregard of the risk of causing such terror, disruption, or inconvenience, the person:

- 1. Threatens to commit any crime of violence or act dangerous to human life; or
- 2. Falsely informs another that a situation dangerous to human life or commission of a crime of violence is imminent knowing that the information is false.

12.1-17-04.1. Domestic terrorism - Definitions - Penalty.

1. As used in this section:

a. "Domestic terrorism" means an activity conducted within the geographical boundaries of the state which:

(1) Is done in cooperation with any federally designated terrorist organization that threatens or appears to threaten the sovereignty of the state or the United States of America;

(2) Is a violation of criminal law; and

(3) Either:

(a) Involves violent acts or threats specifically intended to physically harm human life and:

[1] Intimidate, coerce, influence, or disrupt other lawful activity within the state; or

[2] Influence the policy of the state or any political subdivision of the state; or

(b) Involves the use of weapons of mass destruction.

b. "Material support or resources" means currency or other financial securities, financial services, lodging, safe houses, training, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets. The term does not include medical or religious material.

2. A person is guilty of a class C felony if the person willfully:

a. Assembles with one or more persons for the purpose of training or instructing in the use of, or practicing with, any technique or means capable of causing

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property damage, or bodily injury or death, with the intent to employ such training, instruction, or practice in the commission of domestic terrorism;

b. Commits an act of domestic terrorism;

c. Conspires with one or more persons to commit an act of domestic terrorism; or

d. Provides material support or resources, or conceals or disguises the nature, location, source, or ownership of material support or resources, with the knowledge and intention that the support or resources are to be used in domestic terrorism.

12.1-17-05. Menacing.

A person is guilty of a class A misdemeanor if he knowingly places or attempts to place another human being in fear by menacing him with imminent serious bodily injury.

12.1-17-06. Criminal coercion.

1. A person is guilty of a class A misdemeanor if, with intent to compel another to engage in or refrain from conduct, he threatens to:

- a. Commit any crime;
  - b. Accuse anyone of a crime;
  - c. Expose a secret or publicize an asserted fact, whether true or false, tending to subject any person, living or deceased, to hatred, contempt, or ridicule, or to impair another's credit or business repute; or
  - d. Take or withhold official action as a public servant or cause a public servant to take or withhold official action.
2. It is an affirmative defense to a prosecution under this section that the actor believed, whether or not mistakenly:
- a. That the primary purpose of the threat was to cause the other to conduct himself in his own best interest; or
  - b. That a purpose of the threat was to cause the other to desist from misbehavior, engage in behavior from which he could not lawfully abstain, make good a wrong done by him, or refrain from taking any action or responsibility for which he was disqualified.

#### 12.1-17-07. Harassment.

1. A person is guilty of an offense if, with intent to frighten or harass another, the person:

- a. Communicates in writing or by electronic communication a threat to inflict injury on any person, to any person's reputation, or to any property;
- b. Makes a telephone call anonymously or in offensively coarse language;
- c. Makes repeated telephone calls or other electronic communication, whether or not a conversation ensues, with no purpose of legitimate communication; or
- d. Communicates a falsehood in writing or by electronic communication and causes mental anguish.

2. The offense is a class A misdemeanor if it is under subdivision a of subsection 1 or subsection 4. Otherwise it is a class B misdemeanor.

3. Any offense defined herein and committed by use of electronic communication may be deemed to have been committed at either the place at which the electronic communication was made or at the place where the electronic communication was received.

4. A person is guilty of an offense if the person initiates communication with a 911 emergency line, public safety answering point, or an emergency responder communication system with the intent to annoy or harass another person or a public safety agency or who makes a false report to a public safety agency.

- a. Intent to annoy or harass is established by proof of one or more calls with no legitimate emergency purpose.
- b. Upon conviction of a violation of this subsection, a person is also liable for all costs incurred by any unnecessary emergency response.

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5. Any offense defined herein is deemed communicated in writing if it is transmitted electronically, by electronic mail, facsimile, or other similar means. Electronic communication means transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic, or photo-optical system.

#### 12.1-17-07.1. 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. "Immediate family" means a spouse, parent, child, or sibling. The term also includes any other individual who regularly resides in the household or who within the prior six months regularly resided in the household.
- c. "Stalk" means:

(1) 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 may be directed toward that person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment; or

(2) The unauthorized tracking of the person's movements or location through

the use of a global positioning system or other electronic means that would cause a reasonable person to be frightened, intimidated, or harassed and which serves no legitimate purpose .

2. A person may not 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, 12.1-17-01.2, 12.1-17-02, 12.1-17-04, 12.1-17-05, or 12.1-17-07, or a similar offense from another court in North Dakota, a court of record in the United States, or a tribal court, 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.

12.1-17-07.2. Distribution of intimate images without or against consent - Penalty.

1. As used in this section:

a. "Distribute" means selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, providing access to, or otherwise transferring or presenting an image to another individual, with or without consideration.

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b. "Hosting company" means a person that provides services or facilities for storing or distributing content over the internet without editorial or creative alteration of the content.

c. "Intimate image" means any visual depiction, photograph, film, video, recording, picture, or computer or computer -generated image or picture, whether made or produced by electronic, mechanical, or other means, that depicts:

(1) Exposed human male or female genitals or pubic area, with less than an opaque covering;

(2) A female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or

(3) The individual engaged in any sexually explicit conduct.

d. "Service provider" means an internet service provider, including a person who leases or rents a wire or cable for the transmission of data.

e. "Sexually explicit conduct" means actual or simulated:

(1) Sexual intercourse, including genital -genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(2) Masturbation;

(3) Bestiality;

(4) Sadistic or masochistic activities;

(5) Exhibition of the genitals, pubic region, buttocks, or female breast of any individual;

(6) Visual depiction of nudity or partial nudity;

(7) Fondling or touching of the genitals, pubic region, buttocks, or female breast; or

(8) Explicit representation of the defecation or urination functions.

f. "Simulated sexually explicit conduct" means a feigned or pretended act of

sexually explicit conduct that duplicates, within the perception of an average person, the appearance of an actual act of sexually explicit conduct.

2. A person commits the offense of distribution of intimate images if the person knowingly or intentionally distributes to any third party any intimate image of an individual eighteen years of age or older, if:

- a. The person knows that the depicted individual has not given consent to the person to distribute the intimate image;
- b. The intimate image was created by or provided to the person under circumstances in which the individual has a reasonable expectation of privacy; and
- c. Actual emotional distress or harm is caused to the individual as a result of the distribution under this section.

3. This section does not apply to:

- a. Lawful practices of law enforcement agencies;
- b. Prosecutorial agency functions;
- c. The reporting of a criminal offense;
- d. Court proceedings or any other judicial proceeding;
- e. Lawful and generally accepted medical practices and procedures;
- f. An intimate image if the individual portrayed in the image voluntarily allows public exposure of the image; or
- g. An intimate image that is portrayed in a lawful commercial setting.

4. This section also does not apply to:

- a. An internet service provider or interactive computer service, as defined in 47 U.S.C. 230(f)(2);
- b. A provider of an electronic communications service, as defined in 18 U.S.C. 2510;
- c. A telecommunications service, information service, or mobile service, as defined in 47 U.S.C. 153, including a commercial mobile service, as defined in 47 U.S.C. 332(d);
- d. A cable operator, as defined in 47 U.S.C. 552, if:

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(1) The distribution of an intimate image by the cable operator occurs only incidentally through the operator's function of:

- (a) Transmitting or routing data from one person to another person; or
  - (b) Providing a connection between one person and another person;
- (2) The operator does not intentionally aid or abet in the distribution of the intimate image; and

(3) The operator does not knowingly receive from or through a person who distributes the intimate image a fee greater than the fee generally charged by the operator, as a specific condition for permitting the person to distribute the intimate image; or

e. A hosting company, if:

(1) The distribution of an intimate image by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;

(2) The hosting company does not intentionally engage, aid, or abet in the distribution of the intimate image; and

(3) The hosting company does not knowingly receive from or through a person who distributes the intimate image a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the intimate image.

5. Distribution of an intimate image is a class A misdemeanor.

12.1-17-08. Consent as a defense.

1. When conduct is an offense because it causes or threatens bodily injury, consent to such conduct or to the infliction of such injury by all persons injured or threatened by the conduct is a defense if:

- a. Neither the injury inflicted nor the injury threatened is such as to jeopardize life or seriously impair health;
- b. The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or

c. The conduct and the injury are reasonably foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods, and the persons subjected to such conduct or injury, having been made aware of the risks involved, consent to the performance of the conduct or the infliction of the injury.

2. Assent does not constitute consent, within the meaning of this section, if:

a. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense and such incompetence is manifest or known to the actor;

b. It is given by a person who by reason of youth, mental disease or defect, or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

c. It is induced by force, duress, or deception.

12.1-17-09. Killing or injury of law enforcement support animal - Definition - Penalty.

1. A person is guilty of a class C felony and is subject to a civil penalty of up to ten thousand dollars if that person willfully and unjustifiably kills, shoots, tortures, torments, beats, kicks, strikes, mutilates, disables, or otherwise injures a law enforcement support animal.

2. A person is guilty of a class A misdemeanor and is subject to a civil penalty of up to five thousand dollars if that person willfully:

a. Harasses, taunts, or provokes a law enforcement support animal;

b. Interferes with a law enforcement support animal while the animal is working; or

c. Interferes with the individual handling the animal.

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3. For purposes of this section, "law enforcement support animal" means any animal used by or on behalf of a law enforcement officer in the performance of the officer's functions and duties, including crowd control, corrections, arson investigation, or search and rescue, regardless of whether the animal is on or off duty.

4. This section does not apply to a law enforcement officer or a veterinarian who terminates the life of a law enforcement support animal to relieve the animal of undue suffering and pain.

12.1-17-10. Hazing - Penalty.

A person is guilty of an offense when, in the course of another person's initiation into or affiliation with any organization, the person willfully engages in conduct that creates a substantial risk of physical injury to that other person or a third person. As used in this section, "conduct" means any treatment or forced physical activity that is likely to adversely affect the physical health or safety of that other person or a third person, or which subjects that other person or third person to extreme mental stress, and may include extended deprivation of sleep or rest or extended isolation, whipping, beating, branding, forced calisthenics, overexposure to the weather, and forced consumption of any food, liquor, beverage, drug, or other substance. The offense is a class A misdemeanor if the actor's conduct causes physical injury, otherwise the offense is a class B misdemeanor.

12.1-17-11. Contact by bodily fluids or excrement.

1. An individual is guilty of an offense if the individual causes blood, emesis, excrement, mucus, saliva, semen, vaginal fluid, or urine to come in contact with:

a. A law enforcement officer acting in the scope of employment;

b. An employee of a correctional facility or the department of corrections and rehabilitation acting in the scope of employment unless the employee does an act within the scope of employment which requires or causes the contact;

c. An individual lawfully present in a correctional facility who is not an inmate;

d. An individual lawfully present in the penitentiary or an affiliated facility of the penitentiary who is not an inmate;

e. An individual transporting an individual who is lawfully detained ;

f. A health care facility employee or contractor acting within the scope of employment unless the employee or contractor is performing an act within the scope of employment which requires or causes the contact; or

g. An emergency responder, including a licensed medical services provider, law enforcement officer, firefighter, volunteer firefighter, officer of a nonprofit volunteer

fire department, emergency medical technician, emergency nurse, ambulance operator, or a provider of civil defense services, who while acting in the scope of employment is present at a health care facility .

2.Subsection 1 does not apply to a mentally ill person as defined in section 25 -03.1-02 who has been detained pursuant to chapter 25 -03.1.

3.The offense is a class C felony if the individual knowingly causes the contact and is a class A misdemeanor if the individual recklessly causes the contact.

4.As used in this section, "health care facility" means an office or institution providing health care services or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including a hospital; clinic; ambulatory surgery center; outpatient care facility; weight control clinic; nursing home; basic care or assisted living facility; laboratory; or office of any medical professional licensed or registered under title 43 or any individual who is included within a specialty and subspecialty of those fields. The term includes a waiting room, hallway, private room, semiprivate room, ward, and any mobile or temporary facility.

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12.1-17-12. Assault or homicide while fleeing peace officer.

A person is guilty of a class A felony if that person negligently causes the death of another or a class B felony if that person negligently causes serious bodily injury to another while in violation of section 39 -10-71.

12.1-17-13. Mandated intervention program for domestic violence offenders.

1.As used in this section, "intimate partner" means an offender's spouse, former spouse, current dating partner, recent former dating partner, or another individual with whom the offender has a child in common regardless of whether the offender and the individual are or have been married to each other, are or have been in a dating relationship with each other, or resided together at any time.

2.The sentence for an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-02, 12.1-17-03, 12.1-17-04, 12.1-17-05, 12.1-17-07, 12.1-17-07.1, 12.1-18-02, 12.1-18-03, 12.1-21-05, 12.1-21-06.1, 12.1-31.2-01, 12.1-31.2-02, or 14-07.1-06 against an intimate partner, must include an order to complete a domestic violence offender assessment and intervention program as determined by the court. A court may not order the offender to attend anger management classes or individual counseling unless a domestic violence offender intervention program is not reasonably available to the defendant and the court makes findings for the record explaining why an order to complete a domestic violence offender intervention program would be inappropriate.

3.If an offender who is ordered to complete a domestic violence offender assessment and intervention program is assessed and determined to be inappropriate for the program by the program provider, a court may find the order to complete a domestic violence offender assessment and intervention program to be satisfied or may order the offender to complete other appropriate programming.

12.1-17-14. Forced or coerced abortion - Penalty.

1.As used in this section:

a."Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable intrauterine pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge the termination will with reasonable likelihood cause the death of the unborn child. The use, prescription, or means is not an abortion if done with the intent to:

- (1)Save the life or preserve the health of the unborn child;
- (2)Remove a dead unborn child caused by spontaneous abortion; or
- (3)Treat a woman for an ectopic pregnancy.

b."Force or coerce" means committing, attempting to commit, or threatening to commit physical harm to a woman, the unborn child, or another individual intended to compel the woman to have an abortion performed against her will.

c."Threat" means at least one statement, or a course of conduct by the individual, which places a woman in reasonable apprehension that the individual will follow through with the statement or act as implied by the individual's course of conduct. The term does not include constitutionally protected speech or any generalized

statement regarding a lawful pregnancy option.

2.It is a class C felony to force or coerce a woman to have an abortion against her will.

3.Upon the request of the victim, a law enforcement agency investigating a violation of this section shall notify the victim not less than twenty -four hours before initially contacting the individual alleged to have committed a violation of this section.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-18 - Kidnapping**

### **CHAPTER 12.1-18**

#### **KIDNAPPING**

##### **12.1-18-01. Kidnapping.**

1.A person is guilty of kidnapping if he abducts another or, having abducted another, continues to restrain him with intent to do the following:

- a.Hold him for ransom or reward;
- b.Use him as a shield or hostage;
- c.Hold him in a condition of involuntary servitude;
- d.Terrorize him or a third person;
- e.Commit a felony or attempt to commit a felony; or
- f.Interfere with the performance of any governmental or political function.

2.Kidnapping is a class A felony unless the actor voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a class B felony.

##### **12.1-18-02. Felonious restraint.**

A person is guilty of a class C felony, if he:

- 1.Knowingly abducts another;
- 2.Knowingly restrains another under terrorizing circumstances or under circumstances exposing him to risk of serious bodily injury; or
- 3.Restrains another with intent to hold him in a condition of involuntary servitude.

##### **12.1-18-03. Unlawful imprisonment.**

1.A person is guilty of a class A misdemeanor if he knowingly subjects another to unlawful restraint.

2.It is a defense to a prosecution under this section that the actor is a parent or person in equivalent relation to the person restrained and that the person restrained is a minor.

##### **12.1-18-04. Definitions.**

In this chapter:

1."Abduct" means to restrain a person with intent to prevent his liberation by:

- a.Secreting or holding him in a place where he is not likely to be found; or
  - b.Endangering or threatening to endanger the safety of any human being.
- 2."Restrain" means to restrict the movement of a person unlawfully and without consent so as to interfere substantially with his liberty by removing him from his place of residence or business, by moving him a substantial distance from one place to another, or by confining him for a substantial period. Restraint is "without consent" if it is accomplished by: a. force, intimidation, or deception; or b. any means, including acquiescence of the victim, if he is a child less than fourteen years old or an incompetent person, and if the parent, guardian, or person or institution responsible for the general supervision of his welfare has not acquiesced in the movement or confinement.

##### **12.1-18-05. Removal of child from state in violation of custody decree - Penalty.**

Any person who intentionally removes, causes the removal of, or detains the person's own child under the age of eighteen years outside this state with the intent to deny another person's rights in violation of an existing custody decree is guilty of a class C felony. Detaining the child outside this state in violation of the custody decree for more than seventy -two hours is prima facie evidence that the person charged intended to violate the custody decree at the time of removal.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-19.1 - Abortion**

### **CHAPTER 12.1-19.1**

#### **ABORTION**

##### **12.1-19.1-01. Definitions.**

As used in this chapter:

1. "Abortion" means the act of using, selling, or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge the termination by those means will with reasonable likelihood cause the death of the unborn child. The use, sale, prescription, or means is not an abortion if done with the intent to:

- a. Remove a dead unborn child caused by spontaneous abortion;
- b. Treat a woman for an ectopic pregnancy; or
- c. Treat a woman for a molar pregnancy.

2. "Physician" means an individual licensed to practice medicine or osteopathy under chapter 43-17 or a physician who practices in the armed services of the United States or in the employ of the United States.

3. "Probable gestational age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the gestational age of the unborn child.

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

5. "Serious health risk" means a condition that, in reasonable medical judgment, complicates the medical condition of the pregnant woman so that it necessitates an abortion to prevent substantial physical impairment of a major bodily function, not including any psychological or emotional condition. The term may not be based on a claim or diagnosis that the woman will engage in conduct that will result in her death or in substantial physical impairment of a major bodily function.

12.1-19.1-02. Abortion prohibited - Penalty.

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

12.1-19.1-03. Exceptions.

This chapter does not apply to:

1. An abortion deemed necessary based on reasonable medical judgment which was intended to prevent the death or a serious health risk to the pregnant female.

2. An abortion to terminate a pregnancy that based on reasonable medical judgment resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1 -20, if the probable gestational age of the unborn child is six weeks or less.

3. An individual assisting in performing an abortion if the individual was acting within the scope of that individual's regulated profession, was under the direction of or at the direction of a physician, and did not know the physician was performing an abortion in violation of this chapter.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-21.1 - Animal Research Facility Damage**

### **CHAPTER 12.1-21.1**

#### **ANIMAL RESEARCH FACILITY DAMAGE**

12.1-21.1-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Animal" means any living organism that is used in food, fur, or fiber production, agriculture, research, testing, or education. The term does not include a human being, plant, or bacteria.

2. "Animal facility" means any vehicle, building, structure, research facility, premises, or defined area where an animal is kept, handled, housed, exhibited, bred, or offered for sale.

3. "Deprive" means to:

- a. Withhold an animal or other property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the animal or property is lost to the owner;
- b. Restore the animal or property only upon payment of a reward or other compensation; or
- c. Dispose of an animal or other property in a manner that makes recovery of the

animal or property by the owner unlikely.

4. "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

a. Induced by force or threat;

b. Given by a person the offender knows is not legally authorized to act for the owner; or

c. Given by a person who by reason of age, mental disease or defect, or influence of drugs or alcohol is known by the offender to be unable to make a reasonable decision.

5. "Owner" means a person who has title to the property, possession of the property, or a greater right to possession of the property than the actor.

6. "Possession" means actual care, custody, control, or management.

7. "Research facility" means any place at which any scientific test, experiment, or investigation involving the use of any living animal is carried out, conducted, or attempted.

12.1-21.1-02. Animal facility - Damage or destruction.

No person without the effective consent of the owner may:

1. Intentionally damage or destroy an animal facility, an animal or property in or on the animal facility, or any enterprise conducted at the animal facility.

2. Acquire or otherwise exercise control over an animal facility or an animal or other property from an animal facility with the intent to deprive the owner and to damage the enterprise conducted at the facility.

3. Enter an animal facility, not then open to the public, with intent to commit an act prohibited by this section.

4. Enter an animal facility and remain concealed with intent to commit an act prohibited by this section.

5. Enter an animal facility and commit or attempt to commit an act prohibited by this section.

6. Enter an animal facility and use or attempt to use a camera, video recorder, or any other video or audio recording equipment.

7. Intentionally turn out or release any animal in or on an animal facility.

This section does not apply to lawful activities of a governmental agency carrying out its duties under law.

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12.1-21.1-03. Entry forbidden - Notice.

No person may without the effective consent of the owner, and with the intent to damage the enterprise conducted at the animal facility, enter or remain on an animal facility, if the person had notice that the entry was forbidden or received notice to depart but failed to do so. Notice includes communication by the owner or someone with apparent authority to act for the owner, fencing or other enclosures designed to exclude intruders or to contain animals, or a sign posted on the property or at the entrance to the animal facility indicating that entry is forbidden.

12.1-21.1-04. Penalty.

A person who violates subsection 1 of section 12.1-21.1-02 is guilty of a class B felony if there is damage of ten thousand dollars or more, a class C felony if there is damage of at least five hundred dollars but less than ten thousand dollars, and a class A misdemeanor if there is damage of less than five hundred dollars. A person who violates subsections 2 through 5 or 7 of section 12.1-21.1-02 is guilty of a class C felony. A person who violates subsection 6 of section 12.1-21.1-02 is guilty of a class B misdemeanor.

12.1-21.1-05. Civil action.

A person who has been damaged by reason of violation of this chapter may bring an action in the district court against the person causing the damage to recover an amount equal to three times all actual and consequential damages and court costs and reasonable attorney fees.

This chapter does not affect any other rights of a person who has been damaged by reason of violation of this chapter.

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**2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-21 - Damaging Property or Public Services**

CHAPTER 12.1-21

DAMAGING PROPERTY OR PUBLIC SERVICES

12.1-21-01. Arson.

A person is guilty of arson, a class B felony, if he starts or maintains a fire or causes an explosion with intent to destroy an entire or any part of a building or inhabited structure of another or a vital public facility, or if he starts or maintains a fire or causes an explosion with intent to destroy or damage his own real or personal property for the purpose of collecting insurance for the loss.

12.1-21-02. Endangering by fire or explosion.

1. A person is guilty of an offense if he intentionally starts or maintains a fire or causes an explosion and thereby recklessly:

- a. Places another person in danger of death or bodily injury;
- b. Places an entire or any part of a building or inhabited structure of another or a vital public facility in danger of destruction; or
- c. Causes damage to property of another constituting pecuniary loss in excess of two thousand dollars.

2. The offense is a class B felony if the actor places another person in danger of death under circumstances manifesting an extreme indifference to the value of human life.

Otherwise it is a class C felony.

12.1-21-03. Failure to control or report a dangerous fire.

A person who knows that a fire which was started or maintained, albeit lawfully, by him or with his assent is endangering life or a substantial amount of property of another is guilty of a class A misdemeanor if he willfully fails either to take reasonable measures to put out or control the fire when he can do so without substantial risk to himself or to give a prompt fire alarm.

12.1-21-03.1. Negligent act resulting in fire - Penalty.

It is unlawful for any person to negligently cause a fire to be started in any part of any hotel, motel, roominghouse, lodginghouse, or other place of public abode so as to endanger life or property in any way or to any extent.

1. The state fire marshal shall print and distribute copies of this section to all hotels, motels, roominghouses, lodginghouses, and other places of public abode in this state and such copies shall be conspicuously displayed in each room of every hotel, motel, roominghouse, lodginghouse, and other place of public abode in this state.

2. Violation of this section is a class B misdemeanor.

12.1-21-04. Release of destructive forces.

1. A person is guilty of a class B felony if he intentionally causes a catastrophe by any means and is guilty of a class C felony if he does so willfully.

2. A person is guilty of a class C felony if he willfully creates a risk of catastrophe, although no fire, explosion, or other destruction results.

3. A person who knowingly does an act which causes or which he knows is likely to cause a catastrophe, or assents to the doing of such act, is guilty of a class C felony if he willfully fails to take reasonable measures to prevent the catastrophe.

4. Catastrophe means serious bodily injury to ten or more people or substantial damage to ten or more separate habitations or structures or property loss in excess of five hundred thousand dollars.

12.1-21-05. Criminal mischief.

1. A person is guilty of an offense if that person:

- a. Willfully tampers with tangible property of another so as to endanger person or property; or
- b. Willfully damages tangible property of another.

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2. The offense is:

- a. A class B felony if the actor intentionally causes pecuniary loss in excess of ten thousand dollars.
- b. A class C felony if the actor intentionally causes pecuniary loss in excess of two thousand dollars but not in excess of ten thousand dollars or damages tangible property of another by means of an explosive or a destructive device.
- c. A class C felony if the actor commits the offense while engaged in a riot, as defined in section 12.1 -25-01.

d. A class A misdemeanor if the actor recklessly causes pecuniary loss in excess of two thousand dollars or if the actor intentionally causes pecuniary loss of from one hundred dollars through two thousand dollars.

Otherwise the offense is a class B misdemeanor.

12.1-21-06. Tampering with or damaging a critical infrastructure facility or a public service - Penalty.

1. An individual may not cause a substantial interruption or impairment of a critical infrastructure facility or a public service by:

- a. Tampering with or damaging the tangible property of another;
- b. Incapacitating an operator of a critical infrastructure facility or a public service;
- c. Damaging, destroying, vandalizing, defacing, or tampering with equipment in a critical infrastructure facility;
- d. Damaging, destroying, vandalizing, defacing, impeding, inhibiting, or tampering with the operations of a critical infrastructure facility; or
- e. Interfering, inhibiting, impeding, or preventing the construction or repair of a critical infrastructure facility.

2. A violation of this section is a class C felony if the actor engages in the conduct intentionally and a class A misdemeanor if the actor engages in the conduct knowingly or recklessly. Otherwise it is a class B misdemeanor.

3. This section does not apply to an employee or contractor acting within the scope of the employee's or contractor's employment. As used in this subsection, "employee or contractor" means any person hired or under contract to provide services to a critical infrastructure facility or public service.

4. An organization that has pled guilty or been convicted of a violation under section 12.1-06-04 for conspiring with an individual who has pled guilty or been convicted under subsection 1 must be assessed a fine equivalent to the penalty authorized by subsection 2 for each individual who has pled guilty or been convicted under subsection 1, not to exceed one hundred thousand dollars.

5. This section may not be construed to prevent or prohibit lawful assembly and peaceful and orderly petition for the redress of grievances, including a labor dispute between an employer and its employee.

6. As used in this section, "critical infrastructure facility" includes:

- a. A petroleum or alumina refinery;
- b. An electrical power generating facility, substation, switching station, electrical control center, or electric power line and associated equipment infrastructure;
- c. A chemical, polymer, or rubber manufacturing facility;
- d. A drinking water source, water transmission line, water treatment plant, water distribution system, ground water monitoring well, waste water treatment plant, or waste water collection system;
- e. A natural gas compressor station;
- f. A liquid natural gas terminal or storage facility;
- g. Wireline telecommunications and internet infrastructure, including central offices, fiber optic lines, cable lines, and all additional equipment associated with the provision of broadband or telecommunication services;
- h. Wireless telecommunications infrastructure, including a cell tower, telephone pole or line, including a fiber optic line;

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i. A port, railroad switching yard, railroad track, trucking terminal, or other freight transportation facility;

j. A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas or a natural gas liquid;

k. A transmission facility used by a federally licensed radio or television station;

l. A steel-making facility using an electric arc furnace to make steel;

m. A facility identified and regulated by the United States department of homeland security chemical facility anti-terrorism standards program;

n. A dam regulated by the state or federal government;

o. A natural gas transmission or distribution utility facility, including a pipeline interconnection, a city gate or town border station, a metering station, below or aboveground piping, a regulator station, and a natural gas storage facility;

p. A crude oil or refined product storage and distribution facility, including a valve site, pipeline interconnection, pump station, metering station, below or aboveground pipeline or piping, and a truck loading or offloading facility;

q. Any below or aboveground portion of an oil, gas, hazardous liquid, or chemical pipeline, tank, railroad facility, or other storage facility;

r. An oil and gas production site; and

s. A site or location designated or approved for the construction of a facility described in this subsection.

12.1-21-06.1. Interference with telephone during emergency call.

A person is guilty of an offense if that person removes, damages, or obstructs any telephone or telephone line or any part or apparatus on the line, or severs any wire connected to the line, so as to interfere with an emergency telephone call. The offense is a class C felony if it was done intentionally. The offense is a class A misdemeanor if it was done knowingly or recklessly.

12.1-21-07. Consent as a defense.

Whenever in this chapter it is an element of the offense that the property is of another, it is a defense to a prosecution under those sections that the other has consented to the actor's conduct with respect to the property.

12.1-21-08. Definitions.

In this chapter:

1. "Inhabited structure" means a structure or vehicle:

a. Where any person lives or carries on business or other calling;

b. Where people assemble for purposes of business, government, education, religion, entertainment, or public transportation; or

c. Which is used for overnight accommodation of persons.

Any structure or vehicle is deemed to be "inhabited" regardless of whether a person is actually present. If a building or structure is divided into separately inhabited units, any unit which is property of another constitutes an inhabited structure of another.

2. Property is that "of another" if anyone other than the actor has a possessory or proprietary interest therein.

3. "Vital public facility" includes a facility maintained for use as a bridge (whether over land or water), dam, tunnel, wharf, communications installation, or power station.

12.1-21-09. Tampering with, disabling, or falsely sounding a fire alarm - Tampering with or disabling fire suppression equipment.

1. A person may not tamper with, disable, or falsely sound an alarm signifying a fire in a hotel, motel, roominghouse, lodginghouse, or other place of public abode or in any other public place so as to endanger person or property. A person does not violate this subsection if that person sounds an alarm and has a reasonable belief there is a fire endangering person or property.

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2. A person may not tamper with or disable fire suppression equipment in a hotel, motel, roominghouse, lodginghouse, or other place of abode or in any other public place so as to endanger person or property.

3. A violation of this section is a class B misdemeanor.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-23.1 - Theft of Cable Television**

### **CHAPTER 12.1-23.1**

#### **THEFT OF CABLE TELEVISION**

12.1-23.1-01. Theft of cable television services - Penalty.

A person is guilty of a class B misdemeanor if the person:

1. Knowingly obtains or attempts to obtain cable television service from another by any means, artifice, trick, deception, or device without the payment to the cable television operator of all lawful compensation for each type of service obtained;

2. Knowingly assists or instructs any other person in obtaining or attempting to obtain any cable television service without the payment to the cable television operator of all lawful compensation for each type of service obtained or attempted to be obtained;

3. Knowingly tampers, diverts from, or connects to by any means, whether mechanical, electrical, acoustical or other means, any cables, wires, or other devices used for the distribution of cable television without authority from the cable television operator; or

4. Knowingly manufactures, imports into this state, distributes, sells, offers for sale or rental, possesses for sale, or advertises for sale, any device, plan or kit for a device, or

printed circuit, designed to unlock, decode, descramble, or otherwise make intelligible any locked, encoded, scrambled, or other nonstandard signal carried by the cable television system, thereby facilitating the doing of any acts specified in subsections 1, 2, and 3.

12.1-23.1-02. Civil penalties for theft of cable television services.

1. Any person who violates subsection 1, 2, or 3 of section 12.1 -23.1-01 is liable to the franchised or otherwise duly licensed cable television system for the greater of one thousand dollars or three times the amount of actual damages, if any, sustained by the system, plus reasonable attorney fees.

2. Any person who violates subsection 4 of section 12.1 -23.1-01 is liable to the franchised or otherwise duly licensed cable television system for the greater of ten thousand dollars or three times the amount of actual damages, if any, sustained by the plaintiff, plus reasonable attorney fees. A second or subsequent conviction is punishable by the greater of twenty thousand dollars or three times the amount of actual damages, if any, plus reasonable attorney fees.

12.1-23.1-03. Theft of cable television services - Action - Injunction - Property forfeiture.

1. Any franchised or otherwise duly licensed cable television system may bring an action to enjoin and restrain violation of section 12.1 -23.1-01 or an action for conversion, or both, and may in the same action seek damages as provided for in section

12.1-23.1-02.

2. Any communications paraphernalia prohibited under section 12.1 -23.1-01 may be seized and, upon conviction, is forfeited to the jurisdiction where the arrest was made.

The paraphernalia may be, pursuant to court order, sold or destroyed.

3. It is not a necessary prerequisite to an action pursuant to section 12.1 -23.1-02 that the plaintiff has suffered, or is threatened with, actual damages.

12.1-23.1-04. Amateur radio communications - Exemption.

This chapter shall not be construed to prevent the manufacture, importation, distribution, sale, offer for sale or rental, possession for sale, or advertisement for sale, any device, plan or kit for a device, or printed circuit, used by federally -licensed amateur radio (ham) operators for amateur radio communications as permitted under 47 CFR 91.7 et seq.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-24 - Forgery and Counterfeiting**

### **CHAPTER 12.1-24**

#### **FORGERY AND COUNTERFEITING**

12.1-24-01. Forgery or counterfeiting.

1. A person is guilty of forgery or counterfeiting if, with intent to deceive or harm the government or another person, or with knowledge that the person is facilitating such deception or harm by another person, the person:

- a. Knowingly and falsely makes, completes, or alters any writing; or
- b. Knowingly utters or possesses a forged or counterfeited writing.

2. Forgery or counterfeiting is:

a. A class B felony if:

(1) The actor forges or counterfeits an obligation or other security of the government; or

(2) The offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of ten thousand dollars, but not in excess of fifty thousand dollars. If the value of the property exceeds fifty thousand dollars, the offense is a class A felony.

b. A class C felony if:

(1) The actor is a public servant or an officer or employee of a financial institution and the offense is committed under color of office or is made possible by the actor's office;

(2) The actor forges or counterfeits foreign money or other legal tender, or utters or possesses any forged or counterfeited obligation or security of the government or foreign money or legal tender;

(3) The actor forges or counterfeits any writing from plates, dies, molds, photographs, or other similar instruments designed for multiple reproduction;

(4)The actor forges or counterfeits a writing which purports to have been made by the government; or

(5)The offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of one thousand dollars.

c.A class A misdemeanor in all other cases.

12.1-24-02. Facilitation of counterfeiting.

1.A person is guilty of an offense if, except as authorized by statute or by regulation, he knowingly makes, executes, sells, buys, imports, possesses, or otherwise has within his control any plate, stone, paper, tool, die, mold, or other implement or thing uniquely associated with or fitted for the preparation of any forged or counterfeited security or tax stamp or any writing which purports to be made by this government or any foreign government.

2.A person is guilty of an offense if, except as authorized by statute or by regulation, he:

a.Knowingly photographs or otherwise makes a copy of:

(1)Money or other obligation or security of this government or of any foreign government, or any part thereof;

(2)Any plate, stone, tool, die, mold, or other implement or thing uniquely associated with or fitted for the preparation of any writing described in subsection 1; or

b.Knowingly sells, buys, imports, possesses, or otherwise has within his control any photograph or copy the making of which is prohibited by subdivision a.

3.In a prosecution under this section, authorization by statute or by regulation is a defense.

4.An offense defined in this section is a class B felony if the implement or the impression relates to the forging or counterfeiting of an obligation or security of the government. Otherwise it is a class C felony.

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12.1-24-03. Deceptive writings.

1.A person is guilty of an offense if, with intent to deceive or harm the government or another person, or with knowledge that the person is facilitating such a deception or harm by another person, the person knowingly issues a writing without authority to issue it or knowingly utters or possesses a deceptive writing.

2.The offense is:

a.A class B felony if it is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of ten thousand dollars.

b.A class C felony if:

(1)The actor is a public servant or an officer or employee of a financial institution and the offense is committed under color of office or is made possible by the actor's office; or

(2)The offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of one thousand dollars.

c.A class A misdemeanor in all other cases.

12.1-24-04. Definitions.

In this chapter:

1.The definitions prescribed in section 12.1 -23-10 apply.

2.A "deceptive writing" is a writing which has been:

a.Procured by deception; or

b.Issued without authority.

3."Falsely alters" means to make a change in a writing, without authority, such that the writing appears to have been made by, or fully authorized by, its apparent maker.

4."Falsely completes" means to make an addition to or an insertion in a writing, without authority, such that the writing appears to have been made by, or fully authorized by, its apparent maker.

5."Falsely makes" means to make a writing which purports to be made by the government or another person, or a copy thereof, but which is not because the apparent maker is fictitious or because the writing was made without authority.

6.To "forge" or to "counterfeit" a writing means to falsely make, complete, or alter the writing, and a "forged" or "counterfeited" writing is a writing which has been falsely made, completed, or altered. The terms "forgery" and "counterfeiting" and their

variants are intended to be synonymous in legal effect.

7.The term "obligation or other security of this state" means a bond, certificate of indebtedness, coupon, fractional note, certificate of deposit, a stamp, or other representative of value of whatever denomination, issued pursuant to a statute.

8."Possess" means to receive, conceal, or otherwise exercise control over.

9."Security" other than as provided in subsection 10 includes any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit -sharing agreement, collateral -trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting -trust certificate, certificate of interest in tangible or intangible property, instrument or document or writing evidencing ownership of goods, wares, and merchandise, or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise, uncanceled stamp issued by a foreign government (whether or not demonetized); or, in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing.

10."Tax stamp" includes any tax stamp, tax token, tax meter imprint, or any other form of evidence of an obligation running to a state, or evidence of the discharge thereof.

11."Utter" means to issue, authenticate, transfer, publish, sell, transmit, present, use, or otherwise give currency.

12."Without authority" includes conduct that, on the specific occasion called into question, is beyond any general authority given by statute, regulation, or agreement.

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13."Writing" means:

a.Any paper, document, or other instrument containing written or printed matter or its equivalent, including money, a money order, bond, public record, affidavit, certificate, contract, security, or obligation.

b.Any coin or any gold or silver bar coined or stamped at a mint or assay office or any signature, certification, credit card, token, stamp, seal, badge, decoration, medal, trademark, or other symbol or evidence of value, right, privilege, or identification which is capable of being used to the advantage or disadvantage of the government or any person.

12.1-24-05. Making or uttering slugs.

1.A person is guilty of an offense if he makes or utters a slug with intent to deprive a supplier of property or service sold or offered by means of a coin machine or with knowledge that he is facilitating such a deprivation by another person.

2.The offense is a class A misdemeanor if it involves slugs which exceed fifty dollars in value. Otherwise it is a class B misdemeanor.

3.In this section:

a."Slug" means a metal, paper, or other object which by virtue of its size, shape, or any other quality is capable of being inserted, deposited, or otherwise used in a coin machine as an improper but effective substitute for a genuine coin, bill, or token.

b."Coin machine" means a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed:

(1)To receive a coin or bill of a certain denomination or a token made for the purpose; and

(2)In return for the insertion or deposit thereof, automatically to offer, provide, assist in providing, or permit the acquisition of property or a public or private service.

c."Value" of the slugs means the value of the coins, bills, or tokens for which they are capable of being substituted.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-25 - Riot**

### **CHAPTER 12.1-25**

#### **RIOT**

##### **12.1-25-01. Inciting riot.**

1.A person is guilty of an offense if he:

- a.Incites or urges five or more persons to create or engage in a riot; or
- b.Gives commands, instructions, or directions to five or more persons in furtherance of a riot.

2."Riot" means a public disturbance involving an assemblage of five or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function.

3.A person shall be convicted under section 12.1 -06-01, 12.1-06-03, or 12.1-06-04 of attempt, solicitation, or conspiracy to commit an offense under this section only if he engages in the prohibited conduct under circumstances in which there is a substantial likelihood that his conduct will imminently produce a violation of this section.

4.The offense is a class B felony if it is under subdivision b of subsection 1 or the riot involves one hundred or more persons. Otherwise it is a class C felony.

12.1-25-02. Arming rioters.

1.A person is guilty of a class B felony if the person:

- a.Knowingly supplies a firearm, dangerous weapon, or destructive device for use in a riot;
- b.Teaches another to prepare or use a firearm, dangerous weapon, or destructive device with intent that any such thing be used in a riot; or
- c.While engaging in a riot, is knowingly armed with a firearm, dangerous weapon, or destructive device.

2."Riot" has the meaning prescribed in section 12.1 -25-01.

12.1-25-03. Engaging in a riot.

1.A person is guilty of a class A misdemeanor if the person engages in a riot, as defined in section 12.1-25-01.

2.The provisions of subsection 3 of section 12.1 -25-01 are applicable to attempt, solicitation, and conspiracy to commit an offense under this section. Mere presence at a riot is not an offense under this section.

12.1-25-04. Disobedience of public safety orders under riot conditions.

A person is guilty of a class A misdemeanor if, during a riot as defined in section 12.1 -25-01, or when one is immediately impending, the person disobeys a reasonable public safety order to move, disperse, or refrain from specified activities in the immediate vicinity of the riot. A public safety order is an order designed to prevent or control disorder, or promote the safety of persons or property, issued by the senior law enforcement official on the scene.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-27.2 - Sexual Performances by Children**

### **CHAPTER 12.1-27.2**

#### **SEXUAL PERFORMANCES BY CHILDREN**

12.1-27.2-01. Definitions.

As used in this chapter:

- 1."Obscene sexual performance" means any performance which includes sexual conduct by a minor in any obscene material or obscene performance, as defined in section 12.1-27.1-01.
- 2."Performance" means any play, motion picture, photograph, dance, or other visual representation, or any part of a performance.
- 3."Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, ship, transport, publish, distribute, circulate, disseminate, present, exhibit, or advertise.
- 4."Sexual conduct" means actual or simulated :
  - a.Sexual intercourse;
  - b.Sodomy, as defined under section 12.1 -27.1-01;
  - c.Sexual bestiality;
  - d.Masturbation;
  - e.Sadomasochistic abuse, as defined under section 12.1 -27.1-01;
  - f.Lewd exhibition of the buttocks, breasts, or genitals;
  - g.Nude or partially denuded human figure, as defined in section 12.1 -27.1-03.1, if depicted for the purpose of the sexual stimulation or the sexual gratification of

any individual who may view such depiction; or

h. Physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or breasts. It is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it.

5. "Sexual performance" means any performance which includes sexual conduct by a minor.

6. "Simulated" means the explicit depiction of any of the conduct set forth in subsection 4 which creates the appearance of actual sexual conduct and which exhibits any nude or partially denuded human figure, as defined in section 12.1 -27.1-03.1.

12.1-27.2-02. Use of a minor in a sexual performance.

1. A person is guilty of a class A felony if, knowing the character and content of a performance, that person employs, authorizes, or induces a minor to engage in sexual conduct during a performance or, if being a parent, legal guardian, or custodian of a minor, that person consents to the participation by the minor in sexual conduct during a performance.

2. An adult is guilty of a class A felony if, with the intent to persuade, induce, entice, or coerce a minor to engage in a sexual performance, the adult portrays the adult to be a minor.

12.1-27.2-03. Promoting or directing an obscene sexual performance by a minor.

A person is guilty of a class A felony if, knowing the character and content of a performance, that person produces, directs, or promotes any obscene performance which includes sexual conduct by a person who was a minor at the time of the performance.

12.1-27.2-04. Promoting a sexual performance by a minor.

A person is guilty of a class B felony if, knowing the character and content of a performance, that person produces, directs, or promotes any performance which includes sexual conduct by a person who was a minor at the time of the performance.

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12.1-27.2-04.1. Possession of certain materials prohibited.

A person is guilty of a class C felony if, knowing of its character and content, that person knowingly possesses any motion picture, photograph, or other visual representation that includes sexual conduct by a minor.

12.1-27.2-04.2. Sexual performance by a minor - Enhanced penalties.

1. Notwithstanding the provisions of sections 12.1 -32-01 and 12.1-32-01.1 relating to fines, a person who commits an offense under this chapter and who acts in the course of a commercial or for -profit activity or transaction in which the offender had or shared ownership, control, managerial responsibility, or a financial interest other than wages is subject to the following penalty:

a. For an individual, a fine not to exceed ten thousand dollars; or

b. For a corporation, limited liability company, association, partnership, or other legal entity, a fine not to exceed twenty -five thousand dollars.

2. Notwithstanding the provisions of sections 12.1 -32-01 and 12.1-32-01.1 relating to fines, the court shall impose the following fine upon the conviction of a person or entity described in subsection 1 for a second or subsequent offense under this chapter:

a. For an individual, a fine not to exceed fifty thousand dollars; or

b. For a corporation, limited liability company, association, partnership, or other legal entity, a fine not to exceed one hundred thousand dollars.

12.1-27.2-05. Sexual performance by a minor - Affirmative defenses.

It is an affirmative defense to a prosecution under this chapter that:

1. The defendant in good faith reasonably believed the person appearing in the performance was eighteen years of age or older , if the minor was in fact fifteen years of age or older; or

2. The material or performance involved was disseminated or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other appropriate purpose by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a similar interest in the material or performance.

12.1-27.2-06. Proof of age of minor.

When it becomes necessary under this chapter to determine whether a minor participated in a sexual performance, the trier of fact may base its determination on personal inspection of the

minor, inspection of a photograph or motion picture of the sexual performance, testimony by a witness to the sexual performance as to the age of the minor based upon the minor's appearance, expert testimony based upon the appearance of the minor in the sexual performance, or any other method authorized by law or by rule.  
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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-28 - Gambling and Related Offenses**

### **CHAPTER 12.1-28**

#### **GAMBLING AND RELATED OFFENSES**

##### **12.1-28-01. Gambling - Definitions.**

As used in this chapter:

1. "Gambling" means risking any money, credit, deposit, or other thing of value for gain, contingent, wholly or partially, upon lot, chance, the operation of gambling apparatus, or the happening or outcome of an event, including an election or sporting event, over which the person taking the risk has no control. Gambling does not include:

a. Lawful contests of skill, speed, strength, or endurance in which awards are made only to entrants or to the owners of entries;

b. Lawful business transactions, or other acts or transactions now or hereafter expressly authorized by law; or

c. Use of gaming equipment and devices that may not otherwise be lawful in the state when the equipment or devices are used by any institution under the control of the state board of higher education which awards degrees of bachelor's or higher for the purpose of conducting scientific research in a controlled environment on the campus of that institution.

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

3. "Gambling house" means any location or structure, stationary or movable, wherein gambling is permitted or promoted, or where a lottery is conducted or managed. In the application of this definition, any place where gambling apparatus is found is presumed to be a gambling house, provided that this presumption shall not apply where cards, dice, or other games are found in a private residence.

4. "Lottery" means any plan for the distribution of a thing of value, whether tangible or intangible, to a person or persons selected by chance from among participants, some or all of whom have given a consideration for the chance of being selected.

##### **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. A person is guilty of a class C felony if that person engages or participates in the business of gambling. Without limitation, a person is deemed to be engaged in the business of gambling if 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 that person a coin-operated gaming device; or

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f.Is a public servant who shares in the proceeds of a gambling business whether by way of a bribe or otherwise.

4.a.As used in subsection 3 but with the exceptions provided by subdivision b of this subsection, the term "coin -operated gaming device" means any machine that is:

(1)A so-called "slot" machine 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 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 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.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-29 - Prostitution**

### **CHAPTER 12.1-29**

#### **PROSTITUTION**

12.1-29-01. Promoting prostitution.

1.A person is guilty of an offense if he:

a.Operates a prostitution business or a house of prostitution;

b.Induces or otherwise intentionally causes another to become engaged in sexual activity as a business; or

c.Knowingly procures a prostitute for a prostitution business or a house of prostitution.

2.The offense is a class C felony if it is under subdivision b or c of subsection 1 or if it is under subdivision a and the actor owns, controls, manages, or otherwise supervises the prostitution business or house of prostitution. Otherwise the offense is a class A misdemeanor.

12.1-29-02. Facilitating prostitution.

1.A person is guilty of an offense if the person:

a.Knowingly solicits a person to patronize a prostitute;

b.Knowingly procures a prostitute for a patron;

c.Knowingly leases or otherwise permits a place controlled by the actor, alone or in association with others, to be regularly used for prostitution, promoting prostitution, or facilitating prostitution, or fails to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or taking other legally available means; or

d.Knowingly induces or otherwise intentionally causes another to remain a prostitute. A person who is supported in whole or substantial part by the proceeds of prostitution, other than the prostitute or the prostitute's minor child or a person whom the prostitute is required by law to support, is presumed to be knowingly inducing or intentionally causing another to remain a prostitute.

2.The offense is a class A felony if the actor intentionally causes another to remain a prostitute by force, coercion, threat, or deception, or the prostitute is the actor's spouse or ward, or a person for whose care, protection, or support the actor is responsible.

Otherwise it is a class C felony.

12.1-29-03. Prostitution.

An adult is guilty of prostitution, a class B misdemeanor, if the adult:

1. Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business;

2. Solicits another person with the intention of being hired to engage in sexual activity; or

3. Agrees to engage in sexual activity with another for money or other items of pecuniary value.

12.1-29-04. Testimony of spouse in prostitution offenses.

Testimony of a person against his or her spouse shall be admissible to prove offenses under this chapter involving that spouse's prostitution.

12.1-29-05. Definitions.

In this chapter:

1. A "house of prostitution" is any place where prostitution is regularly carried on by a person under the control, management, or supervision of another.

2. An "inmate" is a prostitute who acts as such in or through the agency of a house of prostitution.

3. A "prostitute" is a person who engages in sexual activity for hire.

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4. A "prostitution business" is any business which derives funds from prostitution regularly carried on by a person under the control, management, or supervision of another.

5. "Sexual activity" means sexual act or sexual contact as those terms are defined in section 12.1-20-02.

12.1-29-06. Hiring an individual to engage in sexual activity.

Except as provided in section 12.1-41-06, an individual who hires or offers or agrees to hire another individual with the intention of engaging in sexual activity is guilty of :

1. A class B misdemeanor for a first offense; and

2. A class A misdemeanor for a second or subsequent offense within ten years .

12.1-29-07. Offender education program.

A sentence for an offense under section 12.1-29-06 or chapter 12.1-41 may include an order for the offender to participate in an offender education program on the negative consequences of the commercial sex industry, including health and legal consequences and the impact on communities, survivors, spouses, and children. The court may order the offender to pay the cost of the offender education program.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-31.2 - Disorderly Conduct Restraining Order**

### **CHAPTER 12.1-31.2**

#### **DISORDERLY CONDUCT RESTRAINING ORDER**

12.1-31.2-01. 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. For the purposes of this section, disorderly conduct includes human trafficking or attempted human trafficking as defined in this title. 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. Unless otherwise terminated by the court, the temporary restraining order is in effect until a restraining order issued under subsection 5 is served.

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 or at a later date if good cause is shown; 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 a class A misdemeanor punishable by imprisonment of up to three hundred sixty days or a fine of up to three 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 4 or 5 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.

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9. Whenever a restraining order is issued, extended, modified, or terminated under this section, the court shall transmit the order electronically to the bureau. Unless the order is a temporary order under subsection 4, the bureau shall enter the order electronically in the national crime information center database provided by the federal bureau of investigation, or its successor agency. The sheriff of the county in which the order was issued shall maintain and respond to inquiries regarding the order in the national crime information center database provided by the federal bureau of investigation, or its successor agency, pursuant to bureau and federal requirements. Whenever a restraining order is issued, the clerk of court shall forward a copy of the order to the local law enforcement agency with jurisdiction over the residence of the protected party by the close of business on the day the restraining order is issued. Once the bureau, after consultation with the state court administrator, determines and implements an electronic method to notify the sheriff of the county that issued the order, the clerk of court's requirement to forward the order to a law enforcement agency will be satisfied.

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.

11. Fees for filing and service of process may not be charged to the petitioner in any proceeding seeking relief due to domestic violence under this chapter.

12.1-31.2-02. Order prohibiting contact.

1. If an individual who is charged with or arrested for a crime of violence or threat of violence, stalking, harassment, or a sex offense is released from custody before arraignment or trial, the court authorizing the release of the individual shall consider and may issue an order prohibiting the individual from having contact with the victim. The order must contain the court's directives and must inform the individual that any violation of the order constitutes a criminal offense. The state's attorney shall provide a copy of the order to the victim. The court shall determine at the time of the individual's

arraignment whether an order issued pursuant to this section will be extended. If the court issues an order pursuant to this section before the time the individual is charged, the order expires at the individual's arraignment or within seventy-two hours of issuance if charges against the individual are not filed.

2.If the court has probable cause to believe that the individual charged or arrested is likely to use, display, or threaten to use a firearm or dangerous weapon as defined in section 12.1-01-04 in any further act of violence, the court shall require that the individual surrender for safekeeping any firearm or specified dangerous weapon in or subject to the individual's immediate possession or control, to the sheriff of the county or chief of police of the city in which the individual resides.

3.Whenever an order prohibiting contact is issued, modified, extended, or terminated under this section, the clerk of court shall forward a copy of the order within one business day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order in the central warrant information system and the national crime information center database provided by the federal bureau of investigation, or its successor agency .

a.Once the bureau, after consultation with the state court administrator, determines and implements a method to transmit electronically to the bureau an order prohibiting contact, the court electronically shall send the full text of the order as issued, modified, extended, or terminated in accordance with this section and any data fields identified by the bureau. This electronic submission will fulfill the law enforcement agency's requirement to enter the order in the central warrant information system, but will not fulfill its requirement to enter, maintain, and respond to inquiries regarding the order in the national crime information center database provided by the federal bureau of investigation, or its successor agency.

b.Once the bureau, after consultation with the state court administrator, determines and implements an electronic method to notify law enforcement about the order,  
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the clerk of court's requirement to forward the order to the law enforcement agency will be satisfied.

c.Once the bureau, after consultation with the director of state radio, determines and implements a method to enter the order into the national crime information center database provided by the federal bureau of investigation, or its successor agency, the bureau shall enter the order electronically in the national crime information center database provided by the federal bureau of investigation, or its successor agency. This electronic entry will fulfill the law enforcement agency's requirement to enter the order in the national crime information center database provided by the federal bureau of investigation, or its successor agency, but will not fulfill its requirement to maintain and respond to inquiries regarding the order in the national crime information center database provided by the federal bureau of investigation, or its successor agency.

4.An individual who violates a court order issued under this section is guilty of a class A misdemeanor.

5.A law enforcement officer shall arrest an individual without a warrant if the officer determines there is probable cause that the individual has committed the offense of violating an order prohibiting contact under this section, whether or not the violation was committed in the presence of the officer. A law enforcement officer who acts in good faith on probable cause and without malice is immune from any civil or criminal liability for making an arrest under this subsection.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-33 - Rights of Convicts**

### **CHAPTER 12.1-33**

#### **RIGHTS OF CONVICTS**

##### **12.1-33-01. Rights lost.**

1.A person sentenced for a felony to a term of imprisonment, during the term of actual incarceration under such sentence, may not:

a.Vote in an election; or

b.Become a candidate for or hold public office.

2.A public office, other than an office held by one subject to impeachment, held at the time of sentence is forfeited as of the date of the sentence if the sentence is in this state, or, if the sentence is in another state or in a federal court, as of the date a certification of the sentence from the sentencing court is filed in the office of the secretary of state who shall receive and file it as a public document. An appeal or other proceeding taken to set aside or otherwise nullify the conviction or sentence does not affect the application of this section, but if the conviction is reversed, the defendant shall be restored to any public office forfeited under this section from the time of the reversal and shall be entitled to the emoluments thereof from the time of the forfeiture.

12.1-33-02. Rights retained by convicted person.

Except as otherwise provided by law, a person convicted of a crime does not suffer civil death or corruption of blood or sustain loss of civil rights or forfeiture of estate or property, but retains all of his rights, political, personal, civil, and otherwise, including the right to hold public office or employment; to vote; to hold, receive, and transfer property; to enter into contracts; to sue and be sued; and to hold offices of private trust in accordance with law.

12.1-33-02.1. Prior conviction of a crime not bar to state licensures - Exceptions.

1.A person may not be disqualified to practice, pursue, or engage in any occupation, trade, or profession for which a license, permit, certificate, or registration is required from any state agency, board, commission, or department solely because of prior conviction of an offense. However, a person may be denied a license, permit, certificate, or registration because of prior conviction of an offense if it is determined that such person has not been sufficiently rehabilitated, or that the offense has a direct bearing upon a person's ability to serve the public in the specific occupation, trade, or profession.

2.A state agency, board, commission, or department shall consider the following in determining sufficient rehabilitation:

a.The nature of the offense and whether it has a direct bearing upon the qualifications, functions, or duties of the specific occupation, trade, or profession.

b.Information pertaining to the degree of rehabilitation of the convicted person.

c.The time elapsed since the conviction or release. Completion of a period of five years after final discharge or release from any term of probation, parole or other form of community corrections, or imprisonment, without subsequent conviction shall be deemed prima facie evidence of sufficient rehabilitation.

3.If conviction of an offense is used in whole or in part as a basis for disqualification of a person, such disqualification shall be in writing and shall specifically state the evidence presented and the reasons for disqualification. A copy of such disqualification shall be sent to the applicant by certified mail.

4.A person desiring to appeal from a final decision by any state agency, board, commission, or department shall follow the procedure provided by the chapter of this code regulating the specific occupation, trade, or profession. If no appeal or review procedure is provided by such chapter, an appeal may be taken in accordance with chapter 28-32, except for attorneys disbarred or suspended under chapter 27 -14.

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12.1-33-02.2. Public employment - Consideration of criminal record.

1.A public employer may not inquire into or consider the criminal record or criminal history of an applicant for public employment until the applicant has been selected for an interview by the employer.

2.This section does not apply to the department of corrections and rehabilitation or to a public employer that has a statutory duty to conduct a criminal history background check or otherwise take into consideration a potential employee's criminal history during the hiring process.

3.This section does not prohibit a public employer from notifying an applicant that law or the employer's policy will disqualify an individual with a particular criminal history background from employment in particular positions.

4.As used in this section, the term "public employer" means the state or a county or city government, or an instrumentality or agency of the state or of a county or city government. The term includes a park district but does not include a school district.

12.1-33-03. Certificate of discharge.

1.If the sentence were in this state, the sentence shall state that the defendant's rights to

vote and to hold any future public office are not lost except during the term of any actual incarceration and that he suffers no other disability by virtue of his conviction and sentence except as otherwise provided in such sentence or by law.

2.If the sentence were in another state or in a federal court, the convicted person shall lose the rights to vote and to hold public office only during the term of actual incarceration. Any person who has been sentenced in another state or in a federal court to a term of imprisonment and who is present in this state shall be presumed to have had such rights restored.

3.If another state having a similar statute issues its certificate of discharge to a convicted person stating that the defendant's rights have been restored, the rights of which he was deprived in this state, under section 12.1 -33-01, are restored to him in this state.

12.1-33-04. Savings provisions.

This chapter does not:

1.Affect the power of a court, otherwise given by law to impose sentence or to suspend imposition or execution of sentence on any conditions, or to impose conditions of probation, or the power of the parole board to impose conditions of parole.

2.Deprive or restrict the authority and powers of officials of a penal institution or other penal facility, otherwise provided by law, for the administration of the institution or facility or for the control of the conduct and conditions of confinement of a convicted person in their custody.

3.Affect the qualifications or disqualifications otherwise required or imposed by law for a designated office, public or private, or to serve as a juror or to vote or for any designated profession, trust, or position, or for any designated license or privilege conferred by public authority.

4.Affect the rights of others arising out of the conviction or out of the conduct on which the conviction is based and not dependent upon the doctrines of civil death, the loss of civil rights, the forfeiture of estate, or corruption of blood.

5.Affect laws governing rights of inheritance of a murderer from his victim.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-34 - Fair Treatment of Victims and Witnesses**

### **CHAPTER 12.1-34**

#### **FAIR TREATMENT OF VICTIMS AND WITNESSES**

12.1-34-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1."Court" means a forum established by law for the adjudication of juvenile petitions, criminal complaints, informations, or indictments.

2."Crime" includes all felony offenses; class A misdemeanors, excluding violations of section 6-08-16.1 for no-account checks; all violations of chapters 12.1 -17 and 12.1-20, including all corresponding violations of municipal ordinances; and any of the offenses in this subsection that may result in adjudication of delinquency.

3."Crime of violence" means any crime in which force, as defined by section 12.1 -01-04, or threat of force was used against the victim.

4."Custodial authority" includes city jail, county jail, juvenile detention center, regional corrections center, halfway house, state penitentiary or Missouri River correctional center, state hospital, or any other inpatient mental health or treatment facility to which a criminal defendant may be sentenced or referred.

5."Disposition" means the sentencing or determination of penalty or punishment to be imposed upon a person convicted of a crime or found delinquent or against whom a finding of sufficient facts for conviction or finding of delinquency is made.

6."Family member" includes a spouse, child, sibling, parent, grandparent, grandchild, legal guardian, or custodian of a victim, and any person with a relationship to the victim which is substantially similar to a relationship specified in this section.

7."Prosecuting attorney" includes city attorney, state's attorney, attorney general, or their assistants.

8."Registered victim" or "registered witness" means a victim or witness registered with the statewide automated victim information and notification system.

9."System" means the statewide automated victim information and notification system.

10."Victim" means a person who suffers direct or threatened physical, financial, or

psychological harm as the result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

11. "Witness" means any person who has been or is expected to be summoned to testify for the prosecution whether or not any action or proceeding has yet been commenced.

12.1-34-02. Fair treatment standards for victims and witnesses.

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

1. Informed by those entities that have contact with the victim or witness as to the availability of and the methods available for registration with the statewide automated victim information and notification system. Those entities include law enforcement, prosecuting attorneys, the courts, and custodial authorities. A victim or witness who clearly objects to registration may not be required to register with the system or must be able to opt out of the system. A victim has the right to:

a. Prevent the disclosure of confidential or privileged information about the victim or the victim's family; and

b. Be notified of any request for identifying information or confidential or privileged information about the victim or victim's family.

2. Informed as to status of investigation. Victims and witnesses, upon request, must be informed by law enforcement authorities investigating a criminal case of the status of the investigation, except where the prosecuting attorney or law enforcement authority determines that to disclose such information would unreasonably interfere with the investigation, until such time as the alleged offender is apprehended or the investigation is closed. A victim, upon request, must be allowed to confer with the prosecuting attorney.

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3. Informed as to criminal charges filed. Victims must be promptly informed by the prosecuting attorney of any criminal charges, arising from an incident in which the person was a victim, filed against any person arrested. The prosecuting attorney shall also provide a brief statement in nontechnical language of the procedural steps involved in the processing of a criminal case. Victims must also be informed by the prosecuting attorney of the pretrial status of each person arrested, including bail and any pretrial release conditions.

4. Notice of pretrial release.

a. Registered victims must be given prompt notice of any hearing in which the arrested person's pretrial release status will be determined. If the alleged offender is scheduled to be released prior to an appearance in court, prompt notice must be given to the registered victim and witness.

b. Victims who are not registered must be given prompt notice, by the law enforcement agency that has made an arrest in any case involving a crime of violence, of any hearing in which the arrested person's pretrial release status will be determined. If the alleged offender in a crime of violence is scheduled to be released before an appearance in court, the custodial authority shall give prompt notice to the victim and witness or, if unavailable, to the arresting law enforcement agency, which shall provide the notice to the victim or witness. The law enforcement agency or custodial authority may fulfill its obligation to notify by registering the victim with the system.

c. Victims and witnesses must be informed by the prosecuting attorney of the methods for enforcing any pretrial release conditions including information as to the level of protection available from law enforcement in the case of harm, threats, or intimidation made to the victim or witness.

5. Notice as to victims' and witnesses' participation in court proceedings. Victims must be informed by the prosecuting attorney of all court proceedings in a reasonable time prior to the proceedings. Witnesses must be informed by the prosecuting attorney of all court proceedings at which their presence is required in a reasonable time prior to the proceedings and informed in nontechnical language of the procedural steps involved in the processing of a criminal case. Victims and witnesses must be notified by the prosecuting attorney of the cancellation of any scheduled court proceeding in sufficient time to prevent an unnecessary appearance in court. All victims and

witnesses shall provide the prosecuting attorney with current information as to address and telephone number, such information to be kept confidential subject to other provisions of this chapter. The notice given by the prosecuting attorney to the victims and witnesses must be given by any means reasonably calculated to give prompt notice.

6.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 hotlines, social service agencies, and domestic violence programs. Victims and witnesses must be informed of the right to seek the advice of an attorney. The prosecuting attorney and law enforcement authority shall advise victims eligible for services of the relevant provisions of chapter 54-23.4.

7.Employer intercession. Victims and witnesses upon request must be provided by the prosecuting attorney with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.

8.Witness fee. Witnesses must be informed by the prosecuting attorney or the court of the procedures to be followed in order to apply for and receive any witness fee to which they are entitled under law.

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9.Return of property. Victims shall have any personal property that was stolen or taken for evidentiary purposes, except contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, returned by the court, prosecuting attorney, or law enforcement agency within ten days after its taking or recovery if it is not needed for law enforcement, prosecution, or defense purposes or as expeditiously as possible when the property is no longer needed for law enforcement, prosecution, or defense purposes. If there is a defendant, the prosecuting attorney shall notify the defendant of the intent to return the property to the owner. Upon a motion made by the defendant and upon good cause shown that the property contains exculpatory evidence of the defendant's innocence, the court may order the law enforcement personnel in possession of the property not to release it to the owner.

10.Waiting area. Victims and witnesses must be provided by prosecuting attorneys and defense attorneys as assisted by the court with a waiting area separate from the defendant, defendant's relatives and friends, and defense witnesses if such an area is available and the use of the area is practical. If a separate waiting area is not available or practical, the court shall provide other safeguards to minimize the victims' and witnesses' contact with the defendant, defendant's relatives and friends, and defense witnesses during court proceedings.

11.Protection of identifying information. Victims and witnesses may not be compelled to testify at any pretrial proceeding or at trial for purposes of identifying the victims' or witnesses' address, telephone number, place of employment, or other personal identification except for name without the victims' or witnesses' consent, unless there is a showing of good cause as determined by the court. Records of a criminal justice agency as defined by section 44 -04-18.7, a correctional facility as defined in section 12-44.1-01, and the department of corrections and rehabilitation containing the address, telephone number, place of employment, or other information that could be used to locate the victim or witness to a crime, are exempt.

12.Right to be present throughout trial. The victim must be informed by the prosecuting attorney of the victim's right to be present throughout the trial of the defendant, except as provided by rule 615 of the North Dakota Rules of Evidence.

13.Prompt disposition of case. Victims and witnesses must be informed by the prosecuting attorney of their rights to a prompt disposition of the cases in which they are involved as victims or witnesses as defined by the docket currency standards of the North Dakota supreme court.

14.Notice as to scheduling of hearing. Registered victims must be informed of the date, time, and place of hearing at which a plea of guilty or not guilty will be entered and of a

sentencing hearing. Victims who are not registered must be given the same information by the prosecuting attorney. The prosecuting attorney shall explain to and consult with the victim in nontechnical language details of any potential plea agreement or verdict.

15. Victim impact statement. The victim must be informed by the prosecuting attorney, prior to sentencing, of the victim's right to submit or make a written impact statement to the court in any criminal case. If a presentence investigation is ordered, the probation officer assigned the report shall include this information in the report. This statement may include an explanation by the victim of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim; an explanation of the extent of any economic loss or property damage suffered by the victim; an opinion of the need for and extent of restitution; and the victim's recommendation for an appropriate sentence. The prosecuting attorney shall advise all victims that the presentence report is subject to review by the defendant and that the report will include the victim's statement. If the sentencing court does not order a presentence investigation, the victim may submit a written impact statement, under oath, to the office of the state's attorney which statement must be submitted to the sentencing court. The victim of violent crime may appear in court to make an oral crime impact statement at the sentencing of the defendant in appropriate circumstances at the

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discretion of the judge. This oral statement must be made under oath and is subject to cross-examination.

16. Notice of final disposition and parole procedures. Registered victims and witnesses must be informed of the final disposition of any criminal case. Victims who are not registered must be given the same notice by the prosecuting attorney. The prosecuting attorney shall explain to the victim the parole process and pardon process and further advise the victim of the necessity of advising the custodial authority and the parole board and the pardon clerk of the victim's address in order for the victim to receive further information under other provisions of this chapter.

17. Prompt notice of custodial release. Registered victims and witnesses must be informed whenever a criminal defendant receives a temporary, provisional, or final release from custody or whenever the defendant escapes from custody. Victims who are not registered must be given the same notice by the appropriate custodial authority. 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 registered 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.

18. Participation in parole board and pardon decision. Victims may submit a written statement for consideration by the parole board, the governor, or the pardon advisory board, if one has been appointed, prior to the parole board, the governor, or the pardon advisory board taking any action on a defendant's request for parole or pardon. A victim statement made under this subsection is a confidential record and may be disclosed only to the parole board, the governor, the pardon advisory board, or their authorized representative. Victims of violent crimes may at the discretion of the parole board, the governor, or the pardon advisory board personally appear and address the parole board, the governor, or the pardon advisory board. Victim testimony and written statements under this subsection are confidential and may be disclosed only to the parole board, the governor, the pardon advisory board, or their authorized representative. Notice must be given by the parole board or pardon clerk informing the registered victim of the pending review. The registered victim must be provided notice of the decision of the parole board or of the governor and the recommendations of the pardon advisory board, if any, and, if applicable, notice of the date of the prisoner's release on parole or the prisoner's pardon, conditional pardon, reprieve, commutation, or remission of fine. Notice must be given within a reasonable time after the parole board or the governor makes a decision but in any event before the parolee's or pardoned prisoner's release from custody.

19. Victims and witnesses of crimes committed by juveniles are entitled to the same rights

under this chapter in juvenile delinquency proceedings as in any other proceeding. In addition, every victim or a witness who is a minor is entitled to have that person's spouse, parent, guardian, and no more than two other designated adults present with that person during any juvenile delinquency proceedings.

20. Access to law enforcement report. Upon request of the child sexual abuse victim over the age of eighteen, the prosecuting attorney or law enforcement authority shall provide the victim with a copy of the law enforcement report corresponding with the victim's case number.

21. Preservation of evidence. A prosecuting attorney, law enforcement authority, criminal laboratory, or evidentiary storage facility may not destroy or dispose of any evidence to a criminal offense before the limitation period for prosecution for the offense has ended or the offense has been adjudicated.

22. If the victim is deceased, incompetent, incapacitated, or a minor, the victim's spouse, parent, grandparent, child, sibling, grandchild, or guardian, and any person with a relationship to the victim which is substantially similar to a listed relationship, may exercise the rights granted to a victim under this chapter.

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12.1-34-03. Responsibilities of victims and witnesses.

Victims and witnesses have all of the following responsibilities to aid in the prosecution of crime:

1. To make a timely report of the crime.
2. To cooperate with law enforcement authorities throughout the investigation, prosecution, and trial.
3. To testify at trial.
4. To notify the system, law enforcement authorities, prosecuting attorney, custodial authority, parole board, pardon clerk, and court, where appropriate, of any change of contact information. Except for release to a domestic violence sexual assault organization as defined in section 14-07.1-01, all contact information provided must be kept confidential.

12.1-34-04. Victim and witness services.

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

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

12.1-34-05. Cause of action for damages or injunctive relief.

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

12.1-34-06. Statewide automated victim information and notification system.

1. The office of the attorney general shall maintain a statewide automated victim information and notification system that must:

- a. Permit a victim to register or update the victim's registration information for the system by calling a toll -free telephone number or accessing a public website.
- b. Notify a registered victim by telephone, mail, text message, or electronic mail in accordance with this chapter.
- c. Notify a registered victim by telephone, mail, text message, or electronic mail

when the offender has a scheduled court proceeding, a parole review, or a change in the status of the offender's parole or probation status, including a change in the offender's address.

d. Notify a registered victim by telephone, mail, text message, or electronic mail when a protective order requested by the victim has been served upon the respondent.

e. Permit a victim to receive a status report for an offender under the supervision or in the custody of the department of corrections and rehabilitation or other correctional facility by calling the system on a toll -free telephone number or by accessing the system through a public website.

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

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

4. All affected entities, including custodial authorities, prosecuting attorneys, law enforcement agencies, courts, the attorney general's office, and the parole clerk, shall cooperate with the system operator in establishing and maintaining the statewide automated victim information and notification system.

12.1-34-07. Medical screening and acute forensic medical examinations costs - Reimbursement by attorney general - Use of evidence.

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

2. A child forensic medical examination is an examination performed on an alleged child victim of criminal sexual conduct for the purpose of gathering evidence of an alleged crime. When a child forensic medical examination is performed, the costs incurred by a health care facility or health care professional for performing the child forensic medical examination or any preliminary medical screening examination may not be charged, either directly or through a third -party payer, to the alleged child victim or the child's parent, guardian, or custodian.

3. Upon submission of appropriate documentation, the attorney general, within the limits of legislative appropriations, shall reimburse the health care facility or a health care professional for the reasonable costs incurred in performing the medical screening and acute forensic medical examination. The attorney general, subject to legislative appropriations, shall reimburse each accredited children's advocacy center located in the state for a forensic interview that is not reimbursable by Medicaid or crime victims compensation.

4. Evidence obtained during a medical examination under this section may not be used against an alleged victim for the prosecution of the alleged victim for a separate offense.

12.1-34-08. Victim's rights card.

The attorney general shall develop a card containing the rights of victims as provided in this chapter and section 25 of article I of the Constitution of North Dakota to be distributed to all crime victims.

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**2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-35 - Child Victim and Witness Fair Treatment Standards**

CHAPTER 12.1-35

## CHILD VICTIM AND WITNESS FAIR TREATMENT STANDARDS

### 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.
- 4."Family member" means a spouse, child, sibling, parent, legal guardian, or custodian of a victim.
- 5."Prosecuting attorney" includes city attorney, state's attorney, attorney general, or their assistants.
- 6."Sex offense" includes all sex offenses defined as such in chapter 12.1 -20.
- 7."Victim" means a living child who has suffered direct or threatened physical, financial, or emotional harm as a result of the commission or attempted commission of a crime.
- 8."Witness" means any living 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.

### 12.1-35-02. Additional services.

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

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

### 12.1-35-03. Information about child victims or witnesses of crimes generally may not appear in public record.

- 1.In order to protect the child from possible trauma resulting from publicity, the name of the child victim or child witness of a crime, except as specified in subsection 2, and identifying biographical information may not appear on the indictment or any other public record. Instead, a Jane Doe or Joe Doe designation must appear in all public records. Sealed confidential records containing the child's name and necessary biographical information must be kept in order to ensure that no defendant is charged twice.
- 2.Interviews and statements of child victims or child witnesses obtained during an investigation of a crime of a violent or sexual nature are exempt.
- 3.Subsection 1 does not apply to the name and identifying biographical information of:
  - a.A child victim or child witness of a criminal offense under title 39 or equivalent ordinance; and
  - b.A child victim of a fire.

### 12.1-35-04. Limits on interviews and testimony.

The prosecuting attorney, the court, and appropriate law enforcement personnel, to the extent possible, shall protect the victim or witness from the psychological damage of repeated or

lengthy interview, testimony, or discovery proceedings while preserving the rights of the public, the victim, and the person charged with the violation.

### 12.1-35-05. Prompt disposition.

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

#### 12.1-35-05.1. 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.

#### 12.1-35-05.2. 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.

#### 12.1-35-05.3. Application to discovery proceedings.

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

#### 12.1-35-06. Cause of action for damages and injunctive relief.

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

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-36.1 - Minor Sex Change Treatment**

### CHAPTER 12.1-36.1

#### MINOR SEX CHANGE TREATMENT

##### 12.1-36.1-01. Definitions.

As used in this chapter:

- 1."Health care provider" means a licensed physician, physician assistant, nurse, or a certified medical assistant.
- 2."Minor" means an individual under the age of eighteen. The term includes an emancipated individual.
- 3."Sex" means the biological state of being female or male, based on the individual's nonambiguous sex organs, chromosomes, or endogenous hormone profiles at birth.

##### 12.1-36.1-02. Perception of a minor's sex - Prohibited practices - Penalty.

1.Except as provided under section 12.1 -36.1-03, if a minor's perception of the minor's sex is inconsistent with the minor's sex, a health care provider may not engage in any of the following practices for the purpose of changing or affirming the minor's perception of the minor's sex:

a.Perform castration, vasectomy, hysterectomy, oophorectomy, metoidioplasty, orchiectomy, penectomy, phalloplasty, or vaginoplasty;

b.Perform a mastectomy;

c.Prescribe, dispense, administer, or otherwise supply any drug that has the purpose of aligning the minor's sex with the minor's perception of the minor's sex when the perception is inconsistent with the minor's sex, including:

(1)Puberty-blocking medication to stop normal puberty;

- (2)Supraphysiologic doses of testosterone to females; or
- (3)Supraphysiologic doses of estrogen to males; or
- d.Remove any otherwise healthy or nondiseased body part or tissue, except for a male circumcision.

2.A health care provider who willfully violates:

- a.Subdivision a, b, or d of subsection 1 is guilty of a class B felony.
- b.Subdivision c of subsection 1 is guilty of a class A misdemeanor.

12.1-36.1-03. Exceptions.

Section 12.1-36.1-02 does not apply:

1.To the good-faith medical decision of a parent or guardian of a minor born with a medically verifiable genetic disorder of sex development, including:

a.A minor with external biological sex characteristics that are irresolvably ambiguous, including having forty -six, XX chromosomes with virilization, forty -six, XY chromosomes with undervirilization, or having both ovarian and testicular tissue; or

b.When a physician otherwise has diagnosed a disorder of sexual development in which the physician, through genetic testing, has determined the minor does not have the normal sex chromosome structure for a male or female; or

2.If performance or administration of the medical procedure on the minor began before April 21, 2023.

12.1-36.1-04. Statutory limitation.

Notwithstanding the limitations of section 29 -04-02, prosecution for a violation of section 12.1-36.1-02 must be commenced within three years of the date of the offense or within three years after the offense is reported to law enforcement, whichever is later.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-36 - Female Genital Mutilation**

### **CHAPTER 12.1-36**

#### **FEMALE GENITAL MUTILATION**

12.1-36-01. Surgical alteration of the genitals of female minor - Penalty - Exception.

1.Except as provided in subsection 2, any person who knowingly separates or surgically alters normal, healthy, functioning genital tissue of a female minor is guilty of a class C felony.

2.A surgical operation is not a violation of this section if a licensed medical practitioner performs the operation to correct an anatomical abnormality or to remove diseased tissue that is an immediate threat to the health of the female minor. In applying this subsection, any belief that the operation is required as a matter of custom, ritual, or standard of practice may not be taken into consideration.

3.Any parent, adult family or household member, guardian, or other custodian of any child who willfully allows a child to be surgically altered under this section is guilty of child abuse under subsection 1 of section 14-09-22.

4.A custom, ritual, religious practice, or the consent of the parent or guardian of a minor is not a defense against a violation under this section.

5.Notwithstanding the limitations of section 29 -04-02, prosecution for a violation of subsection 3 must be commenced within three years of the date of the offense or within three years after the offense is reported to law enforcement, whichever is later.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-37 - Child Support Nonpayment**

### **CHAPTER 12.1-37**

#### **CHILD SUPPORT NONPAYMENT**

12.1-37-01. Willful failure to pay child support - Classification of offenses - Affirmative defense - Penalty.

1.A person is guilty of an offense if the person willfully fails to pay child support in an amount ordered by a court or other governmental agency having authority to issue the orders.

2.a.If the unpaid amount is greater than the greater of two thousand dollars or six times the monthly child support obligation, the offense is a class C felony.

b.If the unpaid amount is greater than the greater of one thousand dollars or three

times the monthly child support obligation, but less than the amount required under subdivision a, the offense is a class A misdemeanor.

c.If the unpaid amount is less than the amount required under subdivision b, the offense is a class B misdemeanor.

3.If the failure to pay child support occurs while the defendant was in another state, and while the child was in this state, the offense must be construed to have been committed in this state.

4.It is an affirmative defense to a charge under subsection 1 that the defendant suffered from a disability during the periods an unpaid child support obligation accrued, such as to effectively preclude the defendant's employment at any gainful occupation. This defense is available only if the defendant lacked the means to pay the ordered amounts other than from employment.

5.For purposes of this section, "child support" has the meaning provided in section 14-09-09.10.

6.This section applies only to the willful failure to pay child support after August 1, 1995.

7.In a prosecution under this chapter, a copy of a record certified under section 14-08.1-08 is admissible as prima facie evidence of the contents of the record.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-38 - Assumption of Risk in Crimes**

### **CHAPTER 12.1-38**

#### **ASSUMPTION OF RISK IN CRIMES**

##### **12.1-38-01. Definitions.**

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

1."Convicted" includes a finding of guilt, whether or not the adjudication of guilt is stayed or executed, an unwithdrawn judicial admission of guilt or guilty plea, a no contest plea, a judgment of conviction, an adjudication as a delinquent child, or an admission to a juvenile delinquency petition.

2."Course of criminal conduct" includes the acts or omissions of a victim in resisting criminal conduct.

3."Crime" includes an offense named in section 12.1-16-01, 12.1-16-02, 12.1-16-03, 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-02, 12.1-17-03, 12.1-17-04, chapter 12.1-18, section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-07, chapter 12.1-21, section 12.1-22-01, 12.1-22-02, or 12.1-22-03, or an attempt to commit any of these offenses. The term includes a crime in other states which would have been within this definition if the crime had been committed in this state.

4."Perpetrator" means a person who has engaged in criminal conduct and includes a person convicted of a crime.

5."Victim" means a person who was the object of another's criminal conduct and includes a person at the scene of an emergency who gives reasonable assistance to another person who is exposed to or has suffered grave physical harm.

##### **12.1-38-02. Perpetrator's assumption of the risk.**

A perpetrator assumes the risk of loss, injury, or death resulting from or arising out of a course of criminal conduct involving a crime, as defined in this chapter, engaged in by the perpetrator or an accomplice, as defined in section 12.1-03-01, and the crime victim is immune from and not liable for any damages as a result of acts or omissions of the victim if the victim used reasonable force as authorized in section 12.1-05-03 or 12.1-05-04. However, the perpetrator's assumption of risk does not eliminate the crime victim's duty to protect against conditions upon the premises which the crime victim knows or has reason to know may create an unreasonable risk of harm or which may cause a foreseeable trespass by minors, nor does the assumption of risk apply to perpetrators who are mentally incompetent or deficient.

##### **12.1-38-03. Evidence**

. Notwithstanding other evidence that the victim may adduce relating to the perpetrator's conviction of the crime involving the parties to a claim for relief, a certified copy of a guilty plea, a court judgment of guilt, a court record of conviction, or an adjudication as a delinquent child is conclusive proof of the perpetrator's assumption of the risk.

##### **12.1-38-04. Attorney's fees to victim.**

If the perpetrator does not prevail in a claim for relief that is subject to this chapter, the court may award reasonable expenses, including attorney's fees and disbursements, to the victim.

12.1-38-05. Stay of claim for relief.

Except to the extent needed to preserve evidence, any claim for relief in which the defense set forth in this chapter is raised must be stayed by the court on the motion of the defendant during the pendency of any criminal action against the plaintiff based on the alleged crime.  
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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-39 - Human Cloning**

### **CHAPTER 12.1-39**

#### **HUMAN CLONING**

##### **12.1-39-01. Definitions.**

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

1. "Fetus" means a living organism of the species homo sapiens from eight weeks' development until complete expulsion or extraction from a woman's body, or until removal from an artificial womb or other similar environment designed to nurture the development of such organism.
2. "Human cloning" means human asexual reproduction, accomplished by introducing the genetic material of a human somatic cell into a fertilized or unfertilized oocyte, the nucleus of which has been or will be removed or inactivated, to produce a living organism with a human or predominantly human genetic constitution.
3. "Human embryo" means a living organism of the species homo sapiens from the single-celled state to eight weeks' development.
4. "Human somatic cell" means a cell having a complete set of chromosomes obtained from a living or deceased human organism of the species homo sapiens at any stage of development.
5. "Oocyte" means a human female germ cell, also known as an egg.

##### **12.1-39-02. Human cloning - Prohibition - Penalty.**

1. A person may not intentionally or knowingly:

- a. Perform or attempt to perform human cloning;
  - b. Participate in performing or attempting to perform human cloning;
  - c. Transfer or receive the product of a human cloning for any purpose; or
  - d. Transfer or receive, in whole or in part, any oocyte, human embryo, human fetus, or human somatic cell, for the purpose of human cloning.
2. Nothing in subsection 1 restricts areas of scientific research not specifically prohibited, including in vitro fertilization, the administration of fertility -enhancing drugs, or research in the use of nuclear transfer or other cloning techniques to produce molecules, deoxyribonucleic acid, tissues, organs, plants, animals other than humans, or cells other than human embryos.
3. A person who violates subdivision a or b of subsection 1 is guilty of a class C felony. A person who violates subdivision c or d of subsection 1 is guilty of a class A misdemeanor.

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## **2024 North Dakota Century Code Title 12.1 - Criminal Code Chapter 12.1-41 - Uniform Act on Prevention of and Remedies for Human Trafficking**

### **CHAPTER 12.1-41**

#### **UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING**

##### **12.1-41-01. Definitions.**

In this chapter:

1. "Adult" means an individual eighteen years of age or older.
2. "Coercion" means:
  - a. The use or threat of force against, abduction of, serious harm to, or physical restraint of, an individual;
  - b. The use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of, an individual;
  - c. The abuse or threatened abuse of law or legal process;
  - d. Controlling or threatening to control an individual's access to a controlled substance as defined in section 19-03.1-01;
  - e. The destruction or taking of or the threatened destruction or taking of an

- individual's identification document or other property;
- f. The use of debt bondage;
- g. The use of an individual's physical or mental impairment when the impairment has a substantial adverse effect on the individual's cognitive or volitional function;
- or
- h. The commission of civil or criminal fraud.
3. "Commercial sexual activity" means sexual activity for which anything of value is given to, promised to, or received, by a person.
4. "Debt bondage" means inducing an individual to provide commercial sexual activity in payment toward or satisfaction of a real or purported debt or inducing an individual to provide labor or services in payment toward or satisfaction of a real or purported debt if the reasonable value of the labor or services is not applied toward the liquidation of the debt or if the length of the labor or services is not limited and the nature of the labor or services is not defined. The term does not include an effort by a creditor to collect an enforceable obligation by means that are permitted under state or federal laws.
5. "Human trafficking" means the commission of an offense created by sections 12.1-41-02 through 12.1-41-06.
6. "Identification document" means a passport, driver's license, immigration document, travel document, or other government-issued identification document, including a document issued by a foreign government.
7. "Labor or services" means activity having economic value.
8. "Minor" means an individual less than eighteen years of age.
9. "Serious harm" means harm, whether physical or nonphysical, including psychological, economic, or reputational, to an individual which would compel a reasonable individual of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm.
10. "Sexual activity" means "sexual act" as defined in section 12.1-20-02. The term includes a sexually explicit performance.
11. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.
12. "Victim" means an individual who is subjected to human trafficking or to conduct that would have constituted human trafficking had this chapter been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.

12.1-41-02. Trafficking an individual.

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1. A person commits the offense of trafficking an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:

- a. Forced labor in violation of section 12.1-41-03; or
  - b. Sexual servitude in violation of section 12.1-41-04.
2. Trafficking an individual who is an adult is a class A felony.
3. Trafficking an individual who is a minor is a class AA felony.

12.1-41-03. Forced labor.

1. A person commits the offense of forced labor if the person knowingly uses coercion to compel an individual to provide labor or services, except when that conduct is permissible under federal law or law of this state other than this chapter.

2. Forced labor of an individual who is an adult is a class A felony.
3. Forced labor of an individual who is a minor is a class AA felony.

12.1-41-04. Sexual servitude.

1. A person commits the offense of sexual servitude if the person knowingly:

- a. Maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity; or
- b. Uses coercion or deception to compel an adult to engage in commercial sexual activity.

2. It is not a defense in a prosecution under subdivision a of subsection 1 that the minor

consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.

3. Sexual servitude under subdivision a of subsection 1 is a class AA felony.

4. Sexual servitude under subdivision b of subsection 1 is a class A felony.

12.1-41-05. Patronizing a victim of sexual servitude.

1. A person commits the offense of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that an individual may engage in commercial sexual activity with another individual and the person knows that the other individual is a victim of sexual servitude.

2. Patronizing a victim of sexual servitude who is an adult is a class B felony.

3. Patronizing a victim of sexual servitude who is a minor is a class A felony.

12.1-41-06. Patronizing a minor for commercial sexual activity.

1. A person commits the offense of patronizing a minor for commercial sexual activity if:

a. With the intent that an individual engage in commercial sexual activity with a minor, the person gives, agrees to give, or offers to give anything of value to a minor or another person so that the individual may engage in commercial sexual activity with a minor; or

b. The person gives, agrees to give, or offers to give anything of value to a minor or another person so that an individual may engage in commercial sexual activity with a minor.

2. Patronizing a minor for commercial sexual activity under subdivision a of subsection 1 is a class A felony.

3. Patronizing a minor for commercial sexual activity under subdivision b of subsection 1 is a class B felony.

12.1-41-07. Business entity liability.

1. A person that is a business entity may be prosecuted for an offense under sections 12.1-41-02 through 12.1-41-06 as provided by chapter 12.1 -03.

2. When a person that is a business entity is prosecuted for an offense under sections 12.1-41-02 through 12.1-41-06, the court may consider the severity of the entity's

conduct and order penalties in addition to those otherwise provided for the offense, including:

a. A fine of not more than one million dollars per offense;

b. Disgorgement of profit from activity in violation of this chapter; and

c. Debarment from state and local government contracts.

12.1-41-08. Aggravating circumstance.

1. An aggravating circumstance during the commission of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04 occurs when the defendant recruited, enticed, or obtained the victim of the offense from a shelter that serves individuals subjected to human trafficking, domestic violence, or sexual assault, runaway youth, foster children, or the homeless.

2. If the trier of fact finds that an aggravating circumstance occurred during the commission of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04, the defendant may be imprisoned for up to five years in addition to the period of imprisonment prescribed for the offense.

12.1-41-09. Restitution.

1. The court shall order a person convicted of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04 to pay restitution to the victim of the offense for:

a. Expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including reasonable attorney's fees and costs; and

b. An amount equal to the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim:

(1) The gross income to the defendant for, or the value to the defendant of, the victim's labor or services or sexual activity;

(2) The amount the defendant contracted to pay the victim; or

(3) The value of the victim's labor or services or sexual activity, calculated under the minimum wage and overtime provisions of the Fair Labor Standards Act, [29 U.S.C. 201 et seq.] or section 34 -06-22, whichever is higher, even if the provisions do not apply to the victim's labor or services or sexual activity.

2.The court shall order restitution under subsection 1 even if the victim is unavailable to accept payment of restitution.

3.If the victim does not claim restitution ordered under subsection 1 for five years after entry of the order, the restitution must be paid to the crime victims restitution and gift fund under section 54 -23.4-05.

12.1-41-10. Victim confidentiality.

In an investigation of or a prosecution for an offense under this chapter, a law enforcement agency and state's attorney shall keep confidential the identity, pictures, and images of the alleged victim and the family of the alleged victim, except to the extent that disclosure is:

1.Necessary for the purpose of investigation or prosecution;

2.Required by law or court order; or

3.Necessary to ensure provision of services or benefits for the victim or the victim's family.

12.1-41-11. Past sexual behavior of victim.

In a prosecution for an offense under this chapter or a civil action under section 12.1-41-15, evidence of a specific instance of the alleged victim's past sexual behavior or reputation or opinion evidence of past sexual behavior of the alleged victim is not admissible unless the evidence is:

1.Admitted in accordance with the North Dakota rules of evidence ; or

2.Offered by the prosecution to prove a pattern of human trafficking by the defendant.

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12.1-41-12. Immunity of minor.

1.If the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim, the individual is not criminally liable or subject to a juvenile delinquency proceeding under chapter 27 -20.4 for:

a.Prostitution under section 12.1 -29-03;

b.Misdemeanor forgery under section 12.1 -24-01;

c.Misdemeanor theft offenses under chapter 12.1 -23;

d.Insufficient funds or credit offenses under section 6 -08-16;

e.Manufacture or possession of a controlled or counterfeit substance offenses under section 19-03.1-23; and

f.Drug paraphernalia offenses under chapter 19 -03.4.

2.It is an affirmative defense to felony forgery, felony theft, and felony drug distribution that the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim as defined by this chapter.

3.An individual who has engaged in commercial sexual activity is not criminally liable or subject to a juvenile delinquency proceeding under chapter 27 -20.4 for prostitution if the individual was a minor at the time of the offense.

4.A minor who, under subsection 1 or 3, is not subject to criminal liability or a juvenile delinquency proceeding is presumed to be a child in need of services under chapter 50-25.1.

5.This section does not apply in a prosecution or a juvenile delinquency proceeding for patronizing a prostitute.

12.1-41-13. Affirmative defense of victim.

An individual charged with prostitution, felony forgery, felony theft, felony drug distribution, or an offense listed in subsection 1 of section 12.1 -41-12 which was committed as a direct result of being a victim may assert an affirmative defense that the individual is a victim.

12.1-41-14. Motion to vacate and seal conviction.

1.An individual convicted of prostitution or an offense listed in subsection 1 of section 12.1-41-12 which was committed as a direct result of being a victim may apply by motion to the court to vacate the conviction and seal the record of conviction. The court may grant the motion on a finding that the individual's participation in the offense was a direct result of being a victim.

2.Official determination or documentation is not required to grant a motion by an individual under subsection 1, but an official determination or documentation from a federal, state, local, or tribal agency that the individual was a victim at the time of the offense creates a presumption that the individual's participation was a direct result of being a victim.

3.A motion filed under subsection 1, any hearing conducted on the motion, and any relief

granted are governed by chapter 29 -32.1.

#### 12.1-41-15. Civil action.

1.A victim may bring a civil action against a person that commits an offense against the victim under section 12.1-41-02, 12.1-41-03, or 12.1-41-04 for compensatory damages, exemplary or punitive damages, injunctive relief, and any other appropriate relief.

2.If a victim prevails in an action under this section, the court shall award the victim reasonable attorney's fees and costs.

3.An action under this section must be commenced not later than ten years after the later of the date on which the victim:

a.No longer was subject to human trafficking; or

b.Attained eighteen years of age.

4.Damages awarded to a victim under this section for an item must be offset by any restitution paid to the victim pursuant to section 12.1-41-09 for the same item.

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5.This section does not preclude any other remedy available to a victim under federal law or law of this state other than this chapter.

#### 12.1-41-16. Display of public-awareness sign.

The department of transportation shall display in every transportation station, rest area, and welcome center in the state which is open to the public a public-awareness sign that contains any state or local human trafficking resource information and the National Human Trafficking Resource Center hotline information.

#### 12.1-41-17. Eligibility for benefit or service.

1.A victim is eligible for a benefit or service available through the state, including compensation under chapter 54 -23.4, regardless of immigration status.

2.A minor who has engaged in commercial sexual activity is eligible for a benefit or service available through the state, regardless of immigration status.

3.As soon as practicable after a first encounter with an individual who reasonably appears to law enforcement to be a victim or a minor who has engaged in commercial sexual activity, the law enforcement agency shall notify the victim services division of the department of corrections and rehabilitation that the individual may be eligible for a benefit or service under the law of this state.

4.For purposes of this section, "a benefit or service available through the state" does not include a benefit or service of a program administered by the department of health and human services using federal or special funds, if the victim or minor does not meet program eligibility requirements including an eligibility requirement that is based on immigration status.

#### 12.1-41-18. Law enforcement protocol.

1.On request from an individual whom a law enforcement officer reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. 1101(a)(15)(T) or 8 U.S.C. 1101(a)(15)(U), or for continued presence under 22 U.S.C. 7105(c)(3), the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the form I-914B or form I -918B provided by the United States citizenship and immigration services on its internet website and ask a federal law enforcement officer to request continued presence.

2.If the law enforcement agency determines that an individual does not meet the requirements for the law enforcement agency to comply with subsection 1, the law enforcement agency shall inform the individual of the reason and that the individual may make another request under subsection 1 and submit additional evidence satisfying the requirements.

#### 12.1-41-19. Grant to or contract with service provider.

1.The attorney general may make a grant to or contract with a unit of state or local government, tribal government, or nongovernmental victims service organization to develop or expand service programs for victims.

2.A recipient of a grant or contract under subsection 1 shall report annually to the attorney general the number and demographic information of all victims receiving services under the grant or contract.

#### 12.1-41-20. Use of public funds for abortions prohibited.

Except as provided by federal law, funds of this state or a political subdivision of this state and federal funds passing through the state treasury or a state agency to provide treatment and support services for victims of human trafficking may be used to refer for or counsel for family planning services, but may not be used to perform, refer for, or encourage abortion.

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12.1-41-21. Forced or coerced abortion.

1.As used in this section:

a."Forces or coerces" means committing, attempting to commit, or threatening to commit physical harm to the woman, the unborn child, or another individual intended to compel a victim of an offense under section 12.1 -41-02, 12.1-41-03, or 12.1-41-04 to have an abortion performed against her will.

b."Threat" means at least one statement, or a course of conduct by the defendant, which places one in reasonable apprehension that the individual will follow through with the statement or act as implied by the defendant's course of conduct. The term does not include constitutionally protected speech or any generalized statement regarding a lawful pregnancy option.

2.A forced or coerced abortion during the commission of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04 occurs when the defendant forces or coerces a victim of the offense to have an abortion against her will.

3.Upon the request of the victim, a law enforcement agency investigating a violation of this section shall notify the victim not less than twenty -four hours before initially contacting the individual alleged to have committed a violation of this section.

4.If the trier of fact finds that a forced or coerced abortion occurred during the commission of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04, the court may sentence the defendant to be imprisoned for up to five years in addition to the period of imprisonment prescribed for the offense.

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## **Title: title-29**

### **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-02 - Prevention of Public Offenses**

#### **CHAPTER 29-02**

#### **PREVENTION OF PUBLIC OFFENSES**

29-02-01. Lawful resistance to commission of offense, by whom made.

Lawful resistance to the commission of a public offense may be made:

- 1.By the party about to be injured; or
- 2.By other parties.

29-02-02. Resistance by party about to be injured.

Resistance sufficient to prevent a public offense may be made by a party about to be injured:

- 1.To prevent an offense against the party's person or the party's family or some member thereof; or
- 2.To prevent an illegal attempt by force to take or injure property in the party's lawful possession.

29-02-03. Third person may resist offense.

Any person, in aid or defense of a person about to be injured by a public offense, may make resistance sufficient to prevent the offense.

29-02-04. Public offense may be prevented by officers.

Public offenses may be prevented by the intervention of officers of justice:

- 1.By requiring security to keep the peace;
- 2.By providing police in cities and by requiring their attendance in exposed places; and
- 3.By suppressing riots.

29-02-05. Persons aiding officers justified.

Whenever officers of justice are authorized to act in the prevention of public offenses, other persons who by their command act in their aid are justified in so doing.

29-02-06. Complaint for threatening, before whom laid.

A complaint may be laid before any magistrate mentioned in section 29 -01-14, authorized by law to act within the county, that a person has threatened to commit an offense against the person or property of another.

29-02-07. Complaint as to threatened offense.

A complaint within the meaning of section 29 -02-06 is a statement in writing, made to a magistrate, that a person has threatened to commit an offense against the person or property of another, and subscribed and sworn to by the complainant.

29-02-08. Magistrate must issue warrant.

If it appears from a complaint to a magistrate that there is just reason to fear the commission of an offense threatened by the person complained of, the magistrate shall issue a warrant directed generally to the sheriff of the county, marshal, or policeman of the city, reciting the substance of the complaint and commanding the officer forthwith to arrest the person complained of and to bring that person before the magistrate.

29-02-09. Procedure when charge controverted.

If a person complained of is brought before a magistrate upon the charge that that person threatened to commit an offense against another, the magistrate, if the charge is controverted, shall take testimony in relation thereto. The evidence on demand of the defendant must be reduced to writing and subscribed by the witnesses.

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29-02-10. When accused must be discharged.

If it appears that there is no just reason to fear the commission of an offense alleged to have been threatened, the person complained of must be discharged.

29-02-11. When accused must give undertaking.

If there is just reason to fear the commission of an offense, the person complained of may be required to enter into an undertaking in such sum, not exceeding one thousand dollars, as the magistrate may direct, with one or more sufficient sureties to abide the order of the next district court of the county, and in the meantime to keep the peace toward the people of this state, and particularly toward the complainant.

29-02-12. When undertaking is or is not given.

If an undertaking to keep the peace as required by section 29 -02-11 is given, the party complained of must be discharged. If the party does not give it, the magistrate shall commit the person to prison specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

29-02-13. Accused committed - How discharged - Undertaking transmitted to district court.

If a person complained of for threatening to commit an offense against the person or property of another is committed for not giving security, that person, upon giving the same, may be discharged by any municipal judge who is authorized to act as a committing magistrate, or by the judge of the district court of the county. Any undertaking so accepted must be transmitted by the acting magistrate to the district court of the county for disposition at the next term.

29-02-14. Assault in presence of court - Security required - Committed on default.

A person who in the presence of a court or magistrate assaults or threatens to assault another, or to commit an offense against another's person or property, or who contends with another with angry words, may be ordered by the court or magistrate to give security, as is provided in section 29 -02-11, or if that person refuses to do so that person may be committed as is provided in section 29 -02-12.

29-02-15. Accused must appear at district court.

A person who has entered into an undertaking to keep the peace shall appear on the first day of the next term of the district court of the county. If that person does not, the court may forfeit that person's undertaking and order it to be prosecuted unless that person's default is excused.

29-02-16. Complainant not appearing - Accused discharged.

If the one who complained of a person who has entered into an undertaking to keep the peace does not appear on the first day of the next term of the district court of the county, the person complained of may be discharged unless good cause to the contrary is shown.

29-02-17. Procedure when parties appear.

If the complainant and accused both appear, as is required by sections 29 -02-15 and 29-02-16, the court may hear their proofs and allegations, and may discharge the undertaking or require a new one for a time not exceeding one year.

29-02-18. When undertaking broken.

An undertaking to keep the peace is broken on the failure of a person complained of to appear at the district court as provided in section 29 -02-15 or upon that person's being

convicted of a breach of the peace.

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29-02-19. Action upon the undertaking to keep peace.

If the state's attorney produces to the district court to which an undertaking to keep the peace is returned, evidence that the principal has been convicted of a breach of the peace, that court shall order the undertaking to be prosecuted and the state's attorney thereupon shall commence an action upon it in the name of this state.

29-02-20. What alleged in action.

In an action prosecuted for breach of an undertaking to keep the peace, the offense stated in the record of conviction must be alleged as the breach of the undertaking, and such record is conclusive evidence thereof.

29-02-21. Limitation.

Security to keep the peace or to be of good behavior cannot be required except as is prescribed in this chapter.

29-02-22. Costs to be taxed.

In all cases in which security is furnished under the provisions of this chapter to keep the peace, the court, in addition to the orders mentioned in this chapter, shall tax the costs against the complainant or defendant, or both, as justice may require, and shall enter judgment therefor. Such judgment may be enforced as a judgment for costs in a criminal case, and execution may issue therefor.

29-02-23. Police to attend public meetings - Direction.

The mayor or other officer having the direction of the police in a city shall order a force sufficient to preserve the peace to attend any public meeting when that person is satisfied that a breach of the peace is reasonably apprehended.

29-02-24. When officers may disperse assembly.

If the persons assembled and commanded to disperse do not immediately disperse, any magistrate or law enforcement officer may command the aid of a sufficient number of persons and may proceed in such manner as in that person's judgment is necessary to disperse the assembly and arrest the offenders.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-04 - Limitations**

### **CHAPTER 29-04**

#### **LIMITATIONS**

29-04-01. Prosecution for murder not limited.

There is no limitation of the time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

29-04-02. Prosecution for felony other than murder within three years.

Except as otherwise provided by law, a prosecution for any felony other than murder must be commenced within three years after its commission. Prosecution of felony offenses under chapter 12.1-23 or 50-24.8 must be commenced within the later of three years of commission of the last act that is an element of the offense, three years of discovery of the stolen property, or three years of discovery of the loss of the property or services. Nothing in this section prevents a person prosecuted for murder from being found guilty of any included offense and punished accordingly.

29-04-02.1. Prosecution for a felony sexual offense or human trafficking.

Except as otherwise provided by law, a prosecution for a felony violation of chapter 12.1-20 or for the crime of human trafficking must be commenced in the proper court within seven years after the commission of the offense.

29-04-03. Prosecution for misdemeanor or infraction within two years.

A prosecution of a misdemeanor or infraction, except as otherwise provided by law, must be commenced within two years after its commission. Prosecution of misdemeanor offenses under chapter 12.1-23 must be commenced within the later of two years of commission of the last act that is an element of the offense, two years of discovery of the stolen property, or two years of discovery of the loss of the property or services.

29-04-03.1. Prosecution for sexual abuse of minors.

1. Except as provided in subsection 2, a prosecution for a violation of sections 12.1-20-03 through 12.1-20-08 or of section 12.1-20-11 if the victim was under eighteen years of age at the time the offense was committed must be commenced in

the proper court within twenty-one years after the commission of the offense or, if the victim failed to report the offense within this limitation period, within three years after the offense was reported to law enforcement authorities.

2.If, based upon evidence containing deoxyribonucleic acid or a fingerprint obtained at the time of offense, a suspect is conclusively identified by deoxyribonucleic acid testing after the time period prescribed in subsection 1 has expired, a prosecution may be commenced within three years after the suspect is conclusively identified by the deoxyribonucleic acid testing or fingerprint authentication .

29-04-03.2. Statute of limitations as to child victim.

If the victim of a violation of chapter 12.1 -20 or of the crime of human trafficking is under the age of fifteen, the applicable period of limitation, if any, does not begin to run until the victim has reached the age of fifteen.

29-04-04. Time of defendant's absence not part of limitation.

If, when a crime or public offense is committed, the defendant is out of the state, or if the defendant is within the state and subsequently leaves the state, the information may be filed, or the indictment found, within the time herein limited, after the defendant's return to the state. No time during which the defendant is not an inhabitant of, or usually resident within, this state is part of the limitation.

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29-04-05. When prosecution is commenced.

A prosecution is commenced when a uniform complaint and summons, a complaint, or an information is filed or when a grand jury indictment is returned.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-06.1 - Tribal Arrest Warrants**

### **CHAPTER 29-06.1**

#### **TRIBAL ARREST WARRANTS**

29-06.1-01. Definitions.

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

1."Tribal arrest warrant" means any document issued by a court of a tribe in this state which authorizes a peace officer to take custody of a person.

2."Tribe" means any of the federally recognized Indian nations, tribes, or bands in this state.

29-06.1-02. Arrest with or without warrant.

1.A peace officer may arrest a person subject to a tribal arrest warrant if presented with the warrant and may arrest a person without a tribal arrest warrant upon probable cause to believe that the person is the subject of such a warrant. An arrest is authorized under this subsection only if the arrest warrant is issued for commission of a crime punishable as a misdemeanor under the applicable tribal ordinance or resolution.

2.The arrested person must be brought without unnecessary delay before the nearest available district judge.

3.The district judge shall issue an order continuing custody upon presentation of the tribal arrest warrant or, if the arrest is made without a warrant, upon testimony or affidavit showing probable cause to believe the person is the subject of such a warrant.

29-06.1-03. Court appearance.

1.The district judge shall inform the person appearing under section 29 -06.1-02 of the name of the tribe that has subjected the person to an arrest warrant, the basis for the arrest warrant, the right to assistance of counsel, and the right to require a judicial hearing before transfer of custody to the applicable tribal authority.

2.After being informed by the district judge of the effect of a waiver, the arrested person may waive the right to require a judicial hearing and consent to return to the applicable tribal authority by executing a written waiver in the presence of the judge. If the waiver is executed, the judge shall issue an order to transfer custody under section 29-06.1-04 or, with the consent of the applicable tribal authority, authorize the voluntary return of the person to that authority.

3.If a hearing is not waived under subsection 2, the district judge shall hold a hearing within three days, excluding weekends and holidays, after the appearance. The arrested person and the state's attorney of the county in which the hearing is to be

held must be informed of the time and place of the hearing. The judge shall release the person upon conditions that will reasonably assure availability of the person for the hearing or direct a law enforcement officer to maintain custody of the person until the time of the hearing. Following the hearing, the judge shall issue an order to transfer custody under section 29 -06.1-04 unless the arrested person establishes by clear and convincing evidence that the arrested person is not the person identified in the warrant.

4.If the judge does not order transfer of custody, the judge shall order the arrested person to be released.

29-06.1-04. Order to transfer custody.

1.A judicial order to transfer custody issued under section 29 -06.1-03 must direct a law enforcement officer to take or retain custody of the person until an agent of the applicable tribal authority is available to take custody. If the agent has not taken custody within three days, excluding weekends and holidays, the judge may order the release of the person upon conditions that will assure the person's availability on a specified date within seven days, excluding weekends and holidays. If the agent has not taken custody within the time specified in the order, the person must be released.

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Thereafter, an order to transfer custody may be entered only if a new arrest warrant is issued.

2.The judge in the order transferring custody may authorize the voluntary return of the person with the consent of the applicable tribal authority.

3.An order to transfer custody is not appealable. An order denying transfer is appealable.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-07 - Preliminary Examinations**

### **CHAPTER 29-07**

#### **PRELIMINARY EXAMINATIONS**

29-07-01. Magistrate's duty - Testimony may be taken.

Superseded by N.D.R.Crim.P., Rules 5, 44.

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

1.Lawyers provided to represent indigent persons must be compensated at a reasonable rate to be determined by the commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person prosecuted in district court, other than for a violation of a home rule county's ordinance, when approved by the commission, must be paid by the state. Expenses necessary for the adequate defense of an indigent person prosecuted for violation of a home rule county's ordinance must be paid by the home rule county. Expenses necessary for the adequate defense of an indigent person prosecuted in municipal court, when approved by the judge, must be paid by the city in which the alleged offense took place. The city shall also pay the expenses in any matter transferred to district court pursuant to section 40-18-06.2 or 40-18-15.1, in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40 -18-19, and in an appeal or postconviction matter seeking relief from a conviction resulting from violation of a municipal ordinance. A defendant requesting representation by counsel at public expense, or for whom counsel provided at public expense without a request is considered appropriate by the court, shall submit an application for indigent defense services. For an application for indigent defense services in the district court, a nonrefundable application fee of thirty-five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the case, the fee amount must be added to the amount to be reimbursed under this section. Application fees collected under this subsection must be forwarded for deposit in the indigent defense administration fund established under subsection 4.

2.A defendant for whom counsel is provided at public expense, subject to this

subsection, shall reimburse the state, home rule county, or city such sums as the state, home rule county, or city expends on the defendant's behalf.

a. At the time counsel is provided for a defendant, the 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. Unless it finds that there is no likelihood that the defendant is or will be able to pay attorney's fees and expenses, the court, in its judgment of conviction, and in any order or amended judgment entered following a revocation or other postjudgment proceeding, shall order the defendant to reimburse the presumed amount of indigent defense costs and expenses, as determined by the commission, and shall notify the defendant of the right to a hearing on the reimbursement amount. If the defendant or prosecutor requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the actual amount of attorney's fees and expenses must be shown. 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 attorney's fees 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

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court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

3. The attorney general, the state's attorney of the home rule county, or the prosecuting attorney of the city in which the alleged offense took place, if reimbursement has not been received, shall seek civil recovery of any amounts expended on the defendant's behalf anytime the attorney general, state's attorney, or city attorney determines the person for whom counsel was appointed may have funds to repay the state, home rule county, 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 attorney general, state's attorney, or prosecuting attorney may contract with a private sector collection agency for assistance in seeking recovery of such funds. Before referring the matter to a collection agency, the state's attorney shall notify the person who is the subject of the collection action.

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

29-07-02. Waiver of examination.

Superseded by N.D.R.Crim.P., Rule 5.

29-07-03. Examination of witnesses.

If the accused waives preliminary examination, the state's attorney may cause the testimony of any witness or witnesses to be taken in writing as is provided by law, with the same force and effect as if such examination had not been waived. Such testimony must be returned by the magistrate to the district court of the magistrate's county as in other cases.

29-07-04. Magistrate must allow accused counsel.

Superseded by N.D.R.Crim.P., Rules 5, 44.

29-07-05. The preliminary examination.

Superseded by N.D.R.Crim.P., Rule 5.

29-07-06. Change of place of hearing - Procedure.

Whenever a person accused of a public offense is brought before a municipal judge for examination, and, at any time before the examination is commenced, the person files with the municipal judge an affidavit stating that by reason of the bias or prejudice of the municipal judge the person believes a fair or impartial examination cannot be had before the municipal judge, the municipal judge shall transfer the action, and all the papers therein, including a certified

copy of the municipal judge's docket entries, to a district judge serving the county. The state's attorney, or assistant state's attorney, in the same manner and for the same reasons as the defendant, may obtain a transfer of the action from the municipal judge before whom the action was commenced, or from the district judge to whom it has been transferred on the application of the state, in which event it must be transferred to another district judge designated by the presiding judge of the judicial district. The place of examination cannot be changed more than once by each party under this section.

29-07-07. Adjournment - Three days limit.

Superseded by N.D.R.Crim.P., Rule 5.

29-07-08. Disposition of accused on adjournment.

Superseded by N.D.R.Crim.P., Rule 5.

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29-07-09. Commitment for examination.

Superseded by N.D.R.Crim.P., Rule 5.

29-07-10. Summoning of witnesses.

Superseded by N.D.R.Crim.P., Rule 5.

29-07-11. Procedure on examination - Reading complaint.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-12. How witnesses examined.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-13. Witnesses kept separate - Exclusion during the examination of any witness.

The magistrate may exclude all witnesses who have not been examined. The magistrate also may cause the witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

29-07-14. Persons not excluded.

The magistrate holding a preliminary hearing, upon the request of the defendant, may exclude from the examination every person except the magistrate's clerk, the prosecutor and the prosecutor's counsel, the attorney general of the state, the state's attorney of the county, the defendant and the defendant's counsel, and such other person as the defendant may designate, and the officer having the defendant in custody, but such exclusion, and the extent thereof, is within the discretion of the court.

29-07-15. Testimony reduced to writing - Conditions - Payment.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-16. Accused may produce witnesses after state concludes testimony.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-17. Keeping and disposition of depositions - Violation is a misdemeanor.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-18. Procedure - Accused discharged.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-19. Costs taxed when prosecution malicious.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-20. Accused held to answer.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-21. If offense not bailable defendant committed.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-22. When offense bailable.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-23. When bail not taken.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-24. Commitment - Procedure.

Superseded by N.D.R.Crim.P., Rule 5.1.

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29-07-25. Form of commitment.

Superseded by N.D.R.Crim.P., Rules 5.1, 58.

29-07-26. Magistrate must deliver papers to district court.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-27. Charge investigated by magistrate if corporation appears.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-28. Appearance by corporation - Hearing - Certificate of magistrate - Procedure.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-29. Return of certificate of probable cause - Procedure.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-30. Information or indictment against corporation without preliminary hearing.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-31. Effect of failure by corporation to answer summons.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-32. Record of magistrate to be kept on docket.

Superseded by N.D.R.Crim.P., Rule 5.1.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-10.1 - Grand Jury**

### **CHAPTER 29-10.1**

#### **GRAND JURY**

29-10.1-01. Grand jury defined - Formation - Functions.

A grand jury must consist of not less than eight nor more than eleven persons of the county possessing the qualifications of jurors prescribed by law, and impaneled and sworn to inquire into all crimes or public offenses against laws of this state triable within the county and, if the evidence warrants, present them to the district court by written indictment.

29-10.1-02. When grand jury may be called.

No grand jury may be drawn, summoned, or convened in any county within this state unless the district judge thereof shall so direct by a written order filed with the clerk of the court in the county wherein the said grand jury is required to attend. Any judge of the district court for any county must direct, in the manner herein provided, that a grand jury be drawn and summoned to attend whenever:

1. The judge deems the attendance of a grand jury necessary for the due enforcement of the laws of the state;

2. The state's attorney of the county wherein the court is to be held, in writing, requests the judge so to do; or

3. A petition in writing requesting the same is presented to the judge, signed by qualified electors of the county equal in number to at least twenty-five percent of the total vote cast in the county for the office of governor of the state at the last general election, but the number of signatures required may not be fewer than two hundred twenty-five nor exceed five thousand.

29-10.1-03. Judge to summon grand jury.

Upon presentment of the request of petition, the judge shall promptly summon and convene the grand jury.

29-10.1-04. Petition for grand jury - Petitioners - Number - Session.

The petition for a grand jury prescribed by section 29-10.1-02 must be verified on information and belief by at least three of the petitioners. The formation of a grand jury under this chapter may not be invalidated should it appear or be proven after the grand jury has been summoned that any of the petitioners were not qualified electors or that the petition was not signed by the required number of qualified electors. No grand jury may remain in session in excess of ten calendar days, unless the judge by written order filed with the clerk of the court extends the session as may be necessary. Unless extended, the grand jury must be discharged at the close of the tenth day of its session. Saturdays, legal holidays, and days in recess must be excluded in computing the duration of the initial or extended session.

29-10.1-05. Challenges by state, when, and causes.

1. The state may challenge the panel of a grand jury or an individual grand juror at any time before the grand jury is impaneled and sworn.

2. A challenge to the panel may be asserted by the state upon the ground only that the grand jurors were not selected according to law.

3. A challenge to an individual grand juror may be asserted by the state upon the ground only that the person is not a qualified juror.

29-10.1-06. Challenge may be oral or written.

A challenge to the panel or to an individual grand juror may be oral or in writing and must be tried to the court.

29-10.1-07. Challenge allowed or disallowed - Entry by clerk.

The court shall allow or disallow a challenge to the panel of a grand jury or to an individual

grand juror, and the clerk shall enter its decision upon the minutes.

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29-10.1-08. Challenge allowed - Procedure.

Whenever a challenge to the panel or to an individual grand juror is allowed, the court shall make an order to the jury commission to summon without delay a sufficient number of persons to complete or to form a grand jury.

29-10.1-09. Jury discharged if challenge to panel allowed.

If a challenge to the panel is allowed, the grand jury must be discharged in which event the judge may order another grand jury to be summoned and convened.

29-10.1-10. Challenge to panel after indictment presented.

At any time prior to pleading to the indictment, the person against whom an indictment has been found and presented may move the court to dismiss the indictment upon the ground that the jurors were not selected or impaneled according to law.

29-10.1-11. Court to appoint foreman and vice foreman.

When the grand jury is completed, the court shall appoint one of the jurors to be foreman and another to act as foreman in case of the absence of the foreman.

29-10.1-12. Oath of grand jurors.

Superseded by N.D.R.Ct. 6.10.

29-10.1-13. Court shall charge grand jury - Duty of court to advise.

After the grand jury is impaneled and sworn, the court shall charge the jurors concerning the offenses that may be considered by them or that are likely to come before them, and concerning their duties as prescribed by law. The court, upon request of the grand jurors and at all reasonable times, shall advise them regarding their duties.

29-10.1-14. Retirement of grand jurors.

After the charge by the court, the grand jurors shall retire to a private room which must be provided for by the county commissioners and perform their duties as prescribed by law.

29-10.1-15. Clerk appointment by grand jurors - Duty.

The grand jury, unless a competent reporter is appointed, shall appoint a member of the jury as clerk, who shall preserve minutes of all the proceedings of the jurors, and exhibits presented, except of the votes of the individual members, and of the evidence given before them. Upon the conclusion of the grand jury session, all exhibits must be placed in the custody of the state's attorney unless otherwise directed by the court.

29-10.1-16. Reporter - Transcript.

1. Unless otherwise directed by the court, the grand jury shall appoint a competent reporter who must be sworn and who shall record in shorthand or stenotype notes, the testimony given in matters before the grand jury. Whenever an indictment is returned, and if so directed by the court, the reporter shall cause the testimony to be transcribed.

2. Whenever the court directs the testimony to be transcribed, the reporter shall certify and file with the clerk of court the original and sufficient copies of the transcript so as to provide a copy for each person indicted and one for the state's attorney or prosecutor.

The reporter shall complete the certification of the transcript within thirty days after the date of the order unless a different period of time is specified by the court.

3. All exhibits presented to the grand jury must be placed in the custody of the state's attorney or prosecutor unless otherwise directed by the court.

29-10.1-17. Selection of jurors.

Before accepting a person drawn as a grand juror, the court must be satisfied that such person is duly qualified to act as such. A person drawn as a juror may be excused for good cause by the court before the person is sworn.

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29-10.1-18. Expenses.

All necessary expenses of the grand jury incurred in its official capacity must be paid by the state out of funds appropriated to the supreme court.

29-10.1-19. Subpoenas.

The grand jury may issue subpoenas or subpoenas duces tecum to any witness within the state. Subpoenas may also be issued by the state's attorney or prosecutor in the manner provided in the statutes or North Dakota Rules of Criminal Procedure.

29-10.1-20. Filling vacancies.

Whenever the membership of a grand jury is reduced in number for any reason, after the grand jury has been impaneled, the judge may direct that the vacancy be filled, and shall so

direct if necessary to maintain the minimum number required, in the same manner as the original members were selected. No person selected as a grand juror to fill a vacancy may vote on any matter upon which evidence has been taken prior to the time of the person's selection.

29-10.1-21. General duties of grand jury.

Each grand jury impaneled within any county shall inquire into offenses against the criminal laws of the state alleged to have been committed within that county. The alleged offenses may be brought to the attention of the grand jury by the court or by any state's attorney or the state's attorney's designee. The state's attorney or the state's attorney's designee shall inform the grand jury of the alleged offense, the identity of the alleged offender, and the state's attorney or state's attorney's designee's action or recommendation. As to any offense committed while the grand jury is in session, the state's attorney or prosecutor may proceed with a preliminary examination or the filing of an information, as provided for by law, and prosecute the charge, and, under such conditions, the grand jury is not required to inquire into such offense. The presentment of an indictment against a person does not preclude the prosecution of such person for the same offense upon a criminal complaint or information previously filed with the court.

29-10.1-22. Subjects of grand jury inquiry.

Whenever directed by the district court, the grand jury shall inquire into:

1. The condition and management of the public prisons in the county; and
2. Willful and corrupt felonious misconduct in office of public officials of every description in the county.

29-10.1-23. Grand jurors entitled to access to prisons and public records.

Grand jurors are entitled to free access, at all reasonable times, to public prisons, and to the examination, without charge, of all public records in the county.

29-10.1-24. Member must report known offense and must give evidence.

If a member of a grand jury knows or has reason to believe that a public offense which is triable in the county has been committed, the member shall declare such fact to the member's fellow jurors, who shall investigate the same. In such investigation, the grand juror may be sworn as a witness.

29-10.1-25. Oath or affirmation to witness.

Superseded by N.D.R.Ct. 6.10.

29-10.1-26. Reception of evidence.

1. Subject to subsection 2, the grand jury shall receive only evidence which is:

- a. Given by witnesses produced and sworn before the grand jury;
- b. Furnished by writings, material objects, or other things perceivable through the senses; or

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c. Contained in a deposition or transcript that is admissible under the North Dakota Rules of Criminal Procedure.

2. The grand jury shall receive only evidence that would be admissible over objection at the trial of a criminal action, but the fact the evidence inadmissible at the trial was received by the grand jury does not render the indictment void if sufficient competent evidence to support the indictment was received by the grand jury.

29-10.1-27. Exculpatory evidence.

The grand jury shall weigh all the evidence submitted to it, and when it has reason to believe that there is exculpatory evidence within its reach, it shall order the evidence to be produced, and for that purpose may require the state's attorney or prosecutor to issue process for the production of such evidence.

29-10.1-28. Who may be present during sessions of grand jury.

No person may be present at a session of the grand jury, other than the witnesses under examination, the judge while giving advice requested by the grand jury, the state's attorney or prosecutor, the attorney general, and the reporter, or interpreter, if any. No person other than the grand jurors may be present while the grand jurors are deliberating or voting, nor may the grand jurors deliberate or vote while any other persons are present. Whenever the grand jury is investigating the state's attorney or any person connected with the state's attorney's office, neither the state's attorney nor any of the state's attorney's assistants or staff may be present before such grand jury during the time of such investigation, except as a witness and, after such appearance as a witness, shall leave the place where the grand jury is in session.

29-10.1-29. Duty of state's attorney.

The state's attorney or prosecutor, upon the request of the grand jurors, shall advise them regarding their duties. The state's attorney or prosecutor, at all reasonable times, may appear before them on the person's own motion for the purpose of giving the grand jurors information or advice regarding any matter cognizable by them and may interrogate witnesses before them whenever the state's attorney or prosecutor believes it necessary.

29-10.1-30. Secrecy of things said and votes - Limited disclosure by certain persons and under certain conditions.

1. Every member of a grand jury shall keep secret whatever that member or any other grand juror may have said, or in what manner that member or any other grand juror may have voted on a matter before the jurors.

2. Matters other than the deliberations and vote of any grand juror may be disclosed by the state's attorney, prosecutor, or attorney general solely in the performance of the person's duties.

3. Otherwise a juror, attorney, interpreter, reporter, or public servant, having official duties in or about a grand jury room or proceeding, may disclose matters occurring before the grand jury only when so directed by the court pursuant to section 29 -10.1-31.

4. A witness may not disclose any matter about which the witness is interrogated, or any proceedings of the grand jury had in the witness's presence, except to the witness's attorney or when so directed by the court, until an indictment is filed and the accused person is in custody.

29-10.1-31. When juror may disclose testimony upon order of the court.

A member of a grand jury or its reporter or interpreter may be required by any court to disclose the testimony of a witness examined before the grand jury for the purpose of impeachment of the witness before the court, or to disclose the testimony given before them by any person, upon a charge against the person for perjury in giving the person's testimony, or upon the person's trial in a criminal prosecution.

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29-10.1-32. Grand juror cannot be questioned.

A grand juror cannot be questioned for anything the grand juror may say, or any vote the grand juror may give, in a session of the grand jury, relative to a matter legally pending before the jurors, except upon a charge against the grand juror for perjury in giving the person's testimony to the person's fellow jurors.

29-10.1-33. When indictment ought to be found.

The grand jurors shall find an indictment charging a person with the commission of an offense when all the evidence before them, taken together, is such as in their judgment would warrant a conviction by the trial jury.

29-10.1-34. Finding indictment - Number of jurors required.

An indictment cannot be found without the concurrence of at least six grand jurors.

Whenever so found, it must be endorsed "a true bill" and the endorsement must be signed by the foreman of the grand jury. The names of the witnesses known to the grand jury must be endorsed thereon before the indictment is presented to the court.

29-10.1-35. Presentment of indictment to court by foreman.

An indictment found by the grand jurors must be presented by the foreman, in their presence, to the court, and must be filed with the clerk.

29-10.1-36. Persons indicted - How arrested.

Whenever an indictment is found and presented against a person, the proceedings prescribed in chapter 29 -12 govern when necessary to secure the person's appearance before the court.

29-10.1-37. Jurors to be discharged upon completion of business.

Upon the completion of the business before them, or whenever the court is of opinion that the public interests will not be served by further continuation of their sessions, the grand jurors must be discharged by the court.

29-10.1-38. Transcript demand - Waiver of transcript and preliminary examination, when.

Within five days after a first appearance before a magistrate, the person against whom an indictment has been found and presented may make a written demand to the district judge for a copy of the transcript of the testimony given before the grand jury as it relates to that person and the charges against that person. Upon receipt of such written demand, the judge shall issue an appropriate order. If the judge for any reason determines that a copy of a transcript of the

testimony cannot be obtained, the person indicted is entitled, but not otherwise, to a preliminary examination, as provided by the statutes or North Dakota Rules of Criminal Procedure for persons otherwise charged with a crime. Under such conditions, the preliminary examination must be had before a judge of the district court serving the county in which the crime was committed or is triable. Failure to make such demand within the time prescribed constitutes a waiver of the right to the transcript or to a preliminary examination.

29-10.1-39. Violation constitutes contempt.

Any person who willfully violates any provision of this chapter is guilty of contempt of court.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-10.2 - State Grand Jury**

### **CHAPTER 29-10.2**

#### **STATE GRAND JURY**

##### **29-10.2-01. Definition.**

As used in this chapter, "organized crime" means racketeering, as defined in section 12.1-06.1-01, or any combination or conspiracy of two or more persons to engage in criminal activity as a significant source of income or livelihood, or to violate, aid, or abet the violation of criminal laws relating to prostitution, gambling, loansharking, drug abuse, illegal alcohol or drug distribution, counterfeiting, extortion, or corruption of law enforcement officers or other public officers or employees.

##### **29-10.2-02. Attorney general to request state grand jury - District court to impanel jury.**

Whenever the attorney general considers it to be in the public interest to convene a grand jury with jurisdiction extending beyond the boundaries of any single county, the attorney general shall petition a judge of the district court for an order impaneling a state grand jury. The judge shall, upon good cause shown, order the impaneling of a state grand jury which has jurisdiction to investigate and indict for crimes committed anywhere within the state. In determining good cause for impaneling a state grand jury, the judge shall require a showing that the matter concerns multicounty criminal activities which involves organized crime as that term is defined herein or corruption of law enforcement officers or other public officers, officials, or employees. The authority and powers granted to the attorney general by this chapter do not supplant or diminish the authority and powers as set out in chapter 29 -10.1.

##### **29-10.2-03. Impaneling state grand jury - Selection - Composition.**

The judge granting the order to impanel a state grand jury shall determine the counties from which the grand jurors are to be selected with due regard for the expense involved and the inconvenience of travel. The judge granting the order for a state grand jury shall notify the clerk of district court of each county from which the judge intends to select the members of the state grand jury. Upon receipt of the notice to impanel a state grand jury, each clerk of district court shall prepare a list of nine prospective state grand jurors from existing county jury lists in the manner provided by chapter 27 -09.1, and forward the clerk's state grand jury list to the clerk of district court of the county in which the order to impanel a state grand jury was granted. The judge granting the order shall impanel the state grand jury from such lists. A state grand jury must be composed of not less than eight nor more than eleven persons and each grand juror shall possess the qualifications of jurors within their respective counties as provided by law. However, not more than one -half of the members may be residents of one county. The members of the state grand jury must be selected and the foremen appointed in the manner provided by chapter 29-10.1 and shall serve a term or terms as provided therein.

##### **29-10.2-04. Summoning jurors - Presentation of evidence - Return of indictments.**

1.State grand jurors must be summoned in the same manner and must be governed by the same provisions as jurors of county grand juries. Judicial supervision of the state grand jury must be maintained by the judge who granted the order impaneling the state grand jury in the same manner as with county grand juries. All indictments or other formal returns of any kind made by the state grand jury must be returned to that judge. An indictment may be found only upon the concurrence of at least six jurors.

2.The presentation of the evidence must be made to a state grand jury by the attorney general, an assistant attorney general, or special counsel appointed by the attorney general.

3.Any indictment by a state grand jury must be returned to the supervising judge without any designation of venue. Thereupon the judge shall designate the county of venue for

the purposes of trial.

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29-10.2-05. Grand jury investigations - Confidentiality - Exceptions.

1. In addition to its power of indictment, a state grand jury impaneled under this chapter may, at the request of the attorney general, cause an investigation to be made into the extent of multicounty criminal activity which involves organized crime as defined herein or corruption of law enforcement officers or other public officers, officials, or employees.

2. Disclosure of any matters occurring before a state grand jury, other than its deliberation and the vote of any juror, may be made to the attorney general for use in the performance of the attorney general's duties. The attorney general may disclose so much of the state grand jury's proceedings to law enforcement agencies as the attorney general considers essential to the public interest and effective law enforcement.

3. A report or presentment of a state grand jury relating to an individual which is not accompanied by a true bill of indictment may not be made public or be published until the individual concerned has been furnished a copy of the report and given thirty days to file with the district court a motion to suppress or seal the report or a portion that is improper and unlawful. The motion, whether granted or denied, automatically acts as a stay of public announcement of the report, or portion of the report, until the district court's ruling on the motion is either affirmed or denied by an appellate court, or until the time in which the order may be appealed has expired, whichever occurs first. The report or portion of the report which is suppressed or sealed may not be opened even by order of the court.

29-10.2-06. Juror fees and expenses.

1. State grand jurors, in addition to receiving the juror fee provided by law for petit jurors, must be reimbursed for necessary expenses on a per diem basis in the same manner and at the same rate as state employees.

2. The costs and expenses incurred in impaneling a state grand jury and in the performance of its functions and duties must be paid by the state out of funds appropriated to the attorney general.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-12 - Process Upon Information and Indictment**

### **CHAPTER 29-12**

#### **PROCESS UPON INFORMATION AND INDICTMENT**

29-12-01. Presence enforced by direction of court.

Superseded by N.D.R.Crim.P., Rule 10.

29-12-02. Warrant of arrest.

Superseded by N.D.R.Crim.P., Rule 46.

29-12-03. Warrant, clerk to issue.

Superseded by N.D.R.Crim.P., Rule 9.

29-12-04. Warrant, form - Felony.

Superseded by N.D.R.Crim.P., Rules 9, 58.

29-12-05. Bench warrant, misdemeanor, infraction, or bailable felony.

If an offense is a misdemeanor, an infraction, or a bailable felony, the bench warrant issued must be in a form similar to form 12 as contained in the appendix to the North Dakota Rules of Criminal Procedure but must add to the body thereof a direction to the following effect: "or if the person requires it, that you take the person before any magistrate of that county or in the county in which you arrest the person, that the person may give bail to answer the information (or indictment)".

29-12-06. Court must fix amount of bail.

Superseded by N.D.R.Crim.P., Rule 9.

29-12-07. Arrest upon bench warrant offense not bailable - Custody.

A defendant, when arrested under a bench warrant for an offense not bailable, must be held in custody by the sheriff of the county in which the information is filed or the indictment found.

29-12-08. Warrant served in any county.

Superseded by N.D.R.Crim.P., Rule 9.

29-12-09. Magistrate taking bail - Procedure.

If a defendant is brought before a magistrate of another county under a bench warrant for the purpose of giving bail, the magistrate shall proceed in respect thereto in the same manner as if the defendant had been brought before the magistrate upon a warrant of arrest, and the same proceedings may be had thereon.

29-12-10. Felony, bail given - Increased amount.

When an information or indictment is for a felony, and the defendant, before the filing or finding thereof, has given bail for the defendant's appearance to answer the charge, the court to which the information or indictment is presented, or sent, or removed for trial, may order the defendant to be committed to actual custody either without bail, or until the defendant gives bail in an increased amount, to be specified in the order.

29-12-11. Procedure - Defendant present, defendant absent.

If a defendant is present when an order for a bench warrant is made, the defendant must be committed forthwith. If the defendant is not present, a bench warrant must be issued and proceeded upon in the manner provided in this chapter.

29-12-12. Appearance of corporation charged with offense - Pleas.

Superseded by N.D.R.Crim.P., Rule 43.

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29-12-13. Information filed or indictment returned - Summons.

If an information is filed without a preliminary examination, or an indictment is returned against a corporation or limited liability company, the clerk of the district court shall issue a summons in the corporate name of the corporation or limited liability company in the form prescribed in rule 4 of the North Dakota Rules of Criminal Procedure commanding it to appear and answer the information or indictment. Such summons must be served as a summons in a civil action is served.

29-12-14. Default of a corporation or limited liability company - Plea - Fine collected.

Whenever a sheriff or other officer returns a summons issued as is provided in section 29-12-13 with the officer's certificate showing due service thereof, the corporation or limited liability company, if it does not appear on and after the day appointed in such summons for its appearance, must be considered in default and the court shall order the clerk to enter a plea of not guilty for said corporation or limited liability company in the minutes of the court, and all further proceedings must be had in said action as if the corporation or limited liability company had appeared and pleaded not guilty to the information or indictment. If upon the trial the corporation or limited liability company is found guilty, the court shall impose a fine upon it as prescribed by law and shall enter judgment for the amount of such fine and the costs of said action in the same manner as on a judgment in a civil action.

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**2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-13 - Arraignment [Superseded by North Dakota Rules of Criminal Procedure]**

CHAPTER 29-13

ARRAIGNMENT

[Superseded by North Dakota Rules of Criminal Procedure]

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**2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-14 - Motions and Pleas [Superseded by North Dakota Rules of Criminal Procedure]**

CHAPTER 29-14

MOTIONS AND PLEAS

[Superseded by North Dakota Rules of Criminal Procedure]

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**2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-18 - Dismissal of Prosecution [Superseded by North Dakota Rules of Criminal Procedure]**

CHAPTER 29-18

DISMISSAL OF PROSECUTION

[Superseded by North Dakota Rules of Criminal Procedure, Rule 48]

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-19 - Continuance**

### **CHAPTER 29-19**

#### **CONTINUANCE**

29-19-01. Definition of continuance.

A continuance, within the meaning of this chapter, is the postponement of a cause for any period of time.

29-19-02. Right to speedy trial.

In a criminal prosecution, the state and the defendant each shall have the right to a speedy trial. The right to a speedy trial in a criminal case in which the charging instrument contains a charge of a felony offense under section 19 -03.1-23 or under chapter 12.1 -20 is for the trial to begin within ninety days of the date the party elects this right. The prosecution and the defendant shall elect this right within fourteen days following the arraignment. The court may allow the trial to begin later than ninety days of the arraignment for good cause.

29-19-03. Court may grant continuance.

The court, upon a showing of sufficient cause therefor by either party, may direct the trial of a cause to be postponed to another day in the same term or to the next term.

29-19-04. Cause for postponement.

Any cause that would be considered adequate for a postponement of a civil action is sufficient in a criminal action.

29-19-05. When application for continuance to be made.

An application for a continuance may be made when a criminal action is called for trial, or at any time previous thereto.

29-19-06. Application for continuance on ground of absent witness.

An application for a continuance on the ground that a witness is absent must show:

1. That the applicant has used due diligence to prepare for the trial;
2. The nature of the diligence used;
3. The name and residence of the absent witness;
4. What the applicant expects or believes such witness would testify were that witness present and orally examined in court;
5. That the testimony of the witness is material;
6. The nature of any document wanted and where the same may be found;
7. That the same facts cannot be satisfactorily shown by other evidence; and
8. That the witness is not absent through the connivance or counsel of the applicant.

29-19-07. Application for continuance on ground defendant or attorney is member of assembly - Grounds.

An application for a continuance on the ground that the defendant or the defendant's attorney of record is a member of either house of the legislative assembly must show:

1. That the legislative assembly then is, or at the time of trial, will be in session;
2. If made by the attorney, that the person has been the attorney of record for the defendant for more than fifteen days prior to the making of the application;
3. That the applicant is a member of one of the houses of the legislative assembly;
4. That the applicant then is, or at the beginning of the term of court in which said action is pending will be, actually engaged in the person's duties in the assembly; and
5. That the applicant's attendance is necessary to a fair and proper trial of said action.

Service of the application must be made at least ten days before the opening of the term of court at which such action is pending. The case may not be tried over the objection of the defendant within ten days after the adjournment of the legislative assembly.

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29-19-08. Application for continuance to be in writing - Contents.

An application for a continuance must be in writing unless otherwise ordered by the court. Such application must specify the ground or grounds upon which it is based and must be filed by the state's attorney or counsel for the defendant, as the case may be.

29-19-09. Hearing of application and action thereon.

The party applying for a continuance may file affidavits in support of that application and counter affidavits may be received or denied as the court may direct.

29-19-10. Entry of reasons for continuance in minutes of court.

Whenever a continuance is granted, the reasons therefor must be entered in the minutes of the court.

29-19-11. Continuance when there are several defendants.

When there are several defendants and a continuance is granted on the application of one or more but not of all defendants, the trial of the other defendants must proceed unless the court otherwise directs.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-23 - Proceedings After Verdict and Before Judgment**

### **CHAPTER 29-23**

#### **PROCEEDINGS AFTER VERDICT AND BEFORE JUDGMENT**

29-23-01. Statement of the case - How constituted.

Superseded by N.D.R.App.P., Rules 10, 28.

29-23-02. Statement of case - Its office - What need not be embodied.

Superseded by N.D.R.App.P., Rules 10, 28.

29-23-03. Statement of the case - By whom settled.

Superseded by N.D.R.App.P., Rules 10, 28.

29-23-04. Statement of the case - Filing thereof - Made part of record.

Superseded by N.D.R.App.P., Rules 10, 28.

29-23-05. Matters deemed excepted to.

Superseded by N.D.R.Crim.P., Rule 51.

29-23-06. Instructions excepted to part of record.

Superseded by N.D.R.Crim.P., Rules 30, 51.

29-23-07. Clerk to enter orders - Certified copies.

The clerk of the district court in which any criminal action or proceeding is pending or tried shall enter, in the minutes of such court, each ruling or decision of the court made in open court, if such ruling is not noted by the official reporter. A certified copy of any or all such entries must be and become a part of the record of said action.

29-23-08. When supreme court may settle statement.

Superseded by N.D.R.App.P., Rules 10, 28.

29-23-09. Time may be extended.

Superseded by N.D.R.App.P., Rules 10, 28.

29-23-10. Title construed.

Nothing in this title contained is to be construed so as to deprive either party of the right to take advantage of any action or decision of the court in a criminal action or proceeding which affects any other material or substantial right of either party, whether before or after the trial, or on such trial.

29-23-11. An error in record basis of motion for new trial or appeal.

Any error committed by the court in or by any decision, ruling, instruction, or other act, and appearing in the record of the action, may be taken advantage of upon a motion for a new trial or in the supreme court on an appeal.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-24 - Motion for New Trial [Superseded by North Dakota Rules of Criminal Procedure]**

### **CHAPTER 29-24**

#### **MOTION FOR NEW TRIAL**

[Superseded by North Dakota Rules of Criminal Procedure, Rule 33]

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-25 - Motion in Arrest of Judgment**

### **CHAPTER 29-25**

#### **MOTION IN ARREST OF JUDGMENT**

29-25-01. Motion in arrest of judgment defined.

Superseded by N.D.R.Crim.P., Rule 34.

29-25-02. Grounds for arrest of judgment.

Superseded by N.D.R.Crim.P., Rule 34.

29-25-03. Form and contents of motion - Entry in minutes.

Superseded by N.D.R.Crim.P., Rule 34.

29-25-04. Notice of motion - When motion heard and decided.

Superseded by N.D.R.Crim.P., Rule 34.

29-25-05. Effect of allowing a motion in arrest.

The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which the defendant was before the information was filed or the indictment found.

29-25-06. Judgment arrested - Further prosecution - Acquittal.

If, from the evidence in a trial, there is reason to believe the defendant guilty, and a new information or indictment can be framed upon which the defendant may be convicted, the court may order the defendant to be recommitted to the officer of the proper county, or admitted to bail anew, to answer the new information or indictment. If the evidence shows the defendant guilty of another offense, the defendant must be committed or held thereon, and in neither case may the verdict be a bar to another prosecution. If no evidence appears sufficient to charge the defendant with any offense, the defendant, if in custody, must be discharged, or if admitted to bail, the defendant's bail must be exonerated, or if money has been deposited instead of bail, it must be refunded, and the arrest of judgment operates as an acquittal of the defendant of the charge upon which the information or indictment was founded.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-29.1 - Administrative Search Warrants**

### **CHAPTER 29-29.1**

#### **ADMINISTRATIVE SEARCH WARRANTS**

29-29.1-01. Warrants to conduct inspections authorized by law.

1. Notwithstanding the provisions of chapter 29 -29, any official or employee of the state or of a unit of county or local government of North Dakota may, under the conditions specified herein, obtain a warrant authorizing to conduct a search or inspection of property if such a search or inspection is one that is elsewhere authorized by law, either with or without the consent of the person whose privacy would be thereby invaded, and is one for which such a warrant is constitutionally required.

2. The warrant may be issued by any magistrate whose territorial jurisdiction encompasses the property to be inspected.

29-29.1-01.1. Warrant for electronic communication information.

1. As used in this section, "Electronic communication information" means any information about an electronic communication or the use of an electronic communication service, limited to the contents of electronic communications and precise or approximate location of the target sender or target recipient at any point during the communication.

2. Notwithstanding chapter 29 -29, any official or employee of the state or of a unit of county or local government of the state may, under the conditions specified in this section, obtain a warrant requiring disclosure of electronic communication information.

3. A warrant issued under this section may authorize the seizure of electronic storage media or the seizure or copying of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant.

4. Under this section, the time for executing the warrant refers to the seizure or onsite copying of the media or information, and not to any later offsite copying or review.

5. The issuing magistrate may grant an extension of a warrant on the owner or the possessor of electronic communication information upon an application under oath stating the owner or the possessor has not produced the requested electronic communication information within ten days and that an extension is necessary to achieve the purposes for which the search warrant was granted. An extension may not exceed thirty days.

29-29.1-02. Conditions to be met before issuance.

The issuing magistrate shall issue the warrant when the magistrate is satisfied the following conditions are met:

1. The one seeking the warrant shall establish under oath or affirmation that the property or electronic communication information to be searched or inspected is to be searched or inspected as a part of a legally authorized program of inspection which naturally includes that property or electronic communication information, or that there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such a search or inspection of that property or electronic communication information ;

2. An affidavit indicating the basis for the establishment of one of the grounds described

in subsection 1 must be signed under oath or affirmation by the affiant; and  
3.The issuing magistrate shall examine the affiant under oath or affirmation to verify the accuracy of the matters indicated by the statement in the affidavit.

29-29.1-03. Requirements for valid issuance.

The warrant is validly issued only if it meets the following requirements:

1.It must be signed by the issuing magistrate and must bear the date and hour of its issuance above the magistrate's signature with a notation that the warrant is valid for only ten days following its issuance;

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2.It must describe, either directly or by reference to the affidavit, the property where the search or inspection is to occur and be accurate enough in description so that the executor of the warrant and the owner or the possessor of the property can reasonably determine from it what person or property the warrant authorizes an inspection of;

3.It must indicate the conditions, objects, activities, or circumstances which the inspection is intended to check or reveal; and

4.It must be attached to the affidavit required to be made in order to obtain the warrant.

29-29.1-04. Warrant valid for ten days.

Any warrant issued under this chapter for a search or inspection is valid for only ten days after its issuance, must be personally served upon an owner or possessor of the property, or upon any person present on the premises if an owner or possessor cannot reasonably be found between the hours of 8:00 a.m. and 8:00 p.m., and must be returned within forty -eight hours of service except as provided in section 29 -29.1-01.1.

29-29.1-05. Competency of evidence discovered.

No facts discovered or evidence obtained in a search or inspection conducted under authority of a warrant issued under this chapter may be competent as evidence in any civil, criminal, or administrative action, nor considered in imposing any civil, criminal, or administrative sanction against any person, nor as a basis for further seeking to obtain any warrant, if the warrant is invalid or if what is discovered or obtained is not a condition, object, activity, or circumstance which it was the legal purpose of the search or inspection to discover; but this does not prevent any such facts or evidence to be so used when the warrant issued is not constitutionally required in those circumstances.

29-29.1-06. Not criminal search warrants.

The warrants authorized under this chapter may not be regarded as search warrants for the purpose of application of chapter 29 -29.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-29.2 - Wiretapping in Drug Offense Investigations**

### **CHAPTER 29-29.2**

#### **WIRETAPPING IN DRUG OFFENSE INVESTIGATIONS**

29-29.2-01. Definitions.

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

1."Aggrieved person" means a person who was a party to any intercepted wire, electronic, or oral communication or a person against whom the interception was directed.

2."Common carrier" is defined in section 8 -07-01.

3."Contents", when used with respect to any wire, electronic, or oral communication, includes any information concerning the identity of the parties to the communication or the existence, substance, purport, or meaning of that communication.

4."Electronic communication" means transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo -optical system, but does not include:

a.The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

b.A wire or oral communication;

c.A communication made through a tone -only paging device; or

d.A communication from a tracking device, defined as an electronic or mechanical device that permits the tracing of the movement of a person or object.

5."Electronic, mechanical, or other device" means any device or apparatus that can be

used to intercept a wire, electronic, or oral communication, other than:

a. Any telephone or telegraph instrument, equipment, or facility, or any component thereof, either:

(1) Furnished to the subscriber or user in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by a subscriber or user for connection to the facilities of service and used in the ordinary course of its business; or

(2) Being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of the officer's duties.

b. A hearing aid or similar device being used to correct subnormal hearing to not better than normal;

c. A device or apparatus specifically designed to only record conversations to which the operator of the device is a party;

d. A device or apparatus used in the normal course of broadcasting by radio or television; or

e. A device or apparatus that is otherwise commonly used for a purpose other than overhearing or recording conversations.

In determining whether a device that is alleged to be an electronic, mechanical, or other device is, in fact, such a device, there must be taken into account, among other things, the size, appearance, directivity, range, sensitivity, frequency, power, or intensity, and the representation of the maker or manufacturer as to its performance and use.

6. "Intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

7. "Judge of competent jurisdiction" means justice of the supreme court of this state or judge of any district court of this state.

8. "Law enforcement officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.

9. "Oral communication" means a communication uttered by a person believing that the communication is not subject to interception, under circumstances justifying that belief, but does not include any electronic communication.

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10. "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, including any electronic storage of the communication, but does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

29-29.2-02. Ex parte order for wiretapping and eavesdropping.

1. An ex parte order for wiretapping or eavesdropping, or both, may be issued by any judge of competent jurisdiction. The order may be issued upon application of the attorney general, or an assistant attorney general, or a state's attorney, or an assistant state's attorney, showing by affidavit that there is probable cause to believe that evidence will be obtained of the commission or attempted commission of a felony violation of chapter 19 -03.1, or a criminal conspiracy to commit a felony violation of chapter 19-03.1.

2. Unless otherwise provided by law, an ex parte order for wiretapping or eavesdropping may be issued only for a crime specified in subsection 1 for which a felony penalty is authorized upon conviction.

3. Each application for wiretapping or eavesdropping, or both, must be made in writing upon oath or affirmation to a judge of competent jurisdiction and must state the applicant's authority to make the application. Each application must include:

a. The identity of the law enforcement officer making the application, and the officer authorizing the application.

b. A complete statement of the facts and circumstances relied upon by the applicant, to justify the belief that an order should be issued, including details as to the particular offense that has been, is being, or is about to be committed; a

particular description of the nature and location of the facilities from which, or the place where, the communication is to be intercepted; a particular description of the type of communication sought to be intercepted; and the identity of the person, if known, committing the offense and whose communications are to be intercepted.

c. A complete statement as to whether other investigative procedures have been tried and failed, or why they reasonably appear to be unlikely to succeed if tried, or to be too dangerous.

d. A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, there must be a particular description of the facts establishing probable cause to believe that additional communications of the same type will occur thereafter.

e. A complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, electronic, or oral communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application.

f. If the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain those results.

4. The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

5. Upon an application, the judge may enter an ex parte order, as requested or as modified, authorizing or approving wiretapping or eavesdropping within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that:

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a. There is probable cause for belief that a person is committing, has committed, or is about to commit a felony violation of chapter 19 -03.1 or a criminal conspiracy to commit a felony violation of chapter 19 -03.1;

b. There is probable cause for belief that particular communications concerning that offense will be obtained through the interception;

c. Normal investigative procedures have been tried and have failed, or reasonably appear to be unlikely to succeed if tried, or to be too dangerous; and

d. There is probable cause for belief that the facilities from which or the place where the wire, electronic, or oral communications are to be intercepted are being used, or about to be used, in connection with the commission of an offense, or are leased to, listed in the name of, or commonly used by the person alleged to be involved in the commission of the offense.

6. Each order authorizing or approving wiretapping or eavesdropping must specify:

a. The identity of the person, if known, whose communications are to be intercepted.

b. The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted.

c. A particular description of the type of communications sought to be intercepted, and a statement of the particular offense to which it relates.

d. The identity of the agency authorized to intercept the communications, and of the person authorizing the application.

e. The period of time during which an interception is authorized, including a statement as to whether the interception automatically terminates when the subscribed communication is first obtained.

7. No order entered under this chapter may authorize or approve the interception of any wire, electronic, or oral communication for any period longer than is necessary to achieve the objective of the authorization. In no event may the period exceed thirty days. The thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten

days after the order is entered. An extension of an order may be granted, but only upon application for an extension made in accordance with subsection 3, and to the court making the findings required by subsection 5. The period of the extension may be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted, and in no event for longer than thirty days. Every order and extension of an order must contain provisions that the authorization to intercept must be executed as soon as practicable, must be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this section, and must terminate upon attainment of the authorized objective, or in any event in thirty days. No more than one extension may be granted for any order entered under this section.

8.If an order authorizing interception is entered pursuant to this section, the order may require reports to be made to the judge who issued the order, showing what progress has been made toward achievement of the authorized objective and the need for continued interception. A report must be made at any time the judge requires.

9.a.The contents of any wire, electronic, or oral communication intercepted by any means authorized by this section must, if possible, be recorded on tape, wire, or other comparable device. The recording of the contents of any wire, electronic, or oral communication under this subsection must be done in such a way as will protect the recording from editing or other alterations. Immediately upon expiration of the period of the order, or extension of the order, the recording must be made available to the judge issuing the order and sealed under the judge's directions. The judge shall direct where the recording must be maintained. A recording may not be destroyed except upon an order of the judge, and in any event must be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to this section. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, is a prerequisite

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for the use or disclosure of the contents of any wire, electronic, or oral communication or evidence derived under this section.

b.Applications made and orders granted under this section must be sealed by the judge. The judge shall direct where applications and orders must be maintained. The applications and orders may be disclosed only upon a showing of good cause before a judge of competent jurisdiction, and may not be destroyed except on order of the judge to whom presented. In any event applications and orders must be kept for ten years. Information obtained pursuant to a court order authorizing interception of wire, electronic, or oral communications may not be used, published, or divulged except in accordance with this chapter.

c.The court may punish violation of this subsection as contempt of court.

10.Within a reasonable time, but not later than ninety days after the termination of the period of an order or extension thereof, the judge to whom the application was presented shall cause to be served, on the persons named in the order or the application, and any other party to intercepted communications as the judge may determine is in the interest of justice, notice of the following:

a.The fact of the entry of the order.

b.The date of the entry and the period of authorized interception.

c.The fact that during the period wire, electronic, or oral communications were intercepted.

The judge, upon the filing of a motion, may make available to any person or counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction, the serving of the matter required by this subsection may be postponed.

11.The contents of any intercepted wire, electronic, or oral communication or evidence derived therefrom may not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a court, unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten -day period may be waived by the court if the court finds that it was

not possible to furnish the party with the information ten days before the trial, hearing, or proceeding, and that the party will not be prejudiced by the delay in receiving this information.

12. An aggrieved person in any trial, hearing, or proceeding in or before any court, officer, agency, or other authority of this state, or a political subdivision of this state, may move to suppress the contents of any intercepted wire, electronic, or oral communication, or evidence derived therefrom, on the grounds that the communication was unlawfully intercepted, the order of authorization or approval under which it was intercepted is insufficient on its face, or the interception was not made in conformity with the order of authorization or approval. This motion must be made before the trial, hearing, or proceeding unless there was no opportunity to make the motion, or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, electronic, or oral communication, or evidence derived from the communication may not be received as evidence. The court, upon the filing of the motion by the aggrieved person, may make available to the aggrieved person or the person's counsel for inspection any portion of the intercepted communication or evidence derived from the communication as the court determines to be in the interests of justice.

13. In addition to any other right to appeal, the state has the right to appeal from an order granting a motion to suppress made under subsection 12, or the denial of an application for an order of approval, if the person making or authorizing the application certifies to the judge granting the motion or denying an application that the appeal is not taken for purposes of delay. The appeal must be taken within thirty days after the date the order was entered and must be diligently prosecuted.

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14. A law enforcement officer who, by any means authorized by this section, has obtained knowledge of the contents of a wire, electronic, or oral communication, or evidence derived from the communication, may disclose the contents to another law enforcement officer to the extent that this disclosure is appropriate in the proper performance of the official duties of the officer making or receiving the disclosure.

15. A law enforcement officer who, by means authorized by this section, has obtained knowledge of the contents of any wire, electronic, or oral communication, or evidence derived therefrom, may use those contents to the extent the use is appropriate in the official performance of official duties.

16. A person who has received, by means authorized by this section, information concerning a wire, electronic, or oral communication, or evidence derived from the communication, intercepted in accordance with this section, may disclose the contents of that communication or derivative evidence while giving testimony in any proceeding held under the authority of the United States or this state.

17. No otherwise privileged wire, electronic, or oral communication intercepted in accordance with, or in violation of, this section loses its privileged character.

18. When a law enforcement officer, while engaged in intercepting wire, electronic, or oral communications in the manner authorized in this section, intercepts wire, electronic, or oral communications relating to an offense other than one specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections 14 and 15 only if an offense other than one specified in the order is an offense that constitutes a felony under the laws of this state. The contents, and evidence derived from the contents, as authorized by this section, may be used under subsection 16 only when authorized or approved by a judge of competent jurisdiction, when the judge finds on subsequent application that the contents were otherwise intercepted in accordance with this section. This application must be made as soon as practicable.

19. The requirements of subdivision b of subsection 3 and subdivision d of subsection 5 relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

a. In the case of an application with respect to the interception of an oral communication, the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted and the judge finds that such

specification is not practical; or

b. In the case of an application with respect to a wire or electronic communication, the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities and the judge finds that such purpose has been adequately shown.

20. An interception of a communication under an order with respect to which the requirements of subdivision b of subsection 3 and subdivision d of subsection 5 do not apply by reason of subsection 19 may not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communication service which has received an order as provided for in subdivision b of subsection 19 may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall rule on such a motion expeditiously.

29-29.2-03. Order may direct others to furnish assistance.

An order authorizing the interception of a wire, electronic, or oral communication must, upon request of the applicant, direct that a communication common carrier shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the carrier is according to the person whose communications are to be intercepted. A communication

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common carrier furnishing these facilities or technical assistance must be compensated by the applicant for reasonable expenses incurred in providing the facilities or assistance.

29-29.2-04. Reports to attorney general.

A state's attorney shall report annually to the attorney general information as to the number of applications made for orders permitting the interception of wire, electronic, or oral communications; the offense specified in the order or application; the nature of the facilities from which or the place where communications were to be intercepted; the number of persons whose communications were intercepted, the number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made; the number of motions to suppress made with respect to such interceptions and the number granted or denied; the number of convictions resulting from the interceptions and the offenses for which the convictions were obtained; and a general assessment of the importance of the interceptions. The state's attorney shall submit the report to the attorney general by January first of each year. The report must include all orders and applications made, but not in effect, during the preceding year.

29-29.2-05. Inapplicability.

This chapter does not apply to the interception, disclosure, or use of a wire, electronic, or oral communication if the person intercepting, disclosing, or using the wire, electronic, or oral communication:

1. Was a person acting under color of law to intercept a wire, electronic, or oral communication and was a party to the communication or one of the parties to the communication had given prior consent to such interception; or
2. Was a party to the communication or one of the parties to the communication had given prior consent to such interception and such communication was not intercepted for the purpose of committing a crime or other unlawful harm.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-29.3 - Pen Registers and Trap and Trace Devices**

### **CHAPTER 29-29.3**

#### **PEN REGISTERS AND TRAP AND TRACE DEVICES**

29-29.3-01. Definitions.

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

1. "Electronic communication" means transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system. The term does not include the radio portion of a cordless telephone communication that is transmitted between

the cordless telephone handset and the base unit, a wire or oral communication, a communication made through a tone -only paging device, or a communication from a tracking device.

2."Electronic communication service" means any service that provides to users of the service the ability to send or receive wire or electronic communications.

3."Pen register" means a device that records or decodes electronic or other impulses that identify the number dialed or otherwise transmitted on the telephone line to which the device is attached, but the term does not include a device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by the provider or a device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

4."Tracking device" means an electronic or mechanical device that permits the tracing of the movement of a person or object.

5."Trap and trace device" means a device which captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

6."Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, including any electronic storage of the communication, but does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

29-29.3-02. Prohibition on pen register and trap and trace device use - Exception.

A person may not install or use a pen register or trap and trace device without first obtaining a court order under this chapter. The prohibition in this section does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service:

1.Relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service;

2.To record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful, or abusive use of service; or

3.When the consent of the user of that service has been obtained.

29-29.3-03. Application for an order for a pen register or a trap and trace device.

1.The attorney general, an assistant attorney general, a state's attorney, or an assistant state's attorney may make application, in writing under oath or equivalent affirmation, for an order or an extension of an order under this chapter authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter to a court of competent jurisdiction.

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2.An investigative or law enforcement officer may make application, in writing under oath or equivalent affirmation, for an order or an extension of an order under this chapter authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter to a court of competent jurisdiction of this state.

3.An application under subsection 1 or 2 must include:

a.The identity of the attorney general, assistant attorney general, state's attorney, or assistant state's attorney or the law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

b.A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

29-29.3-04. Issuance of an order for a pen register or a trap and trace device - Notice.

1.Upon an application made under this chapter, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the attorney general, assistant

attorney general, state's attorney, or assistant state's attorney or the law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to ongoing criminal investigation.

2. An order issued under this section:

a. Must specify:

(1) The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

(2) The identity, if known, of the person who is the subject of the criminal investigation;

(3) The number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

(4) A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

b. Must direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under this chapter.

3. An order issued under this section authorizes the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days. Extensions of the order may be granted, but only upon an application for an order under this chapter and upon the judicial finding required by subsection 1. The period of extension may not exceed sixty days.

4. An order authorizing or approving the installation and use of a pen register or a trap and trace device must direct that:

a. The order be sealed until otherwise ordered by the court; and

b. The person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless otherwise ordered by the court.

5. Within a reasonable time, but not later than one year after the termination of the period of an order or extension of an order, the judge to whom the application was presented shall cause to be served on the persons named in the order or application, and on any other party the notification of whom the judge determines is in the interest of justice, notice of:

a. The fact of the entry of the order.

b. The date of the entry and the period of authorized installation and use of the pen register or trap and trace device.

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c. The fact that during the period of the order or extension information was obtained through use of the pen register or trap and trace device.

29-29.3-05. Assistance in installation and use of a pen register or a trap and trace device.

1. Upon the request of the attorney general, assistant attorney general, state's attorney, or assistant state's attorney or an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the investigative or law enforcement officer all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in this chapter.

2. Upon the request of the attorney general, assistant attorney general, state's attorney, or assistant state's attorney or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install the device on the appropriate line and shall furnish the investigative or law enforcement

officer all additional information, facilities, and technical assistance, including installation and operation of the device, unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in this chapter. Unless otherwise ordered by the court, the results of the trap and trace device must be furnished to the officer of a law enforcement agency designated by the court at reasonable intervals during regular business hours for the duration of the order.

3. A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance under this section must be reasonably compensated for reasonable expenses incurred in providing the facilities and assistance.

4. No cause of action lies in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

5. A good-faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-29.4 - Surveillance by Unmanned Aerial Vehicle**

### **CHAPTER 29-29.4 SURVEILLANCE BY UNMANNED AERIAL VEHICLE**

#### **29-29.4-01. Definitions.**

As used in this chapter:

1. "Flight data" means imaging or other observation recording.
2. "Flight information" means flight duration, flight path, and mission objective.
3. "Law enforcement agency or agents" has the meaning provided for law enforcement officer in section 12.1 -01-04.
4. "Unmanned aerial vehicle" means any aerial vehicle that is operated without the possibility of direct human intervention within or on the aerial vehicle. The term does not include satellites.
5. "Unmanned aerial vehicle system" means an unmanned aerial vehicle and associated elements, including communication links and the components that control the unmanned aerial vehicle, which are required for the pilot in command to operate safely and efficiently in state airspace.

#### **29-29.4-02. Limitations on use of unmanned aerial vehicle system.**

1. Information obtained from an unmanned aerial vehicle is not admissible in a prosecution or proceeding within the state unless the information was obtained:
  - a. Pursuant to the authority of a search warrant; or
  - b. In accordance with exceptions to the warrant requirement.
2. Information obtained from the operation of an unmanned aerial vehicle may not be used in an affidavit of probable cause in an effort to obtain a search warrant, unless the information was obtained under the circumstances described in subdivision a or b of subsection 1 or was obtained through the monitoring of public lands or international borders.

#### **29-29.4-03. Warrant requirements.**

A warrant for the use of an unmanned aerial vehicle must satisfy the requirements of the Constitution of North Dakota. In addition, the warrant must contain a data collection statement that includes:

1. The persons that will have the power to authorize the use of the unmanned aerial vehicle;
2. The locations in which the unmanned aerial vehicle system will operate;
3. The maximum period for which the unmanned aerial vehicle system will operate in each flight; and
4. Whether the unmanned aerial vehicle system will collect information or data about individuals or groups of individuals, and if so:

a. The circumstances under which the unmanned aerial vehicle system will be used; and

b. The specific kinds of information or data the unmanned aerial vehicle system will collect about individuals and how that information or data, as well as conclusions drawn from that information or data, will be used, disclosed, and otherwise handled, including:

(1) The period for which the information or data will be retained; and

(2) Whether the information or data will be destroyed, and if so, when and how the information or data will be destroyed.

29-29.4-04. Exceptions.

This chapter does not prohibit any use of an unmanned aerial vehicle for surveillance during the course of:

1. Patrol of national borders. The use of an unmanned aerial vehicle to patrol within twenty-five miles [40.23 kilometers] of a national border, for purposes of policing that

border to prevent or deter the illegal entry of any individual, illegal substance, or contraband.

2. Exigent circumstances. The use of an unmanned aerial vehicle by a law enforcement agency is permitted when exigent circumstances exist. For the purposes of this subsection, exigent circumstances exist when a law enforcement agency possesses reasonable suspicion that absent swift preventative action, there is an imminent danger to life or bodily harm.

3. An environmental or weather-related catastrophe. The use of an unmanned aerial vehicle by state or local authorities to preserve public safety, protect property, survey environmental damage to determine if a state of emergency should be declared, or conduct surveillance for the assessment and evaluation of environmental or weather-related damage, erosion, flood, or contamination.

4. Research, education, training, testing, or development efforts undertaken by or in conjunction with a school or institution of higher education within the state and its political subdivisions, nor to public and private collaborators engaged in mutually supported efforts involving research, education, training, testing, or development related to unmanned aerial vehicle systems or unmanned aerial vehicle system technologies and potential applications.

29-29.4-05. Prohibited use.

1. A law enforcement agency may not authorize the use of, including granting a permit to use, an unmanned aerial vehicle armed with any lethal weapons.

2. This chapter prohibits any use of an unmanned aerial vehicle for:

a. Domestic use in private surveillance. A law enforcement agency may not authorize the use of, including granting a permit to use, an unmanned aerial vehicle to permit any private person to conduct surveillance on any other private person without the express, informed consent of that other person or the owner of any real property on which that other private person is present.

b. Surveillance of the lawful exercise of constitutional rights, unless the surveillance is otherwise allowed under this chapter.

29-29.4-06. Documentation of unmanned aerial vehicle use.

1. The person authorized to conduct the surveillance under this chapter shall document all use of an unmanned aerial vehicle for surveillance. The person shall document all surveillance flights as to duration, flight path, and mission objectives.

2. The flight information must be verified as accurate and complete by the supervising person authorized by a court to conduct the surveillance.

3. The flight information required under this section must be retained for five years.

4. Any imaging or any other forms of data lawfully obtained under this chapter which are not accompanied by a reasonable and articulable suspicion that the images or data contain evidence of a crime, or are relevant to an ongoing investigation or trial, may not be retained for more than ninety days.

5. Except for the operational capabilities of the unmanned aerial vehicle system and other operational information strictly related to the technical conduct and physical security of the surveillance operation, a person accused of a crime that includes evidence gathered through the use of an unmanned aerial vehicle system surveillance

may obtain all information relating to the person acquired in the course of the surveillance through subpoena and discovery proceedings available in criminal proceedings.

6. Any other person that has an interest in obtaining the documentation required by this section may obtain that documentation pursuant to chapter 44 -04.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-29.5 - Confidential Informants**

### **CHAPTER 29-29.5**

#### **CONFIDENTIAL INFORMANTS**

##### **29-29.5-01. Definitions.**

1. "Benefit" means any of the following conferred on a confidential informant or a third party:

a. Leniency in a criminal case or probation or parole matter, including a decision whether to arrest or charge an offense or to limit the number or severity of charges;

b. Sentence reduction of any kind or amount; or

c. A favorable sentencing or bond recommendation.

2. "Confidential informant" means an individual who cooperates with a law enforcement agency and:

a. Is willing to attempt a controlled buy or controlled sale or agrees to surreptitiously record a target offender; and

b. Seeks or is offered a benefit.

3. "Controlled buy" means the purchase or attempted purchase of contraband, controlled substances, or other items material to a criminal investigation while under supervision or direction of law enforcement.

4. "Controlled sale" means the sale or attempted sale of contraband, controlled substances, or other items material to a criminal investigation while under supervision or direction of enforcement.

5. "Informant agreement" means a written agreement describing the rights and obligations of a confidential informant and law enforcement agency.

6. "Law enforcement agency" means an agency authorized by law to enforce the law and to conduct or engage in investigations or prosecutions for violations of the law.

7. "Target offender" means an individual suspected of a violation of the law, whose identity is known or unknown, and who is the focus of an informant agreement.

##### **29-29.5-02. Limitation on use of juvenile confidential informants.**

1. A law enforcement agency may not use a juvenile fifteen years of age or younger as a confidential informant.

2. A juvenile over the age of fifteen, but under the age of eighteen, may not be used as a confidential informant unless:

a. The juvenile is married;

b. The juvenile is emancipated;

c. The juvenile is serving in the active duty armed forces; or

d. The juvenile is subject to criminal charges; and

(1) There are no other reasonable avenues to obtain evidence of the crime being investigated and the risk of harm to the juvenile is minimal;

(2) The juvenile's custodial parent or guardian has signed the informant agreement; and

(3) The juvenile has consulted with legal counsel.

##### **29-29.5-03. Limitation on use of campus police.**

A law enforcement officer employed under section 15 -10-17 may not enter an informant agreement with a student enrolled in an institution under the control of the state board of higher education.

##### **29-29.5-04. Law enforcement confidential informant training and guidelines.**

1. After July 1, 2018, a law enforcement agency may not use a confidential informant unless the law enforcement agency is trained in the use of confidential informants in a training course approved by the attorney general.

a. Training must occur at least once every three years, and must establish that the law enforcement agency has trained all personnel who are involved in the use or

recruitment of confidential informants in the law enforcement agency's policies and procedures in a manner consistent with the peace officer standards and training requirements.

b. The law enforcement agency shall document the date and scope of all training along with all law enforcement personnel trained.

2. The peace officer standards and training board shall adopt rules for the use of confidential informants which at a minimum:

a. Assign the consideration of the preservation of the safety of a confidential informant.

b. Execute reasonable protective measures for a confidential informant.

c. Establish guidelines for the training and briefing of confidential informants.

d. Restrict off-duty association or social relationships by law enforcement agency personnel with confidential informants.

e. Establish procedures to deactivate confidential informants which maintain the safety and anonymity of confidential informants.

f. Establish a process to evaluate and report the criminal history and propensity for violence of any target offenders.

g. Establish written security procedures protecting the identity of a confidential informant.

h. Establish written procedures relating to the use of a paid confidential informant.

29-29.5-05. Written agreement required.

Except for court proceedings, a law enforcement agency may use a confidential informant only with a written agreement executed by the confidential informant and the law enforcement agency. An agreement for use of a confidential informant must be in writing, and include:

1. The confidential informant's right to remain silent, the right to speak with legal counsel at any time, and the right to cease working as a confidential informant;

2. A statement of the benefit, which will be recommended upon substantial compliance with the informant agreement;

3. A statement that an absolute guarantee or promise may not be made to the confidential informant other than law enforcement will truthfully report cooperation;

4. A statement of the inherent risk associated with acting as a confidential informant;

5. Confidential informant responsibilities, including testifying truthfully if called as a witness in a court proceeding;

6. A written waiver of right to counsel which must be executed separately and attached to the informant agreement, signed by the confidential informant and a law enforcement officer, and include language stating that consulting legal counsel at any time will not invalidate the agreement;

7. The parameters of the agreement, detailing the anticipated number of buys, sales, acts, or the duration of service;

8. A description of any penalty for violating the terms of the written agreement, including any additional criminal charges;

9. A warning that sexual relations with an intended target of a police investigation is a violation of the agreement and may be a violation of the law;

10. A statement that money or property loaned or entrusted to the confidential informant by law enforcement may not be used for personal use and must be accounted for at all times; and

11. Specification of any known crimes of violence committed by a target offender.

29-29.5-06. Death of a confidential informant.

Upon the death of a confidential informant, the supervising law enforcement agency shall withdraw from the investigation of the death of its confidential informant. The supervising law enforcement agency promptly shall notify the attorney general of its withdrawal from the investigation, and the attorney general shall authorize an independent law enforcement agency investigation.

29-29.5-07. Reporting violations of this chapter.

1. An individual may report a suspected violation of this chapter to the appropriate law enforcement agency administration. The law enforcement agency shall investigate any reported violation within twenty days from receiving the complaint and, within forty -five

days from receiving the complaint, make a written determination on whether a violation occurred. Upon completion, the law enforcement agency shall forward the written report to the individual who filed the initial complaint and to the peace officer standards and training board for review. An individual who filed a report for a suspected violation may seek additional remedies from the peace officer standards and training board.

2. A licensed peace officer or a prosecutor who reasonably believes a law enforcement officer or a law enforcement agency has violated this chapter shall file a written report with the peace officer standards and training board.

29-29.5-08. Disposition of cases involving confidential informants.

1. An informant agreement may be presented to the court at the time of sentencing. A court shall give consideration at sentencing to a confidential informant who has substantially complied with an informant agreement.

2. After consideration of an informant agreement, a court may defer imposition of sentence or suspend a portion of a minimum mandatory sentence when a confidential informant has substantially complied with an informant agreement.

3. If necessary to protect a confidential informant or the integrity of an ongoing investigation, a court may direct submission of sentencing memoranda in writing under seal when sentencing or deferring imposition of sentence of a confidential informant.

4. If necessary to protect a confidential informant or the integrity of an investigation, a court may dispense with reporting departure from a mandatory sentence under subsection 3 of section 12.1 -32-03.

5. This section does not prohibit disposition of cases by deferral of prosecution with or without court approval.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-29.6 - Tracking Warrants**

### **CHAPTER 29-29.6**

#### **TRACKING WARRANTS**

29-29.6-01. Definitions.

As used in this chapter:

1. "Electronic communication service" has the meaning given in subsection 2 of section 29-29.3-01.

2. "Electronic device" means a device that enables access to or use of an electronic communication service, remote computing service, or location information service.

3. "Government entity" means a state or local agency, including a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission or an individual acting or purporting to act for or on behalf of a state or local agency.

4. "Location information" means information concerning the location of an electronic device that, in whole or in part, is generated or derived from or obtained by the operation of an electronic device. This information could include historical cell site location information, real time cell site location information, or any cell site location information from a specific period of time.

5. "Location information service" means the provision of a global positioning service or other mapping, locational, or directional information service.

6. "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communication system.

7. "Tracking warrant" means an order in writing, in the name of the state, signed by a court directed to a peace officer, granting the officer access to location information of an electronic device.

29-29.6-02. Tracking warrant required for location information.

1. Except as provided in subsection 2, a government entity may not obtain the location information of an electronic device without a tracking warrant. A warrant granting access to location information must be issued only if the government entity shows that there is probable cause the person who possesses an electronic device is committing, has committed, or is about to commit a crime. An application for a warrant must be made in writing and include:

a. The identity of the government entity's peace officer making the application, and the officer authorizing the application; and

b. A statement of the facts and circumstances relied on by the applicant to justify the applicant's belief that a warrant should be issued, including:

(1) Details as to the particular offense that has been, is being, or is about to be committed; and

(2) The identity of the person, if known, committing the offense whose location information is to be obtained.

2. A government entity may obtain location information without a tracking warrant:

a. When the electronic device is reported lost or stolen by the owner;

b. In order to respond to the user's call for emergency services;

c. With the informed, affirmative, documented consent of the owner or user of the electronic device;

d. With the informed, affirmative consent of the legal guardian or next of kin of the owner or user if the owner or user is believed to be deceased or reported missing and unable to be contacted; or

e. In an emergency situation that involves injury or death to a person who possesses an electronic communications device pursuant to section 8 -10-11.

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29-29.6-03. Time period and extensions.

1. A tracking warrant issued under this section must authorize the collection of location information for a period not to exceed sixty days, or the period of time necessary to achieve the objective of the authorization, whichever is less.

2. Extensions of a tracking warrant may be granted, but only upon an application for an order and upon the judicial finding required by subdivision b of subsection 1 of section 29-29.6-02. The period of extension must be for a period not to exceed sixty days, or the period of time necessary to achieve the objective for which it is granted, whichever is less.

3. Subsections 1 and 2 apply only to tracking warrants issued for the contemporaneous collection of electronic device location information.

29-29.6-04. Notice - Temporary nondisclosure of tracking warrant.

1. Within a reasonable time, but not later than ninety days after the court unseals the tracking warrant under this section, the issuing or denying judge shall cause to be served on the persons named in the warrant and the application an inventory which shall include notice of:

a. The fact of the issuance of the warrant or the application;

b. The date of the issuance and the period of authorized, approved, or disapproved collection of location information, or the denial of the application; and

c. The fact that during the period location information was or was not collected.

2. A tracking warrant authorizing collection of location information must direct that:

a. The warrant be sealed for a period of ninety days; and

b. The warrant be filed with the court administrator within ten days of the expiration of the warrant.

3. The prosecutor may request that the tracking warrant, supporting affidavits, and any order granting the request not be filed. An order must be issued granting the request in whole or in part if, from affidavits, sworn testimony, or other evidence, the court finds reasonable grounds exist to believe that filing the warrant may cause the search or a related search to be unsuccessful, create a substantial risk of injury to an innocent person, or severely hamper an ongoing investigation.

4. The tracking warrant must direct that following the commencement of any criminal proceeding utilizing evidence obtained in or as a result of the search, the supporting application or affidavit must be filed either immediately or at any other time as the court directs. Until such filing, the documents and materials ordered withheld from filing must be retained by the judge or the judge's designee.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-30.3 - Uniform Extradition and Rendition Act**

### **CHAPTER 29-30.3**

#### **UNIFORM EXTRADITION AND RENDITION ACT**

##### **29-30.3-01. (1-101) Definitions.**

As used in this chapter:

1. "Arrest warrant" means any document that authorizes a peace officer to take custody of a person.

2. "Certified copy" means a copy of a document accompanied by a statement of a custodian authorized by the law of a state to maintain the document that the copy is a complete and true copy of an official record filed and maintained in a public office.

3. "Demanded person" means a person whose return to a demanding state is sought from another state by extradition under sections 29 -30.3-08 through 29-30.3-14.

4. "Demanding state" means a state that is seeking the return of a person from another state through the process of extradition under sections 29 -30.3-08 through 29-30.3-14.

5. "Executive authority" means the chief executive in a state other than this state, any person performing the functions of chief executive, or a representative designated by the chief executive.

6. "Governor" means the governor of this state, any person performing the functions of governor, or a representative designated by the governor.

7. "Issuing authority" means any person who may issue or authorize the issuance of an arrest warrant.

8. "Requested person" means a person whose return to a requesting state is sought from another state by rendition under sections 29 -30.3-15 through 29-30.3-20.

9. "Requesting state" means a state that is seeking the return of a person from another state through the process of rendition under sections 29 -30.3-15 through 29-30.3-20.

29-30.3-02. (1-102) Conditions of release.

The law of pretrial release of this state governs release of a person pursuant to sections 29-30.3-06, 29-30.3-13, 29-30.3-19, and 29-30.3-21.

29-30.3-03. (1-103) Nonwaiver by this state.

This chapter and proceedings under it are not exclusive and do not affect the authority of this state to:

1. Try a demanded or requested person for a crime committed within this state;

2. Take custody of a demanded or requested person by extradition or rendition proceedings for the purpose of trial, sentence, or punishment for a crime committed within this state;

3. Take custody of a person under other provisions of law, including interstate agreements; or

4. Release a person from custody upon any valid conditions.

29-30.3-04. (2-101) Arrest without warrant.

1. A peace officer may arrest a person without an arrest warrant upon probable cause to believe that the person is the subject of another state's arrest warrant issued for:

a. Commission of a crime punishable by death or imprisonment for a term exceeding one year;

b. Escape from confinement; or

c. Violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding.

2. The arrested person must be brought before the nearest available magistrate.

3. The magistrate shall issue an order to continue custody or other process to assure the appearance of the person, if testimony or affidavit shows probable cause to believe the person is the subject of another state's arrest warrant issued for:

a. The commission of a crime punishable by death or imprisonment for a term exceeding one year;

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b. Escape from confinement; or

c. Violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding.

29-30.3-05. (2-102) Issuance of process or arrest warrant prior to receipt of demand or request.

1. A magistrate for the county where arrest is sought shall authorize the issuance of an arrest warrant or other process to obtain the appearance of a person, if testimony or affidavit shows probable cause to believe:

a. The person is in this state; and

b. The person is the subject of another state's arrest warrant issued for:

(1)The commission of a crime punishable by death or imprisonment for a term exceeding one year;

(2)Escape from confinement; or

(3)Violation of any term of bail, probation, parole, or order arising out of a criminal proceeding.

2.Other process to obtain the appearance of a person must require the appearance before a magistrate.

3.The arrest warrant must require that the person be brought forthwith before a magistrate.

29-30.3-06. (2-103) Appearance prior to receipt of demand or request.

1.The magistrate shall inform the person appearing pursuant to section 29 -30.3-04 or 29-30.3-05 of:

a.The name of the other state that has subjected the person to an arrest warrant;

b.The basis for the arrest warrant in the other state;

c.The right to assistance of counsel; and

d.The right to require a judicial hearing under this chapter before transfer of custody to the other state.

2.After being informed by the magistrate of the effect of a waiver, the arrested person may waive the right to require a judicial hearing under this chapter and consent to return to the other state by executing a written waiver in the presence of the magistrate. If the waiver is executed, the magistrate shall issue an order to transfer custody pursuant to section 29 -30.3-21 or, with the consent of the official upon whose application the arrest warrant was issued in the other state, authorize the voluntary return of the person to that state.

3.Unless a waiver is executed pursuant to subsection 2, the magistrate shall:

a.Release the person upon conditions that will reasonably assure availability of the person for arrest pursuant to section 29 -30.3-12 or 29-30.3-18; or

b.Direct a law enforcement officer to maintain custody of the person.

Subject to section 29 -30.3-07, the period of conditional release or custody may not exceed thirty days.

29-30.3-07. (2-104) Extension of time.

1.If the person is not arrested pursuant to section 29 -30.3-12 or 29-30.3-18 within the period specified in the arrest warrant or other process, the magistrate for good cause may issue further orders under subsection 3 of section 29 -30.3-06 for additional periods not exceeding a total of sixty days. Further extensions of orders may be requested by the person under subsection 3 of section 29 -30.3-06.

2.If the person is not arrested pursuant to section 29 -30.3-12 or 29-30.3-18 within the time specified by the magistrate, the person may not be subjected to any further order in this state under subsection 3 of section 29 -30.3-06. If the person is subsequently arrested in this state under section 29 -30.3-04 or 29-30.3-05 on the basis of the same arrest warrant of the other state, the person may not be subjected to the issuance of orders under subsection 3 of section 29-30.3-06 and must be released from custody.

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However, the person may be arrested thereafter pursuant to section 29 -30.3-12 or 29-30.3-18.

29-30.3-08. (3-101) Demand for extradition.

1.The governor may recognize a written demand by an executive authority for the extradition of a person, alleging that the person:

a.Is charged with a crime in the demanding state; or

b.Having been charged with or convicted of a crime in the demanding state has:

(1)Escaped from confinement; or

(2)Violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the demanding state.

2.The governor may demand the extradition of a person from another state in accordance with the Constitution of the United States and may comply with the requirements of the other state for recognition of a demand.

29-30.3-09. (3-102) Supporting documentation.

A demand for extradition must be accompanied by a certified copy of an arrest warrant and one of the following:

1.A statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that a crime has been committed and the demanded person committed the crime, together with a copy of the provisions of law defining the crime and fixing the penalty therefor.

2.A certified copy of the indictment upon which the arrest warrant is based.

3.A statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that the demanded person has violated any term of bail, probation, or an order arising out of a criminal proceeding.

4.A certified copy of a judgment of conviction or a sentencing order accompanied by a statement by the issuing authority that the demanded person has escaped from confinement or violated any term of parole.

29-30.3-10. (3-103) Governor's investigation.

The governor may:

1.Investigate the demand for extradition and the circumstances of the demanded person;

2.Request the attorney general or any state's attorney to investigate; or

3.Hold a hearing.

29-30.3-10.1. Guilt or innocence of accused - When inquiry made.

The guilt or innocence of the accused as to the crime with which the person is charged may not be inquired into by the governor or in any proceeding after a demand for extradition has been presented to the governor or a demand for rendition has been filed with the attorney general, except as it may be involved in identifying the person held as the person charged with the crime.

29-30.3-11. (3-104) Extradition of persons imprisoned or awaiting trial.

1.If a demanded person is being prosecuted, is imprisoned, is on parole or probation, or is subject to an order arising out of a criminal proceeding, in this state, the governor may:

a.Grant extradition;

b.Delay action; or

c.Agree with the executive authority of the demanding state to grant extradition upon conditions.

2.The governor may agree with an executive authority of another state for the extradition of a person who is being prosecuted, is imprisoned, is on parole or probation, or is

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subject to an order arising out of a criminal proceeding, in that state upon conditions prescribed by the agreement.

29-30.3-12. (3-105) Governor's warrant.

1.If the governor decides to comply with the demand for extradition, the governor shall issue a warrant for the arrest and extradition of the demanded person. The governor's warrant must recite the name of the state demanding extradition and the crime charged or other basis for the demand.

2.The governor may specify the time and manner in which the warrant is executed.

3.At any time before the transfer of custody of the demanded person to the agent of the demanding state, the governor may recall the warrant or issue another warrant.

4.The warrant must be directed to any law enforcement officer and require compliance with section 29-30.3-13.

5.The law relating to assistance in the execution of other arrest warrants in this state applies to the execution of the governor's warrant.

29-30.3-13. (3-106) Rights of demanded person.

1.A person arrested under a governor's warrant must be brought before the nearest available magistrate who shall receive the warrant and inform the person of:

a.The name of the state demanding extradition;

b.The crime charged or other basis for the demand;

c.The right to assistance of counsel; and

d.The right to a judicial hearing under section 29 -30.3-14.

2.After being informed by the magistrate of the effect of a waiver, the demanded person may waive the right to a judicial hearing and consent to return to the demanding state by executing a written waiver in the presence of the magistrate. If the waiver is executed, the magistrate shall issue an order to transfer custody pursuant to section

29-30.3-21 or, with the consent of the executive authority of the demanding state, authorize the voluntary return of the person.

3.If a hearing is not waived, the magistrate shall hold it within ten days after the appearance. The demanded person and the state's attorney of the county in which the hearing is to be held must be informed of the time and the place of the hearing. The magistrate shall:

- a.Release the person upon conditions that will reasonably assure availability of the person for the hearing; or
- b.Direct a law enforcement officer to maintain custody of the person.

29-30.3-14. (3-107) Judicial extradition hearing.

1.If the magistrate after hearing finds that the governor has issued a warrant supported by the documentation required by subsection 1 of section 29 -30.3-08 and section 29-30.3-09, the magistrate shall issue an order to transfer custody pursuant to section 29-30.3-21 unless the arrested person establishes by clear and convincing evidence that the arrested person is not the demanded person.

2.If the magistrate does not order transfer of custody, the magistrate shall order the arrested person to be released. If the agent of the demanding state has not taken custody within the time specified in the order to transfer custody, the demanded person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant is issued as a result of a new demand for extradition or a new request for rendition.

3.An order to transfer custody is not appealable.

4.An order denying transfer is appealable.

29-30.3-15. (4-101) Request for rendition.

1.Subject to subsections 2 and 3, this state may grant a written request by an issuing authority of another state for the rendition of a person in this state.

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2.The request must be refused if the requested person is:

- a.Being prosecuted or is imprisoned in this state for a criminal offense;
- b.The subject of a pending proceeding in a juvenile court of this state brought for the purpose of adjudicating the person to be a delinquent child;
- c.In the custody of an agency of this state pursuant to an order of disposition of a juvenile court of this state as a delinquent child; or
- d.Under the supervision of the juvenile court of this state pursuant to informal adjustment or an order of disposition of the court.

3.The request must allege that the person:

- a.Is charged with a crime punishable in the requesting state by death or imprisonment for a term exceeding one year in the requesting state; or
- b.Having been charged with or convicted of a crime in the requesting state, has escaped from confinement or violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the requesting state.

4.Upon application of the attorney general or a state's attorney, an issuing authority may request rendition of a person from another state and may comply with requirements of that state for the granting of the request. A correction official who is also an issuing authority may request rendition from another state of a person described in subdivision b of subsection 3, and subject to the jurisdiction of the correction official.

29-30.3-16. (4-102) Supporting documentation.

A request for rendition must be accompanied by a certified copy of the arrest warrant and one of the following:

- 1.A statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that a crime has been committed and the requested person committed the crime, together with a copy of the provisions of law defining the crime and fixing the penalty therefor.
- 2.A certified copy of the indictment upon which the arrest warrant is based.
- 3.A statement by the issuing authority that the warrant was issued after a determination of probable cause to believe that the requested person has violated any term of bail, probation, or other judicial order arising out of a criminal proceeding.
- 4.A certified copy of a judgment of conviction or a sentencing order accompanied by a statement by the issuing authority that the requested person has escaped from

confinement or violated any term of parole.

29-30.3-17. (4-103) Filing of request.

A request for rendition under section 29 -30.3-15 must be filed with the attorney general's office, which office shall forward the request to the proper state's attorney. The governor by written order may terminate the use of rendition at any time before the issuance of an order to transfer custody.

29-30.3-18. (4-104) Issuance of arrest warrant or process.

Upon receipt of a request under section 29 -30.3-17, the prosecuting official shall apply to a magistrate for the issuance of an arrest warrant, or other process, to obtain the appearance of the requested person. If the magistrate finds that the provisions of sections 29 -30.3-15 and 29-30.3-16 have been complied with, the magistrate shall issue the warrant or other process. The warrant must require that the person be brought forthwith before the magistrate. Other process to obtain the appearance of a person must require the appearance before a magistrate.

29-30.3-19. (4-105) Rights of requested person.

1.The magistrate shall inform the person appearing pursuant to section 29 -30.3-18 of:

- a.The name of the state requesting rendition;
- b.The basis for the arrest warrant in the other state;
- c.The right to assistance of counsel; and
- d.The right to require a judicial hearing pursuant to section 29 -30.3-20.

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2.After being informed by the magistrate of the effect of a waiver, the requested person may waive the right to a judicial hearing and consent to return to the requesting state by executing a written waiver in the presence of the magistrate. If the waiver is executed, the magistrate shall issue an order to transfer custody pursuant to section 29-30.3-21 or with consent of the official upon whose application the request was issued authorize the voluntary return of the person.

3.If a hearing is not waived, the magistrate shall hold it within ten days after the appearance. The requested person and the state's attorney of the county in which the hearing is to be held must be informed of the time and place of the hearing. The magistrate shall:

- a.Release the person upon conditions that will reasonably assure availability of the person for the hearing; or
- b.Direct a law enforcement officer to maintain custody of the person.

29-30.3-20. (4-106) Judicial rendition hearing.

1.If the magistrate after hearing finds that sections 29 -30.3-15 and 29-30.3-16 have been complied with, the magistrate shall issue an order to transfer custody pursuant to section 29 -30.3-21 unless the arrested person establishes by clear and convincing evidence that arrested person is not the requested person.

2.If the magistrate does not order transfer of custody, the magistrate shall order the arrested person to be released. If the agent of the requesting state has not taken custody within the time specified in the order to transfer custody, the requested person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant is issued as a result of a new demand for extradition or a new request for rendition.

3.An order to transfer custody is not appealable.

4.An order denying transfer is appealable.

29-30.3-21. (5-101) Order to transfer custody.

1.Except as provided in subsection 2, a judicial order to transfer custody issued pursuant to section 29-30.3-06, 29-30.3-13, 29-30.3-14, 29-30.3-19, or 29-30.3-20 must direct a law enforcement officer to take or retain custody of the person until an agent of the other state is available to take custody. If the agent of the other state has not taken custody within ten days, the magistrate may:

- a.Order the release of the person upon conditions that will assure the person's availability on a specified date within thirty days; or
- b.Extend the original order for an additional ten days upon good cause shown for the failure of an agent of the other state to take custody.

2.If the agent of the other state has not taken custody within the time specified in the order, the person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant or other process to obtain appearance of a person

is issued as a result of a new demand for extradition or a new request for rendition.

3.The magistrate in the order may authorize the voluntary return of the person with consent of the executive authority or with the consent of the official upon whose application the request for rendition was made.

29-30.3-22. (5-102) Confinement.

An agent who has custody of a person pursuant to an order to transfer custody issued in any state may request confinement of the person in any detention facility in this state while transporting the person pursuant to the order. Upon production of proper identification of the agent and a copy of the order, the detention facility shall confine the person for that agent. The person is not entitled to another extradition or rendition proceeding in this state.

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29-30.3-23. (5-103) Cost of return.

Unless the states otherwise agree, the state to which the person is being returned shall pay the cost of returning the person incurred after transfer of custody to its agent.

29-30.3-24. (5-104) Applicability of other law.

1.A person returned to this state is subject to the law of this state as well as the provisions of law that constituted the basis for the return.

2.This chapter does not limit the powers, rights, or duties of the officials of a demanding or requesting state or of this state.

29-30.3-25. (5-105) Payment of transportation and subsistence costs.

If a person returned to this state is found not to have violated the law that constituted the basis for the return, the magistrate may order the county or state to pay the person the cost of transportation and subsistence to:

1.The place of the person's initial arrest; or

2.The person's residence.

29-30.3-26. Payment of expenses.

When the charged offense is a felony, the expenses of returning the demanded person to this state must be paid out of the state treasury, on the certificate of the governor and warrant of the county auditor and in all other cases they must be paid out of the county treasury in the county in which the crime is alleged to have been committed. The expenses are the fees paid to the officers of the state under sections 44 -08-04 and 54-06-09.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-31.1 - Property Forfeiture and Disposition**

### **CHAPTER 29-31.1**

#### **PROPERTY FORFEITURE AND DISPOSITION**

##### **29-31.1-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1."Forfeitable property" means any of the following:

a.Property that is illegally possessed or is contraband.

b.Property that has been used or is intended to be used to facilitate the commission of a criminal offense or to avoid detection or apprehension of a person committing a criminal offense. For purposes of this subdivision, property does not include a residence or other real estate where a co-owner, whether by joint tenancy, tenancy in common, or tenancy by the entireties, of the residence or other real estate, has not been convicted of the criminal offense that was facilitated by the use or intended use of the property.

c.Property that is acquired as or from the proceeds of a criminal offense.

d.Property offered or given to another as an inducement for the commission of a criminal offense.

e.A vehicle or other means of transportation used in the commission of a felony, the escape from the scene of the commission of a felony, or in the transportation of property that is the subject matter of a felony.

f.Personal property used in the theft of livestock or the transportation of stolen livestock.

2."Seized property" means property taken or held by any law enforcement agency in the course of that agency's official duties with or without the consent of the person, if any, who had possession or a right to possession of the property at the time it was taken

into custody.

3. "Seizing agency" is the law enforcement agency that has taken possession of or seized property in the course of that agency's official duties.

29-31.1-02. Disposition of nonforfeitable property.

Seized property that is not required as evidence or for use in an investigation may be returned to the owner without the requirement of a hearing, if the person's possession of the property is not prohibited by law, the property is not forfeitable property, and there is no forfeiture proceeding filed on behalf of the seizing agency. The seizing agency shall send notice by regular mail, if the value of the property is less than two hundred fifty dollars, or certified mail, if the value of the property is equal to or greater than two hundred fifty dollars, to the last -known address of any person having an ownership or possessory right in the property stating that the property is released and must be claimed within thirty days. Notice is deemed to have been made upon the mailing of the notice. The notice must state that if no written claim for the property is made upon the seizing agency within thirty days after the mailing of the notice, the property will be deemed abandoned and disposed of accordingly. If there is more than one party who may assert a right to possession or ownership of the property, the seizing agency may not release the property to any party until the expiration of the date for filing claims unless all other claimants execute a written waiver. If there is more than one claim filed for the return of property under this section, at the expiration of the period for filing claims the seizing agency shall file a copy of all such claims with the clerk of the district court and deposit the property with the court in accordance with the provisions of chapter 32 -11. If no owner can be located or no claim is filed under this section, the property is deemed abandoned and the seizing agency becomes the owner of the property and may dispose of it in any reasonable manner.

29-31.1-03. Seizure of forfeitable property.

Forfeitable property may be seized whenever and wherever the property is found within this state. Forfeitable property may be seized by taking custody of the property or by serving upon the person in possession of the property a notice of forfeiture and seizure. If the court finds that the forfeiture is warranted, an order transferring ownership to the seizing agency must be entered and the property must be delivered to the seizing agency for disposition as directed by the court. Property that has been seized for forfeiture, and is not already secured as evidence in a criminal case, must be safely secured or stored by the agency that caused its seizure.

29-31.1-04. Forfeiture proceedings.

1. Forfeiture is a civil proceeding not dependent upon a prosecution for, or conviction of, a criminal offense and forfeiture proceedings are separate and distinct from any related criminal action.

2. Forfeiture proceedings brought under this chapter must be conducted in accordance with the procedures established for the forfeiture of property in sections 19 -03.1-36.1 through 19-03.1-36.7.

29-31.1-05. Transfer of forfeitable property.

Title to, and responsibility for, forfeitable property vests with the seizing agency at the time of the seizure. Once forfeitable property is seized, no right to the property may be transferred by anyone other than the seizing agency unless the seizure and forfeiture is declared by the court to be a nullity or as otherwise ordered by the court.

29-31.1-06. Disposition of forfeited property.

When property is forfeited under this chapter, the seizing agency may:

1. Retain the property for official use or transfer the custody or ownership of any forfeited property to any federal, state, or local agency.

2. Sell the forfeited property that is not required to be destroyed by law and which is not harmful to the public. The proceeds from the sale, together with any monetary funds ordered to be forfeited, must be used first for the payment of all proper costs and expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs with any remaining proceeds to be deposited, subject to section 54 -12-14, in the appropriate state, county, or city general fund.

3. Dispose of the property in accordance with the order of the court if the property cannot be retained, used, or sold by the seizing agency.

29-31.1-07. Nonforfeitable interest - Purchase of forfeitable interest.

1. Property may not be forfeited under this chapter to the extent of an interest of an

owner who had no part in the commission of the crime and who had no knowledge of the criminal use or intended use of the property. However, if it is established that the owner permitted the use of the property under circumstances in which a reasonable person should have inquired into the intended use of the property and that the owner failed to do so, there is a rebuttable presumption that the owner knew that the property was intended to be used in the commission of a crime.

2. Upon receipt of forfeited property, the seizing agency shall permit any owner or lienholder of record having a nonforfeitable property interest in the property the opportunity to purchase the property interest forfeited. If the owner or lienholder does not exercise the option under this subsection within sixty days of mailing of written notice to such person of such option, the option is terminated unless the time for exercising the option is extended by the seizing agency.

3. A person having a valid, recorded lien or property interest in forfeited property, which has not been repurchased pursuant to subsection 2, must either be reimbursed to the extent of the nonforfeitable property interest or to the extent of the amount raised by the sale of the item, whichever amount is less. The sale of forfeited property must be conducted in a manner that is commercially reasonable and calculated to provide a sufficient return to cover the cost of the sale and reimburse any nonforfeitable interest. The validity of a lien or property interest is determined as of the date the property is seized. All costs and expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs, must be

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first deducted from the sale proceeds and paid to the party incurring such costs and expenses.

4. This section does not preclude a civil suit by an owner of an interest in forfeited property against the party who, by criminal use, caused the property to become forfeited to the seizing agency.

29-31.1-08. Retention of forfeited property.

If property forfeitable under this chapter is needed as evidence in a criminal proceeding, it must be retained under the control of the prosecuting attorney, or the prosecuting attorney's designee, until such time as its use as evidence is no longer required.

29-31.1-09. Disposition of forfeitable property held as evidence in criminal proceeding.

Notwithstanding other provisions of this chapter, in the case of forfeitable property seized and held as evidence of the commission of a criminal offense, the court in which a criminal prosecution was commenced may issue its order, upon motion and after hearing unless waived, for disposition of the property in accordance with this chapter. Notice of the motion must be served in accordance with the North Dakota Rules of Civil Procedure upon the owner and all persons known to be claiming an interest in the property to be forfeited. The notice must be served at least twenty days before a hearing on the motion unless the time period is waived by all parties claiming an interest in the property. The motion must contain the information required in a complaint as set forth in section 19-03.1-36.3. Although no separate forfeiture proceeding is required to be instituted under this section, all other provisions of this chapter apply to proceedings commenced pursuant to this section.

29-31.1-10. Inapplicability of chapter.

The provisions of this chapter do not apply to forfeiture proceedings commenced under other specific provisions of law, including chapters 12.1-06.1, 19-03.1, and 20.1-10.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-32.1 - Uniform Postconviction Procedure Act**

### **CHAPTER 29-32.1**

#### **UNIFORM POSTCONVICTION PROCEDURE ACT**

29-32.1-01. Remedy - To whom available - Conditions.

1. A person who has been convicted of and sentenced for a crime may institute a proceeding applying for relief under this chapter upon the ground that:

a. The conviction was obtained or the sentence was imposed in violation of the laws or the Constitution of the United States or of the laws or Constitution of North Dakota;

- b. The conviction was obtained under a statute that is in violation of the Constitution of the United States or the Constitution of North Dakota, or that the conduct for which the applicant was prosecuted is constitutionally protected;
- c. The court that rendered the judgment of conviction and sentence was without jurisdiction over the person of the applicant or the subject matter;
- d. The sentence is not authorized by law;
- e. Evidence, not previously presented and heard, exists requiring vacation of the conviction or sentence in the interest of justice;
- f. A significant change in substantive or procedural law has occurred which, in the interest of justice, should be applied retrospectively;
- g. The sentence has expired, probation or parole or conditional release was unlawfully revoked, or the applicant is otherwise unlawfully in custody or restrained; or
- h. The conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error available before July 1, 1985, under any common law, statutory or other writ, motion, proceeding, or remedy.

2. Except as provided in subsection 3, an application for relief under this chapter must be filed within two years of the date the conviction becomes final. A conviction becomes final for purposes of this chapter when:

- a. The time for appeal of the conviction to the North Dakota supreme court expires;
- b. If an appeal was taken to the North Dakota supreme court, the time for petitioning the United States supreme court for review expires; or
- c. If review was sought in the United States supreme court, the date the supreme court issues a final order in the case.

3.a. Notwithstanding subsection 2, a court may consider an application for relief under this chapter if:

(1) The petition alleges the existence of newly discovered evidence, including DNA evidence, which if proved and reviewed in light of the evidence as a whole, would establish that the petitioner did not engage in the criminal conduct for which the petitioner was convicted;

(2) The petitioner establishes that the petitioner suffered from a physical disability or mental disease that precluded timely assertion of the application for relief; or

(3) The petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States supreme court or a North Dakota appellate court and the petitioner establishes that the interpretation is retroactively applicable to the petitioner's case.

b. An application under this subsection must be filed within two years of the date the petitioner discovers or reasonably should have discovered the existence of the new evidence, the disability or disease ceases, or the effective date of the retroactive application of law.

4. A proceeding under this chapter is not a substitute for and does not affect any remedy incident to the prosecution in the trial court or direct review of the judgment of conviction or sentence in an appellate court. Except as otherwise provided in this chapter, a proceeding under this chapter replaces all other common law, statutory, or other remedies available before July 1, 1985, for collaterally challenging the validity of the judgment of conviction or sentence. It is to be used exclusively in place of them. A  
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proceeding under this chapter is not available to provide relief for disciplinary measures, custodial treatment, or other violations of civil rights of a convicted person occurring after the imposition of sentence.

29-32.1-02. Exercise of original jurisdiction in habeas corpus.

A court in which original jurisdiction in habeas corpus is vested may entertain a habeas corpus proceeding under chapter 32 -22 or this chapter. This chapter, to the extent appropriate, governs the proceeding.

29-32.1-03. Commencement of proceedings - Filing - Service.

1. A proceeding is commenced by filing an application with the clerk of the court in which the conviction and sentence took place. The state must be named as respondent. No filing fee is required.

2. An application may be filed at any time.

3. If an application is filed before the time for appeal from the judgment of conviction or sentence has expired, the court, on motion of the applicant, may extend the time for appeal until a final order has been entered in the proceeding under this chapter.

4. If an application is filed while an appeal or other review is pending, the appellate court, on motion of either party or on its own motion, may defer further action on the appeal or other review until the determination of the application by the trial court or may order the application certified and consolidated with the pending appeal or other review.

5. Upon receipt of an application, the clerk shall forthwith file it, make an entry in the appropriate docket, and deliver a copy to the state's attorney of the county in which the criminal action was venued.

6. If the applicant is not represented by counsel, the clerk shall notify the applicant that assistance of counsel may be available to persons unable to obtain counsel. The clerk shall also inform the applicant of the procedure for obtaining counsel.

7. The application may be considered by any judge of the court in which the conviction took place.

#### 29-32.1-04. Application - Contents.

1. The application must identify the proceedings in which the applicant was convicted and sentenced, give the date of the judgment and sentence complained of, set forth a concise statement of each ground for relief, and specify the relief requested.

Argument, citations, and discussion of authorities are unnecessary.

2. The application must identify all proceedings for direct review of the judgment of conviction or sentence and all previous postconviction proceedings taken by the applicant to secure relief from the conviction or sentence, the grounds asserted therein, and the orders or judgments entered. The application must refer to the portions of the record of prior proceedings pertinent to the alleged grounds for relief. If the cited record is not in the files of the court, the applicant shall attach that record or portions thereof to the application or state why it is not attached. Affidavits or other material supporting the application may be attached, but are unnecessary.

#### 29-32.1-05. Counsel at public expense - Applicant's inability to pay costs and litigation expenses.

1. If an applicant requests counsel and the court is satisfied that the applicant is indigent, counsel shall be provided at public expense to represent the applicant.

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

#### 29-32.1-06. Response by answer or motion.

1. Within thirty days after the docketing of an application or within any further time the court may allow, the state shall respond by answer or motion.

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2. The state may move to dismiss an application on the ground that it is evident from the application that the applicant is not entitled to postconviction relief and no purpose would be served by any further proceedings. In considering the motion, the court shall take account of substance regardless of defects of form.

3. The following defenses may be raised by answer or motion:

a. The claim has been fully and finally determined in a previous proceeding in accordance with subsection 1 of section 29 -32.1-12; or

b. The application constitutes misuse of process in accordance with subsection 2 of section 29-32.1-12.

#### 29-32.1-07. Amended and supplemental pleadings.

1. The court may make appropriate orders allowing amendment of the application or any pleading or motion, allowing further pleadings or motions, or extending the time for filing any pleading.

2. At any time before the entry of judgment, the court, for good cause, may grant leave to withdraw the application without prejudice.

#### 29-32.1-08. Discovery.

The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner the court has ordered or to which the parties have agreed.

#### 29-32.1-09. Summary dismissal.

1.The court, on its own motion, may enter a judgment denying a meritless application on any and all issues raised in the application before any response by the state. The court also may summarily deny a second or successive application for similar relief on behalf of the same applicant and may summarily deny any application when the issues raised in the application have previously been decided by the appellate court in the same case.

2.The court, on its own motion, may dismiss any grounds of an application which allege ineffective assistance of postconviction counsel. An applicant may not claim constitutionally ineffective assistance of postconviction counsel in proceedings under this chapter.

#### 29-32.1-09.1. Summary disposition.

1.The court may grant a motion by either party for summary disposition if the application, pleadings, any previous proceeding, discovery, or other matters of record show that no genuine issues exist as to any material fact and the moving party is entitled to judgment as a matter of law.

2.If an evidentiary hearing is necessary, the court may determine which issues of material fact are in controversy and appropriately restrict the hearing.

#### 29-32.1-10. Hearing - Evidence.

1.Evidence must be presented in open court, recorded, and preserved as part of the record of the proceedings.

2.A certified record of previous proceedings may be used as evidence of facts and occurrences established therein, but use of that record does not preclude either party from offering additional evidence as to those facts and occurrences.

3.The deposition of a witness may be received in evidence, without regard to the availability of the witness, if written notice of intention to use the deposition was given in advance of the hearing and the deposition was taken subject to the right of cross-examination.

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#### 29-32.1-11. Findings of fact - Conclusions of law - Order.

1.The court shall make explicit findings on material questions of fact and state expressly its conclusions of law relating to each issue presented.

2.If the court rules that the applicant is not entitled to relief, its order must indicate whether the decision is based upon the pleadings, is by summary disposition, or is the result of an evidentiary hearing.

3.If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the previous proceedings, and any supplementary orders as to arraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper.

#### 29-32.1-12. Affirmative defenses - Res judicata - Misuse of process.

1.An application for postconviction relief may be denied on the ground that the same claim or claims were fully and finally determined in a previous proceeding.

2.A court may deny relief on the ground of misuse of process. Process is misused when the applicant:

a.Presents a claim for relief which the applicant inexcusably failed to raise either in a proceeding leading to judgment of conviction and sentence or in a previous postconviction proceeding; or

b.Files multiple applications containing a claim so lacking in factual support or legal basis as to be frivolous.

3.Res judicata and misuse of process are affirmative defenses to be pleaded by the state. The burden of proof is also upon the state, but, as to any ground for relief which, by statute or rule of court, must be presented as a defense or objection at a specified stage of a criminal prosecution, the applicant shall show good cause for noncompliance with the statute or rule.

#### 29-32.1-13. Reimbursement of costs and litigation expenses.

If an application is denied, the state may move for an order requiring the applicant to reimburse the state for costs and for litigation expenses paid for the applicant from public funds. The court may grant the motion if it finds that the applicant's claim is so completely lacking in factual support or legal basis as to be frivolous or that the applicant has deliberately misused

process. The court may require reimbursement of costs and expenses only to the extent reasonable in light of the applicant's present and probable future financial resources.  
29-32.1-14. Review.

A final judgment entered under this chapter may be reviewed by the supreme court of this state upon appeal as provided by rule of the supreme court.

29-32.1-15. Motion for DNA testing not available at trial.

1. Without limitation on a court's authority to order discovery under section 29 -32.1-08, a person convicted of a crime may make a motion for the performance of forensic DNA testing to demonstrate the person's actual innocence if:

a. The testing is to be performed on evidence secured in relation to the trial which resulted in the conviction; and

b. The evidence was not subject to the testing because either the technology for the testing was not available at the time of the trial or the testing was not available as evidence at the time of the trial.

2. A person who makes a motion under subsection 1 must present a prima facie case that:

a. Identity was an issue in the trial; and

b. The evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material aspect.

3. The court shall order that the testing be performed if:

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a. A prima facie case has been established under subsection 2;

b. The testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence; and

c. The testing requested employs a scientific method generally accepted within the relevant scientific community. The court shall impose reasonable conditions on the testing designed to protect the state's interests in the integrity of the evidence and the testing process.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-33 - Uniform Mandatory Disposition of Detainers Act**

### **CHAPTER 29-33**

#### **UNIFORM MANDATORY DISPOSITION OF DETAINERS ACT**

29-33-01. Request for disposition of pending charges - Duty to inform prisoner - Dismissal.

1. Any person who is imprisoned in a penal or correctional institution of this state may request final disposition of any untried indictment, information, or complaint pending against that person in this state. The request must be in writing addressed to the court in which the indictment, information, or complaint is pending and to the prosecuting official charged with the duty of prosecuting it and must set forth the place of imprisonment.

2. The warden or other official having custody of prisoners shall promptly inform each prisoner in writing of the source and nature of any untried indictment, information, or complaint against a prisoner of which the warden or other official had knowledge or notice and of the prisoner's right to make a request for final disposition thereof.

3. Failure of the warden or other official to inform a prisoner, as required by this section, within one year after a detainer has been filed at the institution, entitles the prisoner to a final dismissal of the indictment, information, or complaint with prejudice.

29-33-02. Duty to inform court and prosecuting official.

The request must be delivered to the warden or other official having custody of the prisoner, who shall forthwith:

1. Certify the term of commitment under which the prisoner is being held, the time already served on the sentence, the time remaining to be served, the good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole board relating to the prisoner; and

2. Send by registered or certified mail, return receipt requested, one copy of the request and certificate to the court and one copy to the prosecuting official to whom it is

addressed.

29-33-03. When charges brought to trial - Dismissal.

Within ninety days after the receipt of the request and certificate by the court and prosecuting official or within such additional time as the court for good cause shown in open court may grant, the prisoner or the prisoner's counsel being present, the indictment, information, or complaint must be brought to trial, but the parties may stipulate for a continuance or a continuance may be granted on notice to the attorney of record and opportunity for the attorney to be heard. If, after such a request, the indictment, information, or complaint is not brought to trial within that period, no court of this state any longer has jurisdiction thereof, nor may the untried indictment, information, or complaint be of any further force or effect, and the court shall dismiss it with prejudice.

29-33-04. Request voided by escape.

Escape from custody by any prisoner subsequent to the prisoner's execution of a request for final disposition of an untried indictment, information, or complaint voids the request.

29-33-05. Exclusions.

This chapter does not apply to any person while under commitment to an institution for the mentally ill or mentally deficient.

29-33-06. Prisoners to be informed of chapter.

The warden or other official having custody of prisoners shall arrange for all prisoners to be informed in writing of the provisions of this chapter and for a record thereof to be placed in the prisoner's file.

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29-33-07. Application and construction.

This chapter must be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

29-33-08. Citation of chapter.

This chapter may be cited as the Uniform Mandatory Disposition of Detainers Act.

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## **2024 North Dakota Century Code Title 29 - Judicial Procedure, Criminal Chapter 29-34 - Interstate Agreement on Detainers**

### **CHAPTER 29-34**

#### **INTERSTATE AGREEMENT ON DETAINERS**

29-34-01. Agreement on detainers.

The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

#### **ARTICLE I**

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

#### **ARTICLE II**

As used in this agreement:

1. "State" shall mean a state of the United States; the United States of America; a territory of possession of the United States; District of Columbia; the Commonwealth of Puerto Rico;
2. "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof;
3. "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

#### **ARTICLE III**

1. Whenever a person has entered upon a term of imprisonment in a penal or

correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

2. The written notice and request for final disposition referred to in paragraph 1 hereof shall be given or sent by the prisoner to the official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

3. The official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

4. Any request for final disposition made by a prisoner pursuant to paragraph 1 hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from Page No. 1

the state to whose prosecuting official the request for final disposition is specifically directed. The official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

5. Any request for final disposition made by a prisoner pursuant to paragraph 1 hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph 4 hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

6. Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph 1 hereof shall void the request.

#### ARTICLE IV

1. The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V, paragraph 1, hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further that there shall be a period of thirty days

after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

2. Upon receipt of the officer's written request as provided in paragraph 1 hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

3. In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

4. Nothing contained in the Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph 1 hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

5. If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Page No. 2

Article V, paragraph 5, hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

#### ARTICLE V

1. In response to a request made under Article III or Article IV, hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of federal prisoners, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

2. The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

a. Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

b. A duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which a request for temporary custody of the prisoner has been made.

3. If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

4. The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a

suitable jail or other facility regularly used for persons awaiting prosecution.

5. At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

6. During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

7. For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

8. From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among

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the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

#### ARTICLE VI

1. In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

2. No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

#### ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

#### ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

#### ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

29-34-02. Definition - Appropriate court.

The phrase "appropriate court" as used in the agreement on detainees, with reference to the courts of this state, means any court with criminal jurisdiction in the matter involved.

29-34-03. Enforcement and cooperation directed.

All courts, departments, agencies, officers, and employees of this state and its political

subdivisions are hereby directed to enforce the agreement on detainees and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose. 29-34-04. Application of habitual criminal law not required.

Nothing in this chapter or in the agreement on detainees may be construed to require the application of the habitual criminal law of this state to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement.

29-34-05. Escape from custody.

Escape or attempt to escape from custody, whether within or without this state, while in the temporary custody of an authority of another state acting pursuant to the agreement on detainees constitutes an offense against the laws of this state. Such escape or attempt to escape constitutes an offense to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been released to temporary custody, and is punishable in the same manner as an escape or attempt to escape from said institution.

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29-34-06. Lawful and mandatory to give over inmates.

It is lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainees.

29-34-07. Attorney general shall be the administrator.

The attorney general is hereby designated as the officer who must be the central administrator of and information agent for the agreement on detainees as provided in Article VII of the agreement.

29-34-08. To whom copies of this chapter must be sent.

Copies of this chapter must, upon its approval, be transmitted to the governor of each state, the attorney general and the administrator of general services of the United States, and the council of state governments.

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## **Title: title-39**

### **2024 North Dakota Century Code Title 39 - Motor Vehicles Chapter 39-06.1 - Disposition of Traffic Offenses**

#### CHAPTER 39-06.1

#### DISPOSITION OF TRAFFIC OFFENSES

##### 39-06.1-01. Definitions.

As used in this title:

1. "Adjudication" and "admission" means an official determination, in the manner provided by law, that a traffic violation has been committed by a named driver.
  2. "Equivalent ordinance" means an ordinance of a city, state, or other jurisdiction which is comparable to the cited statute and defines essentially the same offense, even if the language of the ordinance differs or procedural points or methods of proof differ.
  3. "Official" means a municipal judge or a magistrate or other qualified individual appointed by the presiding judge of the judicial district to serve for all or part of the judicial district.
  4. "Points" means the number of demerits assigned to particular types of traffic violations.
- 39-06.1-02. Traffic violations noncriminal - Exceptions - Procedures.
1. An individual cited, in accordance with sections 39-07-07 and 39-07-08, for a traffic violation under state law or municipal ordinance, other than an offense listed in section 39-06.1-05, is deemed to be charged with a noncriminal offense.
    - a. The individual may appear before the designated official and pay the statutory fee for the violation charged at or before the time scheduled for a hearing.
    - b. If the individual has posted bond, the individual may forfeit bond by not appearing at the designated time.
  2. If the individual is cited for a traffic violation under state law and posts bond by mail, the bond must be submitted within fourteen days of the date of the citation and the individual cited shall indicate on the citation whether a hearing is requested. If the individual does not request a hearing within fourteen days of the date of the citation, the bond is deemed forfeited and the violation admitted. If the individual requests a hearing, the court for the county in which the citation is issued shall issue a summons

to the individual requesting the hearing notifying the individual of the date of the hearing before the designated official in accordance with section 39 -06.1-03.

3. Upon appearing at the hearing scheduled in the citation or otherwise scheduled at the individual's request, the individual may make a statement in explanation of the individual's action. The official may at that time waive, reduce, or suspend the statutory fee or bond, or both. If the individual cited follows the foregoing procedures, the individual is deemed to have admitted the violation and to have waived the right to a hearing on the issue of commission of the violation.

4. The bond required to secure appearance must be identical to the statutory fee established by section 39 -06.1-06.

5. Within ten days after forfeiture of bond or payment of the statutory fee, the official having jurisdiction over the violation shall certify to the director:

a. Admission of the violation; and

b. In speeding violations, whether the speed charged was in excess of the lawful speed limit by more than nine miles [14.48 kilometers] per hour and the miles [kilometers] per hour by which the speed limit was exceeded.

6. Under this section a citing police officer may not receive the statutory fee or bond.

39-06.1-02.1. Notification of parents or guardians of juvenile traffic offenders.

The clerk of court shall notify the parent or guardian of any juvenile appearing before the court on a traffic offense of the charge as contained in the citation, the penalty attached to the offense, and the time and place of any court hearing on the matter.

39-06.1-03. Administrative hearing - Procedures - Appeals - Stay orders.

1. An individual cited for a traffic violation, other than an offense listed in section 39-06.1-05, who does not follow one of the procedures in section 39 -06.1-02, may  
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request a hearing on the issue of commission of the charged violation. The hearing must be held at the time scheduled in the citation, at the time scheduled in response to the individual's request, or at some future time, not to exceed ninety days later, set at that first appearance.

2. At the time of a request for a hearing on the issue of commission of the violation, the individual charged shall deposit with the official having jurisdiction an appearance bond equal to the statutory fee for the charged violation.

3. If an individual cited for a traffic violation, other than an offense listed in section 39-06.1-05, has requested a hearing on the issue of the commission of the charged violation and appears at the time scheduled for the hearing, and the prosecution does not appear or is not ready to prove the commission of a charged violation at the hearing, the official shall dismiss the charge.

4. If the official finds that the individual had committed the traffic violation, the official shall notify the director of that fact, and whether the individual was driving more than nine miles [14.48 kilometers] per hour in excess of the lawful limit, stating specifically the miles [kilometers] per hour in excess of the lawful limit, if charged with a speeding violation, within ten days of the date of the hearing. The fact that an individual has admitted a violation, or has, in any proceeding, been found to have committed a violation, may not be referred to in any way, nor be admissible as evidence in any court, civil, equity, or criminal, except in an action or proceeding involving that individual's operator's license.

5.a. An individual may not appeal a finding from a district judge or magistrate that the individual committed the violation. If an individual is aggrieved by a finding in the municipal court that the individual committed the violation, the individual may, without payment of a filing fee, appeal that finding to the district court for trial anew. If, after trial in the appellate court, the individual is again found to have committed the violation, there is no further appeal. Notice of appeal under this subsection must be given within thirty days after a finding of commission of a violation is entered by the official. Oral notice of appeal may be given to the official at the time that the official adjudges that a violation has been committed. Otherwise, notice of appeal must be in writing and filed with the official, and a copy of the notice must be served upon the prosecuting attorney. An appeal taken under this subsection may not operate to stay the reporting requirement of subsection 4, nor to stay appropriate action by the director upon receipt of that

report.

b. The appellate court upon application by the appellant may:

- (1) Order a stay of any action by the director during pendency of the appeal, but not to exceed a period of one hundred twenty days;
- (2) Order a stay and that the appellant be issued a temporary restricted driving certificate by the director to be effective for no more than one hundred twenty days; or
- (3) Deny the application.

An application for a stay or temporary certificate under this subdivision must be accompanied by a certified copy of the appellant's driving record, for the furnishing of which the director may charge a fee of three dollars. Any order granting a stay or a temporary certificate must be immediately forwarded by the clerk of court to the director, who immediately shall issue a temporary certificate in accordance with the order in the manner provided by law. A court may not make a determination on an application under this subdivision without notice to the appropriate prosecuting attorney. An individual who violates or exceeds the restrictions contained in any temporary restricted driving certificate issued under this subdivision is guilty of a traffic violation and must be assessed a fee of twenty dollars.

c. If the individual charged is found not to have committed the violation by the appellate court, the clerk of court shall report that fact to the director immediately.

Unless the appropriate state's attorney consents to prosecute the appeal, if an

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appeal under this subsection is from a violation of a city ordinance, the city attorney for the city wherein the alleged violation occurred shall prosecute the appeal. In all other cases, the appropriate state's attorney shall prosecute the appeal.

6. The state or the city, as appropriate, must prove the commission of a charged violation at the hearing or appeal under this section by a preponderance of the evidence. Upon an appeal under subsection 5, the court and parties shall follow, to the extent applicable, the North Dakota Rules of Civil Procedure. If on the appeal from the finding of the official the finding is affirmed, costs may be assessed at the discretion of the trial judge.

39-06.1-04. Failure to appear, pay statutory fee, post bond - Procedure - Penalty.

If an individual fails to choose one of the methods of proceeding in section 39 -06.1-02 or 39-06.1-03, the individual is deemed to have admitted to commission of the charged violation, and the official having jurisdiction shall report the admission to the director within ten days after the date set for the hearing. Failure to appear at the time designated, after signing a promise to appear, if signing is required by law, or failure to appear without paying the statutory fee or posting and forfeiting bond is a class B misdemeanor. Failure to appear without just cause at the hearing is deemed an admission of commission of the charged violation.

39-06.1-05. Offenses excepted.

The procedures authorized under sections 39 -06.1-02 and 39-06.1-03 may not be utilized by a person charged with one of the following offenses:

1. Driving or being in actual physical control of a vehicle in violation of section 39 -08-01, or an equivalent ordinance.
2. Reckless driving or aggravated reckless driving in violation of section 39 -08-03, or an equivalent ordinance.
3. A violation of chapter 12.1 -16 resulting from the operation of a motor vehicle.
4. Leaving the scene of an accident in violation of section 39 -08-04, 39-08-05, 39-08-07, or 39-08-08, or equivalent ordinances.
5. Driving while license or driving privilege is suspended or revoked in violation of section 39-06-42, or an equivalent ordinance.
6. Violating subdivision b or c of subsection 5 of section 39-24-09.
7. Operating an unsafe vehicle in violation of subsection 2 of section 39-21-46.
8. Causing an accident with an authorized emergency vehicle or a vehicle operated by or under the control of the director used for maintaining the state highway system in violation of subsection 5 of section 39-10-26.

39-06.1-06. Amount of statutory fees.

The fees required for a noncriminal disposition under section 39-06.1-02 or 39-06.1-03 must be as follows:

1. For a nonmoving violation as defined in section 39-06.1-08, a fee of twenty dollars except for a violation of any traffic parking regulation on any state charitable or penal institution property or on the state capitol grounds, a fee in the amount of five dollars, excluding a violation of subsection 11 of section 39-01-15.

2. For a moving violation as defined in section 39-06.1-09, a fee of twenty dollars, except for:

a. A violation of section 39-10-26, 39-10-26.2, 39-10-41, or 39-10-42, a fee of fifty dollars.

b. A violation of section 39-10-05 involving failure to yield to a pedestrian or subsection 1 of section 39-10-28, a fee of fifty dollars.

c. A violation of section 39-21-41.2, a fee of twenty-five dollars.

d. A violation of subsection 1 of section 39-12-02, section 39-08-23, or section 39-08-25, a fee of one hundred dollars.

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e. A violation of subdivision d of subsection 1 of section 39-12-04, a fee of one hundred dollars.

f. A violation of subsection 6 of section 39-04-37, a fee of one hundred dollars.

g. A violation of subsection 2 of section 39-10-21.1, a fee of two hundred fifty dollars.

h. A violation of section 39-10-59, a fee of five hundred dollars.

i. A violation of section 39-09-01, a fee of thirty dollars.

j. A violation of section 39-09-01.1, a fee of thirty dollars.

k. A violation of section 39-10-46 or 39-10-46.1, a fee of one hundred dollars.

l. A violation of subsection 1 of section 39-08-20, one hundred fifty dollars for a first violation and three hundred dollars for a second or subsequent violation in three years.

m. A violation of section 39-10-24 or 39-10-44, a fee of forty dollars.

n. A violation of section 39-10-50.1, a fee of fifty dollars.

o. A violation of section 39-19-03, a fee of fifty dollars.

3. For a violation of section 39-21-44 or a rule adopted under that section, a fee of two hundred fifty dollars.

4. Except as provided in subsections 5 and 7, for a violation of section 39-09-02, or an equivalent ordinance, a fee established as follows:

Miles per hour over

lawful speed limit Fee

1 - 5 \$ 5

6 - 10 \$ 5 plus \$1/each mph over 5 mph over limit

11 - 15 \$ 10 plus \$1/each mph over 10 mph over limit

16 - 20 \$ 15 plus \$2/each mph over 15 mph over limit

21 - 25 \$ 25 plus \$3/each mph over 20 mph over limit

26 - 35 \$ 40 plus \$3/each mph over 25 mph over limit

36 - 45 \$ 70 plus \$3/each mph over 35 mph over limit

46 + \$100 plus \$5/each mph over 45 mph over limit

5. On a highway on which the speed limit is a speed higher than fifty-five miles [88.51 kilometers] an hour, for a violation of section 39-09-02, or an equivalent ordinance, a fee established as follows:

Miles per hour over

lawful speed limit Fee

1 - 10 \$2/each mph over limit

11 + \$20 plus \$5/each mph over 10 mph over limit

6. For a violation of section 39-06.2-10.9 or subsection 3 of section 39-21-46, a fee established as follows:

a. Driving more than eleven hours since the last ten hours off duty, driving after fourteen hours on duty since the last ten hours off duty, driving after sixty hours on duty in seven days or seventy hours in eight days, no record of duty status or log book in possession, failing to retain previous seven-day record of duty status or log book, or operating a vehicle with four to six out-of-service defects, one

hundred dollars;

b.False record of duty status or log book or operating a vehicle with seven to nine out-of-service defects, two hundred fifty dollars;

c.Operating a vehicle after driver placed out of service, operating a vehicle with ten or more out-of-service defects, or operating a vehicle that has been placed out of service prior to its repair, five hundred dollars; and

d.All other violations of motor carrier safety rules adopted under subsection 3 of section 39-21-46, fifty dollars.

7.On a highway on which the speed limit is posted in excess of sixty -five miles [104.61 kilometers] an hour, for a violation of section 39 -09-02, or equivalent ordinance, a fee of five dollars for each mile per hour over the limit.

8.For a violation of a school zone speed limit under subdivision b of subsection 1 of section 39-09-02, a fee of forty dollars for one through ten miles per hour over the

posted speed; and forty dollars, plus one dollar for each additional mile per hour over ten miles per hour over the limit unless a greater fee would be applicable under this section.

9.For a violation of a highway construction zone speed limit under subsection 2 of section 39-09-02, a fee of eighty dollars for one through ten miles per hour over the posted speed; and eighty dollars plus two dollars for each mile per hour over ten miles per hour over the limit, unless a greater fee would be applicable under this section.

The fee in this subsection does not apply to a highway construction zone unless individuals engaged in construction are present at the time and place of the violation and the posted speed limit sign states "Minimum Fee \$80".

39-06.1-07. Notification to offenders - Duties of director.

1.The director shall prepare notification forms to be delivered to the charged individual with the uniform traffic summons and complaint under section 29-05-31. The notification form may be delivered to the individual in writing, by providing a website address, or providing a quick response code. The notification forms must contain language, approved by the attorney general, informing an individual charged with a traffic violation, other than offenses listed in section 39 -06.1-05, of the procedures available to that individual under sections 39 -06.1-02 and 39-06.1-03. The notification must contain a schedule of points to be charged against an individual's driving record or other operator's license penalties as provided by law and a schedule of statutory fees and bond amounts as determined in accordance with this chapter. A notification form separate from the uniform traffic summons and complaint may be delivered to an individual charged with a violation of subsection 3 of section 39-21-46.

2.The director shall prepare a temporary operator's permit under sections 39 -20-03.1, 39-20-03.2, and 39-20-04. The temporary operator's permit must inform the driver of the procedures available under chapter 39 -20 and must be issued in accordance with that chapter. The temporary operator's permit may not be delivered by mail or electronic means unless specifically authorized under chapter 39 -20.

39-06.1-08. Nonmoving violation defined.

For the purposes of section 39 -06.1-06, a "nonmoving violation" means:

1.A violation of section 39-04-02.1, subsection 6 of section 39-04-37, subsection 4 of section 39-06-17, and section 39-06-20, 39-06-44, 39-06-45, 39-10-47, 39-10-49, 39-10-50, 39-10-54.1, 39-21-08, 39-21-10, 39-21-11, or 39-21-14, or a violation of any municipal ordinance equivalent to the foregoing sections.

2.A violation, discovered at a time when the vehicle is not actually being operated, of section 39-21-03, 39-21-05, 39-21-13, 39-21-19, 39-21-32, 39-21-37, 39-21-39, or 39-21-44.2, or a violation of any municipal ordinance equivalent to the foregoing sections.

39-06.1-09. Moving violation defined.

For the purposes of sections 39 -06.1-06 and 39-06.1-13, a "moving violation" means a violation of section 39-04-11, 39-04-22, subsection 1 of section 39-04-37, section 39-04-55, 39-06-01, 39-06-04, 39-06-14, 39-06-14.1, 39-06-16, 39-06.2-07, 39-08-20, 39-08-23, 39-08-24, 39-08-25, 39-09-01, 39-09-01.1, 39-09-04.1, or 39-09-09, subsection 1 of section 39-12-02, section 39-12-04, 39-12-05, 39-12-06, 39-12-09, 39-19-03, 39-21-45.1, 39-24-02, or 39-24-09, except subdivisions b and c of subsection 5 of section 39-24-09, or equivalent ordinances; or a

violation of the provisions of chapter 39 -10, 39-10.2, 39-21, or 39-27, or equivalent ordinances, except subsection 5 of section 39-10-26, section 39-21-44, and subsections 2 and 3 of section 39-21-46, and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

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39-06.1-10. Entries against driving record - Director duties - Hearings - Demerit schedule - Suspension.

1.If a report of a conviction of a traffic offense, or admission or adjudication of a traffic violation is received by the director, the director shall proceed to enter the proper points on the licensee's driving record. If the driving record shows that the licensee has accumulated a total of twelve or more points, assigned on the basis of the schedule contained in subsection 3, the director shall notify the licensee of the director's intention to suspend the operator's license under section 39-06-33. For the purposes of this chapter, the director also may receive and act on reports of traffic offense convictions forwarded by federal, military, and tribal courts in this state.

2.If the director confirms, after hearing or opportunity for hearing, that the licensee's driving record has an accumulated point total of twelve or more points, the director shall suspend the licensee's operator's license according to the following schedule:

Accumulated Point Total: Period of Suspension:

a.Twelve 7 days

b.Thirteen and above 7 days for each point over eleven

3.Points must be assigned and accumulated on the basis of the following schedule:

a.Noncriminal Violations

Noncriminal Adjudication or Admission of: Points Assigned:

(1)Overtime and double parking in violation of city 0 points ordinances

(2)Failure to display license plates 1 point

(3)Permitting unauthorized minor to drive 2 points

(4)Permitting unauthorized person to drive 2 points

(5)Unlawful stopping, standing, or parking on open 2 points highway in violation of section 39 -10-47

(6)Unlawful parking in prohibited place 1 point

(7)Leaving motor vehicle improperly unattended on 1 point an open highway

(8)Opening or leaving motor vehicle doors open when 1 point unsafe to do so

(9)Except as provided in sections 39 -21-44 and 2 points

39-21-45.1, knowingly driving with defective, nonexistent, or unlawful equipment in violation of section 39-21-46, or equivalent ordinances

(10)Careless driving in violation of section 39 -09-01, or 6 points equivalent ordinance

(11)Violating or exceeding restrictions contained in 4 points a restricted certificate issued pursuant to section 39-06.1-03

(12)Racing or drag racing motor vehicles in violation 10 points of section 39-08-03.1, or equivalent ordinance

(13)Exhibition driving in violation of section 39 -08-03.1, or 3 points equivalent ordinance

(14)Failing to yield right of way in violation of 2 points section 39-10-20, 39-10-22 through 39-10-26, 39-10-28, 39-10-33.3, 39-10-44, or 39-10-72, or equivalent ordinances

(15)Disobeying an official traffic -control device 2 points in violation of section 39 -10-04, 39-10-05, or 39-10-07, or equivalent ordinances

(16)Driving on wrong side of road in violation of 2 points section 39-10-08, 39-10-14, or subsection 1, 2, or 3 of section 39-10-16, or

equivalent ordinances

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- (17)Failing to dim headlights in violation of section 1 point  
39-21-21, or equivalent ordinance
- (18)Failing to stop at railroad crossing in violation of section 3 points  
39-10-41 or 39-10-42, or equivalent ordinances
- (19)Knowingly driving with defective brakes in violation of 2 points  
section 39-21-32 or 39-21-33, or equivalent ordinances
- (20)Disregarding the lawful commands of a police officer in 2 points  
violation of section 39 -10-02, or equivalent ordinance
- (21)Overtaking where prohibited or in an unsafe manner in 2 points  
violation of section 39 -10-11, 39-10-12, 39-10-13, or  
39-10-15, or equivalent ordinances
- (22)Overtaking and passing a schoolbus in violation of 6 points  
section 39-10-46, or equivalent ordinance
- (23)Operating a motor vehicle without a license in 4 points  
violation of section 39 -06-01, or equivalent ordinance
- (24)Improperly operating or unlawfully carrying 2 points  
passengers or packages on a motorcycle in violation  
of section 39-10.2-02, or equivalent ordinance
- (25)Improperly operating a motorcycle in laned traffic in 2 points  
violation of section 39 -10.2-03, or equivalent ordinance
- (26)Clinging to other vehicles while riding a motorcycle in 4 points  
violation of section 39 -10.2-04, or equivalent ordinance
- (27)Carrying a passenger on a motorcycle not equipped 2 points  
with passenger footrests in violation of section  
39-10.2-05, or equivalent ordinance
- (28)Operating a motorcycle without protective headgear 2 points  
in violation of subsection 1 of section 39-10.2-06, or  
equivalent ordinance
- (29)Failing to use the care required in section 39 -09-01.1, 2 points  
or equivalent ordinance
- (30)Except as provided in paragraph 33, operating a motor  
vehicle in excess of speed limit in violation of section  
39-09-02, or equivalent ordinance
- |                        |           |
|------------------------|-----------|
| 6 - 10 mph over limit  | 0 points  |
| 11 - 15 mph over limit | 1 point   |
| 16 - 20 mph over limit | 3 points  |
| 21 - 25 mph over limit | 5 points  |
| 26 - 35 mph over limit | 9 points  |
| 36 - 45 mph over limit | 12 points |
| 46 + mph over limit    | 15 points |
- (31)Driving in violation of section 39 -08-18 2 points
- (32)Driving in violation of section 39 -08-09 6 points
- (33)On a highway on which the speed limit is posted in  
excess of sixty-five miles [104.61 kilometers] an hour,  
operating a motor vehicle in excess of the speed limit  
in violation of section 39 -09-02, or equivalent ordinance
- | Miles per hour over lawful speed limit | Points |
|--|--------|
| 1 - 5                                  | 0      |
| 6 - 10                                 | 1      |
| 11 - 15                                | 3      |
| 16 - 20                                | 5      |
| 21 - 25                                | 7      |
| 26 - 30                                | 10     |
| 31 - 35                                | 12     |
| 36 +                                   | 15     |
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- (34)Failing to have a minor in a child restraint system 1 point

or seatbelt in violation of section 39 -21-41.2

(35) Failure or refusal to comply with rules of the 0 points

superintendent of the highway patrol in violation

of subsection 3 of section 39-21-46

(36) Violation of section 39-21-44 or any rule adopted 2 points

under that section

(37) Except as provided in paragraph 39, operating a motor 6 points

vehicle without liability insurance, in violation of

section 39-08-20

(38) Except as provided in paragraph 39, operating a motor 12 points

vehicle without liability insurance, in violation of

section 39-08-20, if the driving record shows that the

licensee has within the eighteen months preceding the

violation previously violated section 39 -08-20

(39) Operating a motor vehicle without liability insurance, 14 points

in violation of section 39 -08-20, if the violation was

discovered as the result of investigation of an accident

in which the driver is the owner

(40) Driving a modified motor vehicle in violation of section 1 point

39-21-45.1, or equivalent ordinance

(41) Driving in violation of the conditions of 2 points

an instructional permit.

#### b. Criminal Violations

Conviction of: Points Assigned:

(1) Reckless driving in violation of section 39 -08-03, or 8 points

equivalent ordinance

(2) Aggravated reckless driving in violation of section 12 points

39-08-03, or equivalent ordinance

(3) Leaving the scene of an accident involving property 14 points

damage in violation of section 39 -08-05, 39-08-07,

or 39-08-08, or equivalent ordinances

(4) Leaving the scene of an accident involving personal 18 points

injury or death in violation of section 39 -08-04, or

equivalent ordinance

(5) Violating restrictions in a restricted license issued 3 points

under section 39-06-17 and relating to the use of

eyeglasses or contact lenses while driving

(6) Violating any restrictions other than those listed in 4 points

paragraph 5, contained in a restricted license issued

under section 39-06-17 or 39-06.1-11

(7) Except as provided in paragraph 9 of subdivision a, 2 points

knowingly operating an unsafe vehicle in violation of

section 39-21-46, or equivalent ordinance

(8) Fleeing in a motor vehicle from a peace officer in 24 points

violation of section 39 -10-71, or equivalent ordinance

(9) Causing an accident with an authorized emergency 2 points

vehicle or a vehicle operated by or under the control

of the director used for maintaining the state highway

system in violation of subsection 5 of section 39-10-26,

or equivalent ordinance

4.a. If the director is informed by a court that an individual has been convicted of

violating section 39 -08-01, or equivalent ordinance, the director, subject to the

offender's opportunity for hearing under subsection 1, shall suspend that

individual's operator's license until the offender furnishes to the director the

written statement of the counselor or instructor of an appropriate licensed

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addiction treatment program that the offender does not require either an

education or treatment program or that the offender has physically attended the

prescribed program and has complied with the attendance rules. The director

shall send notice to the offender informing the offender of the provisions of this subsection.

b.If within the seven years preceding the most recent violation of section 39 -08-01, or equivalent ordinance, the offender has previously violated section 39 -08-01, or equivalent ordinance, at least three times, the driving privileges must be suspended and may be restored only after the offender has completed addiction treatment through an appropriate licensed addiction treatment program and has had no alcohol-related or drug-related offense for two consecutive years after completion of treatment. The offender must receive a temporary restricted license during the suspension period, in accordance with section 39 -06.1-11.

5.If judicial disposition of a traffic violation includes an order or recommendation of suspension or revocation of an operator's license, the suspension or revocation runs concurrently with any suspension ordered under this section. After a conviction of an individual for violating section 39 -08-01, the director, in suspending the individual's operator's license, shall give credit for the time in which license suspension or revocation has been or is being imposed under chapter 39 -20 in connection with the same offense.

6.A suspension must be deemed to have commenced twenty days after the order of suspension is delivered to the licensee at the licensee's address of record in the department. Constructive delivery under this section must be considered as occurring seventy-two hours after proper deposit in the mails.

7.Points assigned under this section must be recorded against an operator's driving record regardless of whether the operator has ever had an operator's license issued in this state, and the director shall maintain records on all violators regardless of licensure. Upon the assignment of twelve or more points, any unlicensed operator must be deemed to be driving under suspension if the operator has never had an operator's license or if the operator has failed to renew the operator's license.

8.The period of suspension imposed for a violation of section 39 -08-01, 39-08-01.2, or 39-08-01.4 or equivalent ordinance is:

a.Ninety-one days if the operator's record shows the individual has not violated section 39-08-01 or equivalent ordinance within the seven years preceding the last violation.

b.One hundred eighty days if the operator's record shows the individual has not violated section 39 -08-01 or equivalent ordinance within the seven years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one -hundredths of one percent by weight.

c.Three hundred sixty -five days if the operator's record shows the individual has once violated section 39 -08-01 or equivalent ordinance within the seven years preceding the last violation.

d.Two years if the operator's record shows the individual has at least once violated section 39-08-01 or equivalent ordinance within the seven years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

e.Two years if the operator's record shows the individual has at least twice violated section 39-08-01 or equivalent ordinance within the seven years preceding the last violation.

f.Three years if the operator's record shows the individual has at least twice violated section 39 -08-01 or equivalent ordinance within the seven years preceding the last violation and the violation is for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

9.If an individual has a temporary restricted driver's license with the restriction the individual participates in the twenty-four seven sobriety program under chapter 54 -12, Page No. 9

the individual may operate a motor vehicle during the suspension periods under this section.

39-06.1-10.1. Alternative disposition - Driver training course - Exceptions.

1.An individual issued a summons or notice to appear under section 39 -07-07 may appear before the court and elect to attend a driver training course approved by the director in lieu of entry of points on the licensee's driving record. An individual who

elects to attend the course must so notify the court at the time of posting the bond, which is forfeited even though an election is made under this section. The individual who makes the election shall pay the driver training course fee to the driver training course sponsor. If an individual elects to attend the course, the point penalty of five points or fewer for the violation by section 39 -06.1-10 may not be assessed if proof of completion of the course is presented to the department within thirty days after the individual notifies the court of the election. An individual may not make an election under this section if:

- a. That individual has made an election under this section within the twelve months preceding the date of issuance of the summons or notice to appear;
  - b. The offense is assigned six or more points; or
  - c. The offense is an offense listed in section 39 -06.1-05.
2. An individual making an election under this section forfeits any point reduction option under section 39-06.1-13.

39-06.1-11. Temporary restricted license - Ignition interlock device.

1. Except as provided under subsection 2 or 3, if the director has suspended a license under section 39-06.1-10 or has extended a suspension or revocation under section 39-06-43, upon receiving written application from the offender affected, the director may for good cause issue a temporary restricted operator's license valid for the remainder of the suspension period after seven days of the suspension period have passed.

2. If the director has suspended a license under chapter 39 -20, or after a violation of section 39-08-01 or equivalent ordinance, upon written application of the offender the director may issue a temporary restricted license that takes effect after thirty days of the suspension have been served after a first offense under section 39 -08-01 or chapter 39-20, but if the offender is participating in the twenty-four seven sobriety program under chapter 54 -12, the director shall issue a temporary restricted license that takes effect after fourteen days of the suspension have been served if the driver is not subject to any unrelated suspension or revocation .

3. For any suspension or revocation imposed under the law, the director shall issue a temporary restricted license if the offender is participating in and compliant with the twenty-four seven sobriety program under chapter 54 -12 or if the offender has not committed an offense for a period of one year before the date of the filing of a written application. The application must be accompanied by :

- a. Proof of financial responsibility and a report from an appropriate licensed addiction treatment program and, if prescribed, proof of compliance with attendance rules in an appropriate licensed addiction treatment program; or
- b. If the offender is participating in the twenty -four seven sobriety program, proof of program participation.

4. For a temporary restricted license under subsection 3, the director may conduct a hearing for the purposes of obtaining information, reports, and evaluations from courts, law enforcement, and citizens to determine the offender's conduct and driving behavior during the prerequisite period of time. The director may require an ignition interlock device be installed in the offender's vehicle and may require the applicant to submit proof of attendance at a driver training course approved by the director . The director may impose additional conditions as reasonably necessary to ensure compliance.

5. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under section 39 -06-31. A temporary restricted

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license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in -state conduct.

6.a. In addition to any restrictions authorized under section 39 -06-17, the director may impose any of the following conditions upon the use of a temporary restricted license issued under this section for the use of a motor vehicle by the offender:

- (1) To use during the licensee's normal working hours ;
- (2) To use for attendance at an appropriate licensed addiction treatment program or a treatment program ordered by a court; or
- (3) To use as necessary to prevent the substantial deprivation of the

educational, medical, or nutritional needs of the offender or an immediate family member of the offender .

b. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.

c. This section does not limit the director's authority to cancel a temporary restricted license for good cause.

7. If an offender has been charged with, or convicted of, a second or subsequent violation of section 39 -08-01 or equivalent ordinance , or if the offender's license is subject to suspension under chapter 39 -20 and the offender's operator's license is not subject to an unrelated suspension or revocation in this state, the director shall issue a temporary restricted license to the offender upon the restriction the offender participate in the twenty-four seven sobriety program under chapter 54-12. The offender shall submit an application to the director for a temporary restricted license along with submission of proof of financial responsibility and proof of participation in the twenty-four seven sobriety program to receive a temporary restricted license.

8. If the director denies a temporary restricted license under this section, or denies a request for a hearing under subsection 4, the applicant may appeal within thirty days after the date of the decision by filing a notice of appeal in the district court in the county where the applicant resides and by serving the notice of appeal on the director. On appeal the district court shall review the application and may authorize presentation of additional evidence.

9. If an offender is participating in an approved drug court program, the court may order issuance of a temporary restricted license. Upon application by the offender, the director shall issue a temporary restricted license to the participant subject to conditions specified by the court.

a. The application must be accompanied by proof of financial responsibility, the court's order, and the designated reinstatement fee.

b. For purposes of this subsection, "approved drug court program" means a district court-supervised treatment program approved by the supreme court.

39-06.1-12. Completion of suspension - Reduction of point total.

If a licensee completes a period of suspension ordered under section 39-06.1-10 or as ordered or recommended by a court of competent jurisdiction, the director shall reduce the point total shown on the licensee's driving record to eleven points. A suspension must be ordered if that licensee's point total again reaches twelve or more points.

39-06.1-13. Reduction of point total - Other methods.

1. The director shall reduce the point total shown on any licensee's driving record by one point for each three -month period during which points are not recorded against the licensee's driving record for a moving violation or a violation listed in paragraphs 12 through 16 of subdivision a of subsection 3 of section 39-06.1-10. The three-month period must be calculated from the date of entry of the last points against that licensee's driving record.

2. The point total shown on a licensee's driving record must, during any twelve -month period, be reduced by three points when the licensee mails or delivers a certificate to the director indicating successful completion of instruction in a driver training course

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approved by the director. Successful completion of instruction must be certified to by the sponsoring agency or organization of the driver training course. The reduction in points under this subsection must be solely from a point total accumulated before completion of the necessary hours of driver training instruction, and may not exceed nine points during any three -year period commencing on the date of entry of the last points against the individual's driving record. If on the date the director receives the certificate of completion of the driver training course from the licensee, that licensee's driving record contains twelve or more points or, as a minor, the licensee's driving record contains six points or more, the point reduction under this subsection must be applied after serving the period of suspension or cancellation required by the number of points on the licensee's record.

39-06.1-14. Delivery of license revocation.

Delivery of the order of revocation is deemed to have occurred seventy -two hours after the order is mailed by regular mail to the address of record in the department under section

39-06-20.

39-06.1-15. Diplomatic immunities and privileges.

1.This section applies only to an individual who displays an operator's license issued by the United States department of state to a police officer or who otherwise claims immunities or privileges under chapter 6 of title 22 of the United States Code with respect to the individual's violation of any law or ordinance that relates to the operation of a motor vehicle.

2.If a driver who is subject to this section is stopped by a police officer who has probable cause to believe that the driver has committed a violation, the police officer shall record all relevant information from any operator's license or identification card, including an operator's license or identification card issued by the United States department of state; as soon as practicable contact the United States department of state office in order to verify the driver's status and immunity, if any; and forward the following to the bureau of diplomatic security office of foreign missions of the United States department of state:

a.A vehicle accident report, if the driver was involved in a vehicle accident;

b.A copy of the citation or other charging document if a citation or other charging document was issued to the driver; and

c.A written report of the incident if a citation or other charging document was not issued to the driver.

3.This section does not prohibit or limit the application of any law to a criminal or motor vehicle violation by an individual who has or claims immunities or privileges under title 22 of the United States Code.

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## **2024 North Dakota Century Code Title 39 - Motor Vehicles Chapter 39-10.2 - Motorcycles**

### **CHAPTER 39-10.2**

#### **MOTORCYCLES**

39-10.2-01. Traffic laws apply to person operating motorcycle or motorized bicycle.

Every person operating a motorcycle or motorized bicycle is granted all of the rights and is subject to all of the duties applicable to the driver of any other vehicle under this title, except as to special regulations in this chapter and except as to those provisions of this title which by their nature can have no application. For purposes of this chapter, the term "motorcycle" means motorcycles and motorized bicycles.

39-10.2-02. Riding on motorcycle.

1.A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator may not carry any other person nor may any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle at the rear or side of the operator.

2.A person shall ride upon a motorcycle only while sitting astride the seat, facing forward, with one leg on each side of the motorcycle.

3.No person may operate a motorcycle while carrying any package, bundle, or other article which prevents the person from keeping both hands on the handlebars.

4.No operator may carry any person, nor may any person ride in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

39-10.2-03. Operating motorcycles on roadways laned for traffic.

1.All motorcycles are entitled to full use of a lane and no motor vehicle may be driven in such a manner as to deprive any motorcycle of the full use of a lane. This subsection does not apply to the operation of motorcycles two abreast in a single lane as authorized in subsection 4.

2.The operator of a motorcycle may not overtake and pass in the same lane occupied by the vehicle being overtaken.

3.No person may operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

4.Motorcycles may not be operated more than two abreast in a single lane.

5.Subsections 2 and 3 do not apply to police officers in the performance of their official duties.

39-10.2-04. Clinging to other vehicle.

No person riding upon a motorcycle may attach the person's self or the motorcycle to any other vehicle on a roadway.

39-10.2-05. Footrests.

Any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, must be equipped with footrests for such passenger.

39-10.2-06. Equipment for motorcycle riders.

- 1.No person under the age of eighteen years may operate or ride upon a motorcycle unless a safety helmet meeting United States department of transportation standards is being worn on the head of the operator and rider, except when participating in a lawful parade. If the operator of a motorcycle is required to wear a safety helmet, any passenger must also wear a safety helmet regardless of the age of the passenger.
- 2.This section does not apply to persons riding within an enclosed cab or on a golf cart.
- 3.No person may operate a motorcycle if a person under the age of eighteen years is a passenger upon that motorcycle and is not wearing a safety helmet as provided in subsection 1.

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39-10.2-07. Other applicable law.

All of the provisions of chapter 39 -06.1 pertaining to the disposition of traffic offenses apply to this chapter.

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## **2024 North Dakota Century Code Title 39 - Motor Vehicles Chapter 39-10.3 - Experimental Vehicles**

### **CHAPTER 39-10.3**

#### **EXPERIMENTAL VEHICLES**

39-10.3-01. Definitions.

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

- 1."Chase vehicle" means a motor vehicle that accompanies an experimental vehicle while operating on a highway.
- 2."Experimental vehicle" means a vehicle with an unladen weight of six thousand pounds [2721.55 kilograms] or less which may be equipped with any configuration of axles and wheels and which is primarily powered by some source other than a combustion engine, muscle, or an animal.

39-10.3-02. Applicability.

An experimental vehicle is a motor vehicle under this title, except:

- 1.Chapter 39-22 does not apply to experimental vehicles.
- 2.Registration of an experimental vehicle is governed by this chapter.
- 3.The governing body of a political subdivision may regulate, restrict, or prohibit the use of an experimental vehicle operating within the political subdivision's corporate limits in areas under the jurisdiction of the political subdivision.

39-10.3-03. Experimental vehicle registration - Application - Issuance - Fees - Renewal.

- 1.An individual may not operate an experimental vehicle unless the vehicle has been registered in accordance with this chapter.
- 2.The department shall design and furnish an application that must be used to register an experimental vehicle. The registration must state the name and address of every owner of the experimental vehicle and must be signed by at least one owner. A copy of the application is evidence of registration for the first thirty days after the date of application.
- 3.On receipt of an application and the appropriate fee, the department shall register the experimental vehicle and assign a registration number and a certificate of registration. The certificate of registration must include information regarding name and address of the owner.
- 4.The fee for registration of an experimental vehicle is fifty dollars for each registration cycle of one year ending on March thirty -first. The department may prorate the initial registration fee. For a duplicate or replacement registration number or registration card that is lost, mutilated, or becomes illegible, the department may charge a fee of not more than five dollars.
- 5.To renew a registration, the owner of an experimental vehicle shall follow the

procedure adopted by the department and pay the registration fee.

6. The department may adopt rules for the registration of experimental vehicles and the display of registration numbers.

39-10.3-04. Exemption from fees.

Payment of fees is not required of an experimental vehicle owned and used by the United States, a state or any of its agencies, institutions, or political subdivisions; an experimental vehicle registered in a foreign country and temporarily used in this state; or an experimental vehicle validly licensed in another state and which has not been in this state for more than thirty consecutive days.

39-10.3-05. Transfer or termination of experimental vehicle ownership - Change of address of owner.

Within fifteen days of a transfer of any ownership interest in an experimental vehicle, other than a security interest, the destruction or abandonment of any experimental vehicle, or a change of address of the owner as listed with the application for registration, written notice of

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the fact must be given by the last registered owner to the director in the form the director requires.

39-10.3-06. Rules of operation.

A person may not operate an experimental vehicle on a highway without being accompanied by a chase vehicle. The chase vehicle must follow the experimental vehicle at a safe-driving distance.

39-10.3-07. Equipment.

An experimental vehicle must be equipped with a horn, front and rear turn signal lamps, stop lamps, a balanced and coreactive dual -braking system, a windshield, a safety belt installed at each seating position, an exterior mirror mounted on the operator's side of the vehicle, a roll cage that encompasses the entire driver, fresh air intake vents or wheel openings, and either an exterior mirror mounted on the passenger's side of the vehicle or an interior rearview mirror.

39-10.3-08. Penalty.

A violation of this chapter for which there is no penalty in this title is a class B misdemeanor.  
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## **2024 North Dakota Century Code Title 39 - Motor Vehicles Chapter 39-16.2 - Gas Transporter Financial Responsibility**

### **CHAPTER 39-16.2**

#### **GAS TRANSPORTER FINANCIAL RESPONSIBILITY**

39-16.2-01. Definitions.

As used in this chapter:

1. "Dealer" means any person in the business of handling liquefied petroleum gas who delivers or sells any liquefied petroleum gas to any retail dealer or user of liquefied petroleum gas.

2. "Liquefied petroleum gas" includes any material that is composed predominantly of any of the following hydrocarbons or mixtures of the following hydrocarbons: propane, propylene, butanes (normal butane and isobutane), and butylenes.

39-16.2-02. Liquefied petroleum gas transporters - Financial responsibility requirements.

A dealer who owns or operates a vehicle used for the transportation of liquefied petroleum gas shall maintain motor vehicle liability insurance of:

1. At least five million dollars for the transportation of liquefied petroleum gas transported in cargo tanks, portable tanks, or hopper -type vehicles with capacities of three thousand five hundred water gallons [13248.94 liters] or more.

2. At least one million dollars for the transportation of liquefied petroleum gas transported in cargo tanks, portable tanks, or hopper -type vehicles with capacities of less than three thousand five hundred water gallons [13248.94 liters].

39-16.2-03. Maintenance and certification of financial requirements - Verification.

A dealer subject to the financial responsibility requirements of this chapter shall maintain the liability insurance prescribed in section 39 -16.2-02 which obligates the dealer to pay compensation for injuries to persons and for loss or damage to property by reason of the ownership, maintenance, or use of the covered vehicle. The director may require dealers subject to the financial responsibility requirements of this chapter to certify the existence of financial responsibility in the form and at the times required by the director. The director may

forward the certification to the named insurer to determine if the certification is correct. No civil liability may accrue to the insurer or any of its employees for reports made to the director if the reports are made in good faith based upon the most recent information to the insurer.

39-16.2-04. Self-insurance.

The director may allow a dealer to fully or partially self-insure motor vehicles as required by this chapter if the dealer provides financial data the director requires and the director determines that the financial data demonstrates that the dealer is sufficiently stable and solvent to fully or partially self-insure. The director shall authorize self-insurance subject to reasonable provisions for the filing of periodic financial statements demonstrating no substantial deterioration of financial stability.

39-16.2-05. Penalties.

A dealer subject to the financial responsibility requirements of this chapter who operates or causes to be operated a motor vehicle in this state without meeting the financial responsibility requirements of this chapter is guilty of a class B misdemeanor. A dealer subject to the financial responsibility requirements of this chapter who operates or causes to be operated a motor vehicle in this state without meeting the financial responsibility requirements of this chapter if the vehicle is involved in an accident is guilty of a class A misdemeanor. The department may refuse to issue the registration for a vehicle or may cancel the registration of a vehicle owned or operated by a person who does not comply with the requirements of this chapter.

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## **2024 North Dakota Century Code Title 39 - Motor Vehicles Chapter 39-22.1 - Trailer Dealer's Licensing and Bonding**

### **CHAPTER 39-22.1**

#### **TRAILER DEALER'S LICENSING AND BONDING**

39-22.1-01. Trailer dealer's license - Fees - Plates - Definition.

1. A person may not engage in the business of buying, selling, or exchanging of trailers, or advertise or hold out to the public as being in the business of buying, selling, or exchanging of trailers without first being licensed.

2. Application for dealer's license and renewal license must be made to the director on forms as the director prescribes and furnishes, and the application must be accompanied by an annual fee of thirty dollars for which must be issued one dealer plate. The applicant for an initial trailer dealer license shall submit a nonrefundable fee of one hundred dollars for the initial inspection with the application. A dealer's license expires on December thirty-first of each year, and application for renewal of a dealer's license must be made on or before the expiration of the current dealer's license. Any dealer who fails to submit a renewal application before the expiration of the dealer's current license, in addition to all other fees due, shall pay a one hundred dollar fee at the time the dealer's license is renewed.

3. A trailer dealer's license may be issued only to those who will maintain a primary established place of business and will abide by all the provisions of law pertaining to trailer dealers. In addition, the dealer shall maintain that person's business records in one central location.

4. Upon the payment of a fee of ten dollars for each additional plate, the director shall register and issue dealer's license plates for use on any trailers owned by the licensed dealer, and the trailers bearing the dealer's license plates may be lawfully operated upon the public highways of this state by the dealer during the year of the registration, in the direct functions of demonstrating, buying, selling, or transporting trailers. A dealer's license plates expire on December thirty-first of each year.

5. The term "trailer" as used in this chapter does not include those trailers exempt from registration in chapter 39-04.

39-22.1-01.1. Primary established place of business - Penalty.

1. If the licensee desires to move from the primary established place of business occupied when the license was granted to a new location, the licensee shall notify the director.

2. A licensed dealer may establish secondary trailer display lots in the conduct of the dealer's business. Secondary lots must be identified as a part of the licensed dealer's operation.

3. The department may assess a person violating this section a one hundred dollar fee for a first violation or a two hundred dollar fee for a second violation within two years of

the first violation. The department may suspend the license of a trailer dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

39-22.1-02. Bond required.

Before the issuance of or the renewal of a trailer dealer's license, as provided by law, the applicant for the license shall furnish a continuous surety bond executed by the applicant as principal and executed by a surety company licensed and qualified to do business within the state of North Dakota, which must be in the amount of ten thousand dollars, and be conditioned upon the faithful compliance by the applicant as a dealer, if the license be issued to the applicant, that the dealer will comply with all the laws of this state pertaining to the business, and regulating or being applicable to the business of the dealer as a dealer in trailers, and indemnifying any person dealing or transacting business with the dealer in connection with any trailer from any loss or damage occasioned by the failure of the dealer to comply with the laws of this state, including the furnishing of a proper and valid certificate of title to the vendee of a trailer within fifteen days of the sale of the trailer, and that the bond shall be filed with the

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director before the issuance of the license. However, the aggregate liability of the surety to all persons for all losses or damages may not exceed the amount of the bond. Any third party sustaining injury within the terms of the bond may proceed against the principal and surety without making the state a party to any proceedings. Any applicant bonded under chapter 39-18 or 39-22 may not be required to furnish the surety bond provided for in this section if the bond issued under chapter 39-18 or 39-22 is written to include the requirements of this section. The bond may be canceled by the surety, as to future liability, by giving written notice by certified mail, addressed to the principal at the address stated in the bond, and to the department. Thirty days after the mailing of the notice, the bond is null and void as to any liability arising after that thirty days. The surety remains liable, subject to the terms, conditions, and provisions of the bond, until the effective date of the cancellation.

39-22.1-02.1. Disposition of fees.

Fees from registration of dealers must be deposited with the state treasurer and credited to the highway tax distribution fund.

39-22.1-03. Suspension, denial, revocation, or cancellation of dealer's license -  
Penalty.

The director may deny an application for a dealer's license or suspend, revoke, or cancel a dealer's license after it has been granted for making any material misstatement by an applicant in the application for a license; willfully failing to comply with this chapter; willfully violating a law relating to the sale, distribution, or financing of trailers; ceasing to have a primary established place of business; or failing to comply with the reasonable rules and regulations of the director as established under chapter 28 -32, but no order suspending or revoking a dealer's license may be made without a hearing at which the licensee must be given an opportunity to be heard. Any dealer violating any provision of this chapter must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a trailer dealer licensed under this chapter if a third or subsequent violation of the chapter occurs within five years of the first violation.

39-22.1-04. Examination of books and records.

The director or any duly authorized representative may inspect the pertinent books, letters, records, and contracts of any licensed trailer dealer or any other person relating to any complaint made against the dealer or person and held to be in violation of this chapter. In addition, any duly authorized representative of the department may inspect the records of any licensed dealer to verify that fees collected for the department have been properly remitted.

39-22.1-05. Powers of the director.

In addition to other powers provided by law, the director may:

- 1.Cancel, revoke, or suspend a dealer's license as provided for in section 39-22.1-03.
- 2.Adopt rules not inconsistent with this chapter governing the application for dealer's licenses and the cancellation or suspension or revocation of dealer's licenses.
- 3.Employ and pay any person as the director determines necessary to inspect dealers in this state or investigate dealers for information for the director to procure evidence in connection with any prosecution or other action to suspend, revoke, or cancel a dealer's license in relation to any matter in which the director has any duty to perform.

39-22.1-06. Penalty.

Any person who violates this chapter is guilty of a class B misdemeanor.

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## **2024 North Dakota Century Code Title 39 - Motor Vehicles Chapter 39-22.3 - Motor-Powered Recreational Vehicle Dealers**

### **CHAPTER 39-22.3**

#### **MOTOR-POWERED RECREATIONAL VEHICLE DEALERS**

39-22.3-01. Motor-powered recreational vehicle dealer's license - Fees - Additional number plates.

A person may not engage in the business of buying, selling, or exchanging of motor-powered recreational vehicles without possessing a current motor -powered recreational vehicle dealer's license. A person may not advertise or hold out to the public as engaging in the buying, selling, or exchanging of motor -powered recreational vehicles for resale without possession of a current motor -powered recreational vehicle dealer's license. The motor-powered recreational vehicle dealer's license fee is twenty -five dollars per year and with which must be issued one dealer's plate. Additional dealer's plates are ten dollars each. A dealer plate may be displayed on any motor -powered recreational vehicle owned by the dealer.

39-22.3-02. Application required.

A license may not be granted unless a completed application has been made in the form prescribed by the director.

39-22.3-03. Issuance of license - Conditions - Penalty.

A license may not be issued until the applicant furnishes proof satisfactory to the director that the applicant has and will continue to maintain an established place of business. An established central place of business means a permanent enclosed building or structure either owned or leased with a stated periodic rental, at which a permanent business of bartering, trading, and selling of motor -powered recreational vehicles, the repair, maintenance, and servicing of motor-powered recreational vehicles and the storage of parts and accessories of motor-powered recreational vehicles will be carried out in good faith and not for the purpose of evading this section, and where the business books, records, and files must be maintained, and does not mean a residence, tents, temporary stands, or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement. The central place of business may consist of several buildings or structures, but a building or structure may not be located beyond one thousand feet [304.8 meters] from any other buildings or structures of the central place of business. The central place of business must be located within this state. The licensee must be permitted to use unimproved lots and premises for sales, storage, or display of motor-powered recreational vehicles. A nonrefundable fee of fifty dollars will be charged for each inspection and must accompany each initial application for a motor -powered recreational vehicle dealer's license. Any dealer violating this chapter must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a motor-powered recreational vehicle dealer licensed under this chapter if a third or subsequent violation of this chapter occurs within five years of the first violation.

39-22.3-04. Grounds for denial, suspension, cancellation, or revocation of dealer's license.

The director may deny an application for a dealer's license or suspend, revoke, or cancel the license after it has been granted for the following reasons:

1. For any material misstatement by an applicant in the application for the license.
  2. For any willful failure to comply with this chapter or with any rule adopted by the director.
  3. For knowingly permitting any salesperson to sell or exchange, or offer or attempt to sell or exchange, any motor -powered recreational vehicle except for the licensed motor-powered recreational vehicle dealer by whom the salesperson is employed, or to offer, transfer, or assign any sale or exchange that they may have negotiated to any other dealer.
  4. For having violated any law relating to the sale, distribution, or financing of motor-powered recreational vehicles .
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5. For having ceased to have an established place of business.
  6. For failure to collect and timely transmit the snowmobile safety and off -highway safety

fees.

39-22.3-05. Bond required.

The license applicant shall furnish a continuous surety bond executed by a surety company, licensed and qualified to do business within this state and the bond must run to the state of North Dakota in the amount of ten thousand dollars and be conditioned upon the faithful compliance by the applicant with all the statutes of this state, regulating or being applicable to a dealer in motor-powered recreational vehicles, and indemnifying any person having a motor-powered recreational vehicle transaction with the dealer from any loss of damage occasioned by the failure of the dealer to comply with any statutory requirement of the transaction. The bond must be filed with the director before the issuance of a license. The aggregate liability of the surety of all persons may not exceed the amount of the bond. Any third party sustaining injury within the terms of the bond may proceed against the principal and surety without making the state a party of any proceedings. The bond may be canceled by the surety, as to future liability, by giving written notice by certified mail, addressed to the principal at the address stated in the bond, and to the department. Thirty days after the mailing of the notice, the bond is null and void as to any subsequent liability. The surety remains liable, subject to the terms, conditions, and provisions of the bond, until the effective date of the cancellation.

39-22.3-06. Disposition of fees.

Fees from registration of dealers must be deposited with the state treasurer and credited to the dealer enforcement fund to be used exclusively for enforcement of this chapter.

39-22.3-07. Dealer permitting license to be used by another dealer - License revoked - Penalty.

A dealer who permits any other dealer to use that first dealer's license, or permits the use of the license for the benefit of any other dealer, is guilty of an infraction. The director shall revoke the license of any dealer who violates this section.

39-22.3-08. Dealers to furnish information to director.

All dealers engaged in the sale of motor -powered recreational vehicles in this state shall furnish the director with information as to models, specifications, selling prices, and other data requested by the director as may be necessary in carrying out this chapter.

39-22.3-09. Powers of the director.

In addition to other powers provided by law, the director in conformity with this chapter:

1. May cancel, revoke, or suspend a dealer's license as provided for in this chapter;
2. May prescribe rules not inconsistent with this chapter governing the application for dealer's licenses and the cancellation or suspension or revocation of a dealer's license; and
3. May employ and pay persons necessary to inspect dealers in this state, investigate dealers for the information of the director, and procure evidence in connection with any prosecution or other action to suspend, revoke, or cancel a dealer's license in relation to any matter in which the director has any duty to perform.

39-22.3-10. Examination of books and records.

The director or the director's duly authorized representative may inspect the books, letters, records, and contracts of any licensed motor -powered recreational vehicle dealer relating to any specific complaint made against the dealer and held to be in violation of any provision of this title.

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39-22.3-11. Officers to administer the provisions of chapter.

The director and the director's appointees are responsible for the administration of the provisions of this chapter.

39-22.3-12. Penalty for violation of provisions of chapter.

Any person violating any of the provisions of this chapter for which another penalty is not specifically provided is guilty of a class B misdemeanor.

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**2024 North Dakota Century Code Title 39 - Motor Vehicles Chapter 39-24.1 - Snowmobile Operator Regulation**

**CHAPTER 39-24.1**

**SNOWMOBILE OPERATOR REGULATION**

**39-24.1-01. Implied consent to determine alcohol concentration and presence of drugs.**

An individual who operates a snowmobile on any public land or private land with public

access is deemed to have given consent, and shall consent, subject to this chapter, to a chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter, the definitions in section 39-24-01 apply, and in addition, "chemical test" means any test or tests to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter; and "drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely operating a snowmobile. The chemical test must be administered at the direction of a law enforcement officer only after placing the individual, except individuals mentioned in section 39-24.1-04, under arrest and informing that individual that the individual is or will be charged with the offense of operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a minor under section 27-20.4-05 satisfies the requirement of an arrest. The law enforcement officer shall also inform the individual charged that refusal of the individual to submit to the chemical test determined appropriate will result in that individual being prohibited from operating a snowmobile for up to three years. The law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating subdivision c of subsection 5 of section 39-24-09, the law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter.

39-24.1-02. Chemical test of operator in serious bodily injury or fatal accident.

Notwithstanding section 39-24.1-01 or 39-24.1-06, when the operator of a snowmobile is involved in an accident resulting in the death or serious bodily injury, as defined in section 12.1-01-04, of another person, and there is probable cause to believe that the operator is in violation of subdivision c of subsection 5 of section 39-24-09, the operator may be compelled by a law enforcement officer to submit to a chemical test.

39-24.1-03. Individuals qualified to administer chemical test and opportunity for additional test.

Only an individual medically qualified to draw blood, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood. The director of the state crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of a breath or urine specimen. The director of the state crime laboratory, or the director's designee, shall electronically post a copy of the certified list of approved designations, including medical doctor and registered nurse, with the state crime laboratory division of the attorney general at the attorney general website and shall make the certified records required by this section available for download in a printable format on the attorney general website. The individual tested may have an individual of that individual's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a law enforcement officer with all costs of the additional chemical test to be the responsibility of the individual charged. The failure or inability to obtain an additional chemical test by an individual does not preclude the admission of the chemical test taken at the direction

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of a law enforcement officer. Upon the request of the individual who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood or urine sample test taken at the direction of the law enforcement officer must be made available to that individual by the law enforcement agency that administered the chemical test.

39-24.1-04. Consent of person incapable of refusal not withdrawn.

Any person who is dead, unconscious, or otherwise in a condition rendering that person incapable of refusal is deemed not to have withdrawn the consent provided by section 39-24.1-01 and the chemical test may be given.

39-24.1-05. Action following chemical test result for a snowmobile operator.

If a person submits to a chemical test under section 39-24.1-01, 39-24.1-03, or 39-24.1-04 and the test shows that person to have the presence of a drug in that person's body or an

alcohol concentration of at least ten one -hundredths of one percent by weight at the time of the performance of the test within two hours after the operating of a snowmobile, the test is evidence of a per se violation of subdivision c of subsection 5 of section 39-24-09.

39-24.1-06. Revocation of privilege to operate snowmobile upon refusal to submit to testing.

1.If a person refuses to submit to testing under section 39 -24.1-01, no chemical test may be given, but the law enforcement officer immediately shall issue to that person a summons or otherwise notify that person in writing to appear at the time and place specified in the summons or notice. The hearing and any appeal must be conducted as provided in section 39 -06.1-03. If the person requests a hearing at a time and date other than as stated in the summons or notice, that person must post an appearance bond as required by subsection 2 of section 39 -06.1-03. Upon establishing at the hearing by a preponderance of the evidence that the officer had probable cause to believe the person had been operating a snowmobile while in violation of subdivision c of subsection 5 of section 39-24-09 or had observed that the snowmobile was operated in a negligent, reckless, or hazardous manner as defined by the director by rule, that the person was lawfully arrested if applicable, and that the person had refused to submit to the chemical test under section 39 -24.1-01, the court shall prohibit the person from operating a snowmobile on all public land or private land with public access for the appropriate period under this section, and shall impose a noncriminal statutory fee of five hundred dollars. A violation of this section must be reported to the parks and recreation department. The department shall keep a record of all reported violations. The period for which a person is prohibited from operating a snowmobile under this section is:

a.One year if the person's record shows that within the five years preceding the most recent refusal under this section, the person has not been prohibited from operating a snowmobile for a violation of this chapter or for a violation of subdivision c of subsection 5 of section 39-24-09.

b.Two years if the person's record shows that within the five years preceding the most recent refusal under this section, the person has once been prohibited from operating a snowmobile for a violation of this chapter or for a violation of subdivision c of subsection 5 of section 39-24-09.

c.Three years if the person's record shows that within the five years preceding the most recent refusal under this section, the person has twice been prohibited from operating a snowmobile under this chapter or for a violation of subdivision c of subsection 5 of section 39-24-09 and the prohibitions resulted from at least two separate arrests.

2.A person may not be prohibited from operating a snowmobile under this section if:

a.The person files an affidavit with the court before the time set for hearing in the summons or notice, or, with the permission of the court, within five days after the hearing. The affidavit must state that the person:

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(1)Intends to voluntarily plead guilty to violating subdivision c of subsection 5 of section 39-24-09 within thirty days after the date of the offense;

(2)Agrees that the person may not operate a snowmobile for the appropriate period defined in section 39 -24.1-07;

(3)Acknowledges the right to a section 39 -06.1-03 administrative hearing and section 39-06.1-03 judicial review and voluntarily and knowingly waives these rights; and

(4)Agrees that the person may not operate a snowmobile for the appropriate period as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within thirty days after the date of the offense, or the court does not accept the guilty plea, or the guilty plea is withdrawn; and

b.The person pleads guilty to violating subdivision c of subsection 5 of section 39-24-09 within thirty days after the date of the offense.

39-24.1-07. Criminal penalties for operating snowmobile while having alcohol or drug concentrations.

Upon conviction of a violation of subdivision c of subsection 5 of section 39 -24-09, the court

shall impose the following minimum penalties:

1. Notwithstanding subsection 7 of section 12.1 -32-01, if the person's record indicates that, within the five years preceding the date of the offense, the person has not violated subdivision c of subsection 5 of section 39 -24-09 or the person has not been prohibited from operating a snowmobile under this chapter, the offense is an infraction. The court shall impose a minimum fine of two hundred fifty dollars and, as a condition of that person's probation, shall prohibit that person from operating a snowmobile on all public land or private land with public access for sixty days within the snowmobile season that runs from December first through April first.

2. If the person's record indicates that, within the five years preceding the date of the offense, the person has one violation of subdivision c of subsection 5 of section 39-24-09 or the person has once been prohibited from operating a snowmobile under this chapter, the offense is a class B misdemeanor . The court shall impose a minimum fine of three hundred fifty dollars and, as a condition of that person's probation, shall prohibit that person from operating a snowmobile on all public land or private land with public access for one year from the date of the sentence.

3. If the person's record indicates that, within the five years preceding the date of the offense, the person has had at least two violations of subdivision c of subsection 5 of section 39-24-09 or the person has at least twice been prohibited from operating a snowmobile under this chapter, the offense is a class B misdemeanor. The court shall impose a minimum fine of four hundred fifty dollars and, as a condition of that person's probation, shall prohibit that person from operating a snowmobile on all public land or private land with public access for two years from the date of the sentence.

39-24.1-08. Interpretation of chemical tests.

Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any individual while operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol concentration or presence of other drugs, or a combination thereof , in the individual's blood, breath, or urine at the time of the act alleged as shown by a chemical analysis of the blood, breath, or urine is admissible. For the purpose of this section:

1. An individual having a drug in that individual's body or an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after operating a snowmobile is under the influence of intoxicating liquor, drugs, or a combination thereof at the time of operating a snowmobile.

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2. Alcohol concentration is based upon grams of alcohol per one hundred milliliters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty -seven milliliters of urine.

3. The results of the chemical test must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the director of the state crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state crime laboratory or the director's designee. The director of the state crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the individual requested to take the chemical test.

4. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and electronically post a written record of the approval with the state crime laboratory division of the attorney general at the attorney general website , and shall include in the record:

- a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
- b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
- c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
- d. The certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental records have the same force and effect as the records that are supplemented.
- e. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.

5. Copies of the state crime laboratory certified records referred to in subsections 3 and 4 that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website must be admitted as prima facie evidence of the matters stated in the records.

6. A certified copy of the analytical report of a blood or urine test issued by the director of the state crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.

7. Superseded by N.D.R.Ev., Rule 707.

8. A signed statement from the individual medically qualified to draw the blood sample for testing as set forth in subsection 3 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of this evidence may be required.

39-24.1-09. Proof of refusal admissible in any action or proceeding.

If the person under arrest refuses to submit to the chemical test, proof of refusal is admissible in any action or proceeding arising out of acts alleged to have been committed while the person was operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof.

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39-24.1-10. Effect of evidence of chemical test.

This chapter does not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the chemical test results show a drug or an alcohol concentration of at least ten one-hundredths of one percent, the purpose of the evidence must be limited to the issues of probable cause, whether an arrest was made prior to the administering of the test, and the validity of the test results.

39-24.1-11. Liability.

Any individual medically qualified to draw blood or any licensed physician, nurse, technician, or an employee of a hospital who draws blood from any person pursuant to a request of any arresting officer is not liable in any civil action for damages arising out of the act except for gross negligence.

39-24.1-12. Operation of snowmobile during period of prohibition - Penalty.

Any person who operates a snowmobile on any public land or private land with public access during the period the person is prohibited from operating a snowmobile under this chapter is guilty of a class A misdemeanor.

39-24.1-13. Fleeing or attempting to elude a peace officer.

1. Any driver of a snowmobile who willfully fails or refuses to bring the snowmobile to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the snowmobile to a stop, is guilty of a class B misdemeanor for a first or second offense and a class A misdemeanor for a subsequent offense. A signal complies with this section if the signal is perceptible to the driver and:

- a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
- b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or

siren, and the officer is in uniform or prominently displays the officer's badge of office.

2. Any sentence imposed under this section must include a minimum fine of at least five hundred dollars.

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## **2024 North Dakota Century Code Title 39 - Motor Vehicles Chapter 39-24 - Regulation and Registration of Snowmobiles**

### **CHAPTER 39-24**

#### **REGULATION AND REGISTRATION OF SNOWMOBILES**

##### **39-24-01. Definitions.**

For the purposes of this chapter:

1. "Collector snowmobile" means a snowmobile that is twenty-five years old or older, was originally produced as a separate identifiable make by a manufacturer, and is owned and operated solely as a collector's item.

2. "Dealer" means a person engaged in the business of buying, selling, or exchanging snowmobiles, who advertises or holds out to the public as being engaged in the buying, selling, or exchanging of snowmobiles, or who engages in the buying of snowmobiles for resale.

3. "Operate" means to ride in or on and control the operation of a snowmobile.

4. "Operator" means every person who operates or is in actual physical control of a snowmobile.

5. "Owner" means a person, other than a lienholder, having the property in or title to a snowmobile and who is entitled to the use or possession of that snowmobile.

6. "Register" means the act of assigning a registration number to a snowmobile.

7. "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

8. "Snowmobile" means a self-propelled vehicle intended for off-road travel primarily on snow, having a curb weight of not more than one thousand two hundred pounds [544.31 kilograms], driven by track or tracks in contact with the snow, steered by a ski or skis in contact with the snow, and which is not wider than forty-eight inches [121.92 centimeters].

##### **39-24-02. Snowmobile registration - Title certificate - General requirements.**

Except as hereinafter provided, no person may operate any snowmobile unless the snowmobile has been registered in accordance with the provisions of this chapter.

Any snowmobile purchased after July 1, 1973, must be titled under the provisions of chapter 39-05 in order to be operated under the provisions of this section. Any snowmobile purchased prior to July 1, 1973, may be titled under the provisions of chapter 39-05.

##### **39-24-03. Registration - Application - Issuance - Fees - Renewal.**

1. Application for registration must be made to the department in a form as the department shall prescribe and furnish and must state the name and address of every owner of the snowmobile and be signed by at least one owner. A copy of the application must be carried on the person when operating and shall serve as evidence of registration for a period of not more than thirty days from the date of application.

2. Upon receipt of the application and the appropriate fee, the department shall register a snowmobile and assign a registration number and a certificate of registration. The registration number must be at least one and one-half inches [3.81 centimeters] in height and of a reflectorized material and must be securely affixed on each side of the snowmobile in a position as to provide clear legibility for identification. The certificate of registration must include information regarding the make, year, serial number, and name and address of the owner. The fee for registration of each snowmobile must be five dollars for any portion of the registration period and the registration period is for two years beginning October first of each odd-numbered year. The fee for a duplicate or replacement registration number or registration card which is lost, mutilated, or becomes illegible may not exceed five dollars. For each snowmobile registered under the provisions of this chapter, there must be assessed a snowmobile trail tax in the amount of forty-five dollars.

3. Every owner of a snowmobile shall renew the registration in a manner as the department shall prescribe, upon payment of the same registration fees provided in this section.

4. Upon application for registration as prescribed in this section, any snowmobile dealer as defined in section 39-24-01 must be issued registration numbers distinctively marked as dealer's registration numbers upon payment of the appropriate fee as prescribed in this section. The dealer's registration numbers must be used only on snowmobiles owned by the dealership.

39-24-03.1. Snowmobile safety fees.

Upon the sale of a new or used snowmobile and in addition to other fees and taxes imposed under section 39-24-03, a dealer shall collect a five dollar safety fee from the buyer. Within fifteen days after the end of each calendar quarter, the dealer shall file a report with the parks and recreation department which discloses the number of snowmobiles sold during that calendar quarter and includes fees collected from the buyer. Fees imposed under this section must be deposited in the state snowmobile fund established under section 39-24-05. The parks and recreation department may use these funds solely for snowmobile safety education and promotion. The parks and recreation department shall report to the director within thirty days of the end of each calendar quarter the motor -powered recreational vehicle dealers that submitted a safety fee report and the number of vehicles sold, and shall identify every dealer not collecting or transmitting snowmobile safety fees.

39-24-04. Exemption from registration - Exemption from fees.

1. A registration number must be issued without the payment of a fee for snowmobiles owned by the state of North Dakota or any of its political subdivisions upon application for the registration.

2. No registration or fees may be required of:

a. Snowmobiles owned and used by the United States or another state or its political subdivisions.

b. Snowmobiles registered in a country other than the United States and temporarily used within this state.

c. Snowmobiles validly licensed in another state and which have not been within this state for more than thirty consecutive days.

d. Snowmobiles operated upon lands owned or leased by the snowmobile owner.

e. Snowmobiles incapable of speeds in excess of ten miles per hour and with an engine displacement of less than one hundred cubic centimeters.

f. Collector snowmobiles. The director may issue a special permit to a person to operate in a parade; organized group outings, including races, rallies, or other promotional events; and for up to ten days each year for personal transportation. The director may impose a reasonable restriction of a permittee and may revoke, amend, suspend, or modify a permit for cause.

3. If a snowmobile is exempt from registration under subdivision b or c of subsection 2, the owner is required to purchase an out-of-state public trails and lands access permit received upon payment of a twenty-five dollar per year fee.

a. The permit must be displayed on the snowmobile when the snowmobile is operated on public lands within the state.

b. For up to five business days after purchasing an out-of-state public trails and lands access permit, an online receipt or printed receipt may be presented in lieu of the official permit until the official permit is received.

c. Dealers or other agents authorized by the director of the parks and recreation department that sell out-of-state public trails and lands access permits may retain one dollar of the twenty-five dollar per year fee and the remainder of the fees collected under this subsection must be deposited in the state snowmobile fund.

39-24-05. Disposition of registration fees and trail tax - Transfer from highway tax distribution fund.

Fees from registration of snowmobiles must be deposited with the state treasurer and credited to the highway tax distribution fund. The snowmobile trail tax must be deposited in a

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state snowmobile fund in the state treasury. Additionally, an amount equal to the tax collected on forty gallons [151.42 liters] of motor vehicle fuel multiplied by the number of collector snowmobiles and snowmobiles registered under this chapter must be transferred annually from the highway tax distribution fund, before allocation of the fund under section 54-27-19, and credited to the state snowmobile fund. The parks and recreation department may, upon

appropriation by the legislative assembly, expend from such fund moneys it deems necessary for purposes of administering snowmobile safety programs and establishing and maintaining snowmobile facilities and programs.

39-24-06. Transfer or termination of snowmobile ownership or change of address of owner.

Within fifteen days after the transfer of ownership, or any part thereof, other than a security interest, or the destruction or abandonment of any snowmobile, or a change of address of the owner as listed with the application for registration, written notice thereof must be given by the owner to the director in such form as must be prescribed by the director.

39-24-07. Licensing by political subdivisions.

No political subdivision of this state may require licensing or registration of snowmobiles subject to the provisions of this chapter.

39-24-08. Rules and regulations.

Pursuant to this code and this chapter, rules for the regulation and use of snowmobiles must be adopted as follows:

1.The director shall adopt rules for the registration of snowmobiles and display of registration numbers.

2.The director has the authority in the interest of public health, welfare, and safety to regulate, restrict, or prohibit, by rule, the operation of snowmobiles on those highways under the director's jurisdiction. The director's authority to prohibit the use of snowmobiles is limited to the roadways, shoulders, inslopes, and medians within the right of way, except where such action is necessary to avoid an obstacle.

Notwithstanding the racing prohibitions in section 39 -08-03.1, the director may, on a case-by-case basis, permit organized and bona fide snowmobile races on the ditch bottoms, backslopes, and the top of the backslopes of the highway rights of way under the director's jurisdiction. The planning, organization, route selection, and safety precautions of any such race are the sole responsibility of the permittee. It is expressly provided that the director, and the department and the employees thereof, shall incur no liability whatsoever for permitting such races.

3.The director of the parks and recreation department shall adopt rules for regulating use of snowmobiles in state parks and other state -owned land under the supervision of the director of the parks and recreation department.

4.The governing bodies of political subdivisions shall promulgate rules and regulations for regulating use of snowmobiles in recreation and other appropriate areas under their jurisdiction. The governing bodies of cities may, by ordinance, regulate, restrict, and prohibit the use of snowmobiles when operated within the exclusive jurisdiction of cities.

39-24-09. Rules for operation of snowmobiles.

1.No person may operate a snowmobile upon the roadway, shoulder, or inside bank or slope of any road, street, or highway in this state except as provided pursuant to this chapter. No snowmobile may be operated at any time within the right of way of any interstate highway within this state except as provided in this section.

2.A snowmobile may make a direct crossing of a noninterstate street or highway provided:

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a.The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

b.The snowmobile is brought to a complete stop before crossing the shoulder or main traveled way of the highway;

c.The driver yields the right of way to all oncoming traffic which constitutes an immediate hazard; and

d.In crossing a divided highway, the crossing is made only at an intersection of such highway with another public street or highway.

3.No snowmobile may be operated unless it is equipped with at least one headlamp, one taillamp, and brakes, all in working order, which conform to standards prescribed by rule of the director pursuant to the authority vested in the director by this code and this chapter.

4.The emergency conditions under which a snowmobile may be operated other than as

provided by this chapter must be such as to render the use of an automobile impractical under such conditions at such period of time and location.

5. It is unlawful for any person to drive or operate any snowmobile in the following ways which are declared to be unsafe and a public nuisance:

- a. At a rate of speed greater than reasonable or proper under all the surrounding circumstances.
- b. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage to such person or property.
- c. While under the influence of intoxicating liquor or a drug as defined in section 39-24.1-01, or a combination thereof.
- d. Without a lighted headlamp and taillamp when required for safety.
- e. In any tree nursery or planting in a manner which damages or destroys growing stock.
- f. Without a manufacturer -installed or equivalent muffler in good working order and connected to the snowmobile exhaust system.
- g. Upon any private land where the private land is posted by the owner or tenant prohibiting trespassing. The name of the person posting the land must appear on each sign in legible characters. The posted signs must be readable from the outside of the land and must be placed conspicuously at a distance of not more than eight hundred eighty yards [804.68 meters] apart, provided further that as to land entirely enclosed by a fence or other enclosure, posting of signs at or on all gates through the fence or enclosure constitutes a posting of all the enclosed lands.

6. It is unlawful for any person to operate a snowmobile pursuant to chapter 39 -24 without having in possession a valid driver's license, except as provided by section 39-24-09.1.

7. If a snowmobile is operated within the right of way of any road, street, or highway of this state under this chapter, during times or conditions that warrant the use of lights, the snowmobile operator shall travel in the same direction as the direction of motor vehicles traveling on the side of the roadway immediately adjacent to the side of the right of way traveled by the snowmobile. An operator of a snowmobile traveling on a snowmobile trail maintained by the parks and recreation department which is within the right of way of any road, street, or highway of this state is exempted from this rule. The operator shall wait for all traffic to clear the roadway before crossing bridges and other similar structures.

8. It is unlawful for any person to operate a snowmobile within a highway right of way as defined in subsection 38 of section 24 -01-01.1 between April first and November first of any year.

9. No snowmobile may be operated at any time within the right of way of any highway within this state while towing a sled, skid, or other vehicle, unless the sled, skid, or other vehicle is connected to the snowmobile by a hinged swivel and secure hitch.

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10. No person under the age of eighteen years may operate, ride, or otherwise be propelled on a snowmobile unless the person wears a safety helmet meeting United States department of transportation standards.

11. A person may not operate a snowmobile, and an owner of a snowmobile may not knowingly permit the snowmobile to be operated, upon any property maintained, leased, or owned by the state parks and recreation department to which the public has a right of access for snowmobile or other vehicular use, without a policy of liability insurance which insures the person named, and any person using the snowmobile with the express or implied permission of the person named, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of the snowmobile within this state, subject to the following limits, exclusive of interest and costs, with respect to each snowmobile: twenty -five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and twenty -five thousand dollars because of injury to or destruction of property of others in any one accident. Upon request of a law enforcement officer, a person operating a snowmobile shall provide proof of liability

insurance to that officer within twenty days.

12.A snowmobile may not be operated within the right of way of any interstate highway within this state except:

- a.For emergency purposes; or
- b.Across an interstate highway on an overpass or underpass, except where otherwise prohibited by law or by signing, provided the snowmobile crosses on the extreme right side of the overpass or underpass.

39-24-09.1. Operation by individuals - Minimum age.

1.An individual under the age of ten may not operate a snowmobile unless the individual operates the snowmobile on private land. An individual ten or eleven years of age may not operate a snowmobile unless the individual operates the snowmobile on private land or the individual is in the presence of a parent or guardian pursuant to chapter 30.1-27, has completed a snowmobile safety training course as prescribed by the director of the parks and recreation department pursuant to chapter 28-32, and has received the appropriate snowmobile safety certificate issued by the director of the parks and recreation department.

2.An individual twelve years of age and over may not operate a snowmobile unless the individual is in possession of a valid driver's license, operates the snowmobile on private land, or unless the individual has completed a snowmobile safety training course as prescribed by the director of the parks and recreation department pursuant to chapter 28-32 and has received the appropriate snowmobile safety certificate issued by the director of the parks and recreation department.

3.The failure of an operator to exhibit a snowmobile safety certificate upon demand to any official authorized to enforce this chapter is presumptive evidence that the individual is not the holder of the certificate.

4.Fees collected from each individual receiving certification must be deposited into the snowmobile fund for purposes of establishing snowmobile safety programs.

39-24-10. Enforcement.

Peace officers of this state and their respective duly authorized representatives are hereby authorized to enforce the provisions of this chapter.

39-24-11. Penalties.

1.Any person who violates :

a.Subsection 12 of section 39-24-09 must be assessed a fee of one hundred dollars;

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b.Subdivision b or g of subsection 5 of section 39-24-09 is guilty of a class B misdemeanor;

c.Subdivision c of subsection 5 of section 39-24-09 is guilty of an infraction or a class B misdemeanor as determined by section 39 -24.1-07;

d.Subsection 11 of section 39-24-09 is guilty of a class B misdemeanor and must be assessed a fine of at least one hundred dollars ; and

e.Any other provision of section 39 -24-09 must be assessed a fee of twenty dollars.

2.Any person, unless specifically exempted, who fails to register or fails to display a decal or permit as required by sections 39 -24-02 and 39-24-04 must be assessed a fee of fifty dollars. If the person provides proof of registration after the violation, the fee may be reduced by one -half.

3.Any person who violates any other provision of this chapter for which a specific penalty is not provided must be assessed a fee of ten dollars.

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## **2024 North Dakota Century Code Title 39 - Motor Vehicles Chapter 39-25 - Regulation of Commercial Driver Training**

### **CHAPTER 39-25**

#### **REGULATION OF COMMERCIAL DRIVER TRAINING**

39-25-01. Definitions.

1."Commercial driver training school" or "school" means a business enterprise conducted by a person for the education and training of individuals, either practically or theoretically, or both, to operate or drive a motor vehicle, and for which accepts consideration or charges tuition for the service.

2."Instructor" means an individual, whether acting on that individual's own behalf as an

operator of a commercial driver training school or for a school for compensation, who teaches, conducts a class for, gives demonstrations to, or supervises practice of, an individual learning to operate or drive a motor vehicle.

3. "Certificate of course completion" means documentation signed by one or more driver education programs indicating the driver has met the classroom instruction and behind-the-wheel instruction requirements prescribed by the director.

39-25-02. Duties of director - Regulations.

1. The director shall adopt and prescribe regulations concerning the administration and enforcement of this chapter which are necessary to protect the public. The director shall inspect the school facilities, equipment of applicants and licensees, and examine applicants for instructor's and examiner's licenses or certifications.

2. The director shall administer and enforce this chapter and shall adopt regulations for the administration and enforcement of this chapter.

39-25-02.1. Waiver of skill test.

The director may waive the skill portion of the driver's license examination if the applicant has successfully completed the classroom instruction and behind-the-wheel instruction requirements prescribed by the director. The director shall adopt and prescribe regulations concerning criteria for the classroom instruction and behind-the-wheel instruction requirements. A certificate of course completion must accompany the driver's application as evidence that the applicant for a class D license has satisfactorily completed the classroom instruction and behind-the-wheel instruction requirements prescribed by the director.

39-25-03. School - License required - Contents of application for license.

1. A commercial driver training school may not be established nor may any existing school continue to operate unless the school applies for and obtains from the director a license in the manner and form prescribed by the director.

2. The application for license must include a statement of the location of the school, the equipment, courses of instruction, instructors, previous records of the school and instructors, financial statements, schedule of fees and charges, character and reputation of the operators, insurance, and any other matter as the director may prescribe for the protection of the public.

39-25-04. Instructor - License required - Contents of application for license.

1. An individual may not act as an instructor unless the individual applies for and obtains a license in the manner and form prescribed by this chapter.

2. The regulations must state the requirements for an instructor's license, including requirements concerning residency, language, moral character, physical condition, knowledge of the courses of instruction, motor vehicle laws and safety principles, previous personal and employment records, and any other matter as the director may prescribe for the protection of the public.

39-25-05. Expiration and renewal of licenses - Fees.

A license expires on the last day of the calendar year and may be renewed upon application to the director as prescribed by the director's regulations. Each application for an original or

renewal school license must be accompanied by a fee of twenty-five dollars, and each application for an original or renewal instructor's license must be accompanied by a fee of ten dollars. These fees must be deposited in the state treasury in the state highway fund. License fees may not be refunded in the event any license is rejected, suspended, or revoked.

39-25-06. Refusal, suspension, or revocation of license.

The director may refuse to issue, or may suspend or revoke a license in any case when the director finds the applicant or licensee has violated any of the provisions of this chapter or the regulations adopted by the director. A suspended or revoked license must be returned to the director by the licensee.

39-25-07. Exclusions - Free instruction - Colleges, universities, and high schools.

This chapter does not apply to any person giving driver training lessons without charge, to employers maintaining driver training schools without charge solely for that employer's employees, nor to a school or a class conducted by a college, a university, or a high school for a regularly enrolled full-time or part-time student as a part of a normal program of the institution, except that a public driver education program may provide a certificate of course completion to be used by a driver to waive the skill portion of the driver's license examination under section

39-25-02.1.

39-25-08. Violations and penalties.

Any person who violates section 39 -25-03 or 39-25-04 is guilty of a class B misdemeanor.

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## **2024 North Dakota Century Code Title 39 - Motor Vehicles Chapter 39-28 - Motorcycle Safety Education**

### **CHAPTER 39-28**

#### **MOTORCYCLE SAFETY EDUCATION**

39-28-01. Additional fees for motorized bicycle and motorcycle registration.

In addition to the fees required by section 39 -04-19 for motorized bicycle and motorcycle registration, a motorcycle safety education fee of ten dollars is required at the time of registration of each motorized bicycle and motorcycle.

39-28-02. Director to establish standards for motorcycle safety courses.

The director shall establish requirements for instructional standards, course approval, and teacher certification standards for motorcycle safety courses required by this chapter.

Motorcycle safety courses may be offered by public schools and by approved organizations which meet instruction, course, and teacher certification requirements. The director may adopt rules governing the operation of motorcycle safety courses, administer moneys pursuant to this chapter, conduct audits and otherwise examine the records and accounts of approved motorcycle safety courses, and require other information as may be necessary to monitor the quality of motorcycle safety courses.

39-28-03. Reimbursement for motorcycle safety courses.

The director shall reimburse public schools and organizations offering approved motorcycle safety courses for the actual cost of the courses. The amount of reimbursement for each student may not exceed the actual per -pupil cost for the motorcycle safety program.

39-28-04. Motorcycle safety promotion.

The director, in cooperation with other state agencies, shall promote safety and awareness in the use and operation of motorcycles through advertising and other appropriate means, as provided by this chapter. The general public may provide input to improve motorcycle safety and education.

39-28-05. Disposition of fees.

Any fee collected pursuant to this chapter must be deposited by the director with the state treasurer and credited to a special motorcycle safety education fund in the state treasury.

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## **2024 North Dakota Century Code Title 39 - Motor Vehicles Chapter 39-29.1 - Low-Speed Vehicles**

### **CHAPTER 39-29.1**

#### **LOW-SPEED VEHICLES**

39-29.1-01. Definitions.

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

1. "Low-speed vehicle" means a four -wheeled vehicle that is able to attain a speed, upon a paved level surface, of more than twenty miles [32 kilometers] per hour in one mile [1.6 kilometers] and not more than twenty -five miles [40 kilometers] per hour in one mile [1.6 kilometers] and may not exceed three thousand pounds [1361 kilograms] in weight when fully loaded with passengers and any cargo.

2. "Operate" means to ride in or on and control the operation of a low -speed vehicle.

3. "Register" means the act of assigning a registration number to a low -speed vehicle.

39-29.1-02. Applicability.

A low-speed vehicle is a motor vehicle under this title, except:

1. Chapter 39-22 does not apply to low -speed vehicles.

2. Registration of a low -speed vehicle is governed by this chapter.

3. A political subdivision may not require licensing or registration of low -speed vehicles.

4. The governing body of a city may regulate, restrict, or prohibit the use of low -speed vehicles operating in the city limits in areas under the jurisdiction of the city.

39-29.1-03. Low-speed vehicle registration - Application - Issuance - Fees - Renewal.

1. An individual may not operate a low -speed vehicle unless the vehicle has been registered in accordance with this chapter.

2. The department shall design and furnish an application that must be used to register a low-speed vehicle. The registration must state the name and address of every owner of the low-speed vehicle and must be signed by at least one owner. A copy of the

application is evidence of registration for the first thirty days after the date of application.

3. On receipt of an application and the appropriate fee, the department shall register the low-speed vehicle and assign a registration number and a certificate of registration. The certificate of registration must include information regarding the make, year, serial number, and name and address of the owner.

4. The fee for registration of a low-speed vehicle is twenty dollars for each registration cycle of two years ending on March thirty-first. The department may prorate the initial registration fee. For a duplicate or replacement registration number or registration card that is lost, mutilated, or becomes illegible, the department may charge a fee of not more than five dollars.

5. To renew a registration, the owner of a low-speed vehicle shall follow the procedure adopted by the department and pay the registration fee.

6. The department may adopt rules for the registration of low-speed vehicles and the display of registration numbers.

39-29.1-04. Low-speed vehicle dealers.

A low-speed vehicle dealer does not need a motor vehicle dealer's license. Upon application and on payment of a twenty dollar fee, a low-speed vehicle dealer is entitled to be issued registration numbers distinctively marked as dealer's registration numbers. The dealer's numbers may be used only on low-speed vehicles owned by the dealership.

39-29.1-05. Exemption from registration - Exemption from fees.

1. Registration and payment of fees is not required of:

a. A low-speed vehicle owned and used by the United States or another state or its political subdivisions.

b. A low-speed vehicle registered in a foreign country and temporarily used in this state.

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c. A low-speed vehicle validly licensed in another state and which has not been in this state for more than thirty consecutive days.

d. A low-speed vehicle used exclusively for work on private agricultural land or on an industrial jobsite on private land.

2. A low-speed vehicle owned by this state or any of its political subdivisions are exempt from registration fees for low-speed vehicles.

39-29.1-06. Transfer or termination of low-speed vehicle ownership - Change of address of owner.

Within fifteen days of a transfer of any ownership interest in a low-speed vehicle, other than a security interest, the destruction or abandonment of any low-speed vehicle, or a change of address of the owner as listed with the application for registration, written notice of the fact must be given by the last registered owner to the director in the form the director requires.

39-29.1-07. Rules of operation.

A person may not operate a low-speed vehicle on a highway on which the speed limit exceeds thirty-five miles [56.33 kilometers] per hour. The operator of a low-speed vehicle may make a direct crossing of a highway on which the speed limit exceeds thirty-five miles [56.33 kilometers] per hour if the crossing is made so the operator can continue on a highway on which the speed limit does not exceed thirty-five miles [56.33 kilometers] per hour.

39-29.1-08. Equipment.

A low-speed vehicle must be equipped with headlamps, front and rear turn signal lamps, taillamps, stop lamps, red reflex reflectors on each side as far to the rear of the vehicle as practicable and one red reflector on the rear, brakes, a parking brake, a windshield, a vehicle identification number, a safety belt assembly installed at each designated seating position, an exterior mirror mounted on the operator's side of the vehicle, and either an exterior mirror mounted on the passenger's side of the vehicle or an interior rearview mirror.

39-29.1-09. Penalty.

A violation of this chapter for which there is no civil or criminal penalty in this title is a class B misdemeanor.

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**2024 North Dakota Century Code Title 39 - Motor Vehicles Chapter 39-29.2 - Unconventional Vehicles**

CHAPTER 39-29.2

## UNCONVENTIONAL VEHICLES

### 39-29.2-01. Definitions.

As used in this chapter unless the context otherwise requires:

1. "Identifying number" means the vehicle identification numbers and letters if any assigned by the manufacturer or by the department for the purpose of identifying a vehicle. The term includes any numbers or letters assigned by the manufacturer for the purpose of identifying a part of a vehicle or any number placed on a part in accordance with this chapter or rules of the department for the purpose of identifying the vehicle.
2. "Unconventional vehicle" means a motor vehicle that is designed to travel on at least three wheels in contact with the ground, has an unladen weight of at least three hundred pounds [136.08 kilograms] but less than eight thousand pounds [3628.7 kilograms], has a permanent upright seat that does not require the operator to straddle or sit astride it, has a steering device for front wheel steering control, is capable of speeds in excess of sixty -five miles [104.61 kilometers] per hour, complies with equipment listed in chapter 39 -21 or 39-27, as appropriate, and has an identifying number. The term does not include motor vehicles that otherwise may be registered under this title.

### 39-29.2-02. Certificate of title for unconventional vehicle.

The department shall issue a certificate of title for an unconventional vehicle in accordance with section 39-05-05.

### 39-29.2-03. Registration of unconventional vehicle.

1. Registration of an unconventional vehicle is governed by this chapter.
2. An individual may not operate an unconventional vehicle on public roadways unless the vehicle has been registered under this chapter.
3. The department shall design and furnish an application that must be used to register an unconventional vehicle. The registration must state the name and address of every owner of the unconventional vehicle and must be signed by at least one owner. A copy of the application is evidence of registration for the first thirty days after the date of application.
4. On receipt of an application and the appropriate fee, the department shall register an unconventional vehicle and assign a registration number and a certificate of registration. The certificate of registration must include information regarding the make, year, identifying number, and name and address of the owner.
5. The fee for registration of an unconventional vehicle is fifty dollars per year. For a duplicate or replacement registration number plate or registration card that is lost, mutilated, or becomes illegible, the department may charge a fee of not more than five dollars.
6. To renew a registration, the owner of an unconventional vehicle shall follow the procedure adopted by the department and pay the registration fee.
7. The department shall issue a plate in the same manner as a plate is issued to a motorcycle. Whenever the ownership of an unconventional vehicle registered under this chapter is transferred or assigned, the plates must be handled in accordance with subsection 1 of section 39 -04-36.
8. Funds collected from registration must be deposited in the motor vehicle registration fund.
9. Every unconventional vehicle is subject to the motor vehicle body damage disclosure requirement of section 39 -05-17.2.

### 39-29.2-04. Operation of unconventional vehicle.

To operate an unconventional vehicle on a highway, the operator must be a class D licensed driver. An operator may operate an unconventional vehicle on any highway.

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### 39-29.2-05. Equipment.

Operators and passengers in an unconventional vehicle shall comply with seatbelt use laws.

### 39-29.2-06. Manufacturer's or distributor's certification.

1. The manufacturer or distributor shall certify that an unconventional vehicle is designed and manufactured for use upon public highways and complies with the rules adopted under this chapter. An individual who manufactures an unconventional vehicle for personal use does not have to meet the certification requirements of this section, but

shall comply with the rules adopted under this chapter.

2.The certificate must be incorporated on the manufacturer's statement of origin upon transfer of vehicle ownership.

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## **2024 North Dakota Century Code Title 39 - Motor Vehicles Chapter 39-29 - Off-Highway Vehicles**

### **CHAPTER 39-29**

#### **OFF-HIGHWAY VEHICLES**

##### **39-29-01. Definitions.**

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

1."Dealer" means any person engaged in the business of buying, selling, or exchanging off-highway vehicles or who advertises, or holds out to the public as engaged in the buying, selling, or exchanging of off -highway vehicles, or who engages in the buying of off-highway vehicles for resale.

2."Off-highway vehicle" means any motorized vehicle not designed for use on a highway and capable of cross -country travel on land, snow, ice, marsh, swampland, or other natural terrain. The term includes a motorized vehicle converted to operate on snow. The term does not include an electric bicycle. An off-highway vehicle must be classified into one of the following categories:

a.Class I off-highway vehicle is a vehicle that does not qualify as road capable under chapters 39-21 and 39-27, has a seat or a saddle designed to be straddled by the operator, and has handlebars for steering control of two wheels.

b.Class II off-highway vehicle is fifty inches [1270.00 millimeters] or less in width, weighs one thousand two hundred pounds [544.31 kilograms] or less, and travels on three or more nonhighway tires; or is sixty-five inches [1651 millimeters] or less in width, weighs two thousand pounds [907.19 kilograms] or less, and travels on four or more nonhighway tires .

c.Class III off-highway vehicle weighs less than eight thousand pounds [3628.74 kilograms]; travels on skis, runners, tracks, or four or more tires ; has a seat; has a wheel, handlebars, or t steering for steering control ; and is designated for or capable of cross -country on or over land, water, sand, snow, ice, marsh, swampland, or other natural terrain, but does not include a vehicle registered by the department under chapter 39 -04 or 39-24.

3."Operate" means to ride in or on and control the operation of an off -highway vehicle.

4."Operator" means an individual who operates or is in actual physical control of an off-highway vehicle.

5."Owner" means a person, other than a lienholder, having the property in or title to an off-highway vehicle and entitled to its use or possession.

6."Register" means the act of assigning a registration number to an off -highway vehicle.

39-29-01.1. Safety fee - Imposition - Collection by dealer - Payment to department - Use of fee.

Upon the sale of a new or used off -highway vehicle, a dealer shall collect a five dollar safety fee from the buyer. By the end of each calendar quarter, the dealer shall file a report with the parks and recreation department which discloses the number of off -highway vehicles sold the previous months and includes the fees collected from the buyer. Fees imposed under this section must be deposited in the off -highway vehicle fund established under section 39 -29-05. The fees may be used only by the parks and recreation department and only for off -highway vehicle safety education and promotion. The parks and recreation department shall report to the director within thirty days of the end of each calendar quarter the motor -powered recreational vehicle dealers that submitted a safety fee report and the number of vehicles sold, and shall identify every dealer not collecting or transmitting the safety fee.

39-29-02. Off-highway vehicle registration.

Except as provided in this chapter, an individual may not operate an off -highway vehicle unless it has been registered under this chapter.

39-29-03. Registration - Application - Issuance - Fees - Renewal.

1.Application for registration must be made to the department of transportation in the form the department prescribes and furnishes. The registration must state the name

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and address of every owner of the off -highway vehicle and be signed by at least one

owner. A copy of the application is evidence of registration for the first thirty days after the date of application.

2. On receipt of an application and the appropriate fee, the department shall register the off-highway vehicle and assign a registration number and a certificate of registration. In addition, the department shall issue a decal made of reflectorized material which contains the registration number or the department shall issue one distinctive number plate upon the request of the owner. The operator of an off-highway vehicle shall securely affix and display the decal or the plate in a position as to provide clear legibility for identification. The certificate of registration must include information regarding the make, year, serial number, and name and address of the owner.

3. The fee for registration of each off-highway vehicle is five dollars for a registration period of two years. For a duplicate or replacement registration number or registration card which is lost, mutilated, or becomes illegible, the department may charge a fee of not more than five dollars. For each off-highway vehicle registered under this chapter, there is an off-highway vehicle trail tax of fifteen dollars.

4. The owner of an off-highway vehicle shall renew the registration in the manner the department prescribes and pay the registration fees and applicable tax provided in subsection 3.

5. On application for registration as prescribed in subsection 2, and on payment of the amounts prescribed in subsection 3, an off-highway vehicle dealer is entitled to be issued registration numbers distinctively marked as dealer's registration numbers. The dealer's registration numbers may be used only on off-highway vehicles owned by the dealership.

39-29-04. Exemption from registration - Exemption from fees.

1. Registration and payment of fees is not required of:

a. Off-highway vehicles owned and used by the United States or any state or its political subdivisions.

b. Off-highway vehicles registered in a foreign country and temporarily used in this state.

c. Off-highway vehicles validly licensed in another state and which have not been within this state for more than thirty consecutive days.

d. Off-highway vehicles used exclusively on private lands.

e. Off-highway vehicles used exclusively in organized track racing events.

2. If an off-highway vehicle is exempt from registration under subdivision b or c of subsection 1, the owner shall purchase an out-of-state public trails and lands access permit received upon payment of a ten dollar per-year fee. Dealers or other agents authorized by the director of the parks and recreation department who sell out-of-state public trails and lands access permits may retain one dollar of the ten dollar per-year fee. The remainder of the fees collected under this subsection must be deposited in the off-highway vehicle fund.

39-29-05. Disposition of registration fees and trail tax.

1. Fees from registration of off-highway vehicles must be deposited with the state treasurer and credited to the highway tax distribution fund.

2. The off-highway vehicle trail tax must be deposited in the off-highway vehicle fund in the state treasury. The parks and recreation department may, on appropriation by the legislative assembly, expend from that fund moneys for establishing off-highway vehicle facilities, use areas, and safety and education programs, and on enforcement of this chapter. The department may also use the fund to make grants to political subdivisions, governmental agencies, and nonprofit organizations for the purpose of developing and improving off-highway vehicle facilities and use areas and on promoting off-highway vehicle safety and education. The department may also use the fund to make grants to law enforcement agencies for the purpose of enforcing laws

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applicable to off-highway vehicles and to the use of off-highway vehicle facilities and use areas.

39-29-06. Transfer or termination of off-highway vehicle ownership - Change of address of owner.

Within fifteen days after the transfer of any ownership interest in an off-highway vehicle, other than a security interest, or the destruction or abandonment of any off-highway vehicle, or a

change of address of the owner as listed with the application for registration, written notice of the fact must be given by the new owner to the director in the form the director requires.

39-29-07. Licensing by political subdivisions.

Political subdivisions of this state may not require licensing or registration of off-highway vehicles.

39-29-08. Rules.

1. The department shall adopt rules for the registration of off-highway vehicles and display of registration numbers.

2. The director, in the interest of public health, welfare, and safety, may regulate, by rule, the operation of off-highway vehicles on state highways. The director's authority to prohibit the use of off-highway vehicles is limited to the roadways, shoulders, inslopes, and medians within the right of way, except where such action is necessary to avoid an obstacle. Notwithstanding the racing prohibitions in section 39-08-03.1, the director may, on a case-by-case basis, permit organized and bona fide off-highway vehicle races on the ditch bottoms, backslopes, and the top of the backslopes of the state highway rights of way. The planning, organization, route selection, and safety precautions of any race are the sole responsibility of the person obtaining the permit. The director, the department, and the department's employees do not incur any liability for permitting races.

3. The director of the parks and recreation department shall adopt rules to regulate use of off-highway vehicles in state parks and other state-owned land under the supervision of the director of the parks and recreation department.

4. The governing bodies of political subdivisions may adopt rules to regulate use of off-highway vehicles in areas under their jurisdiction. The governing body of a city may, by ordinance, regulate, restrict, and prohibit the use of off-highway vehicles operated in the city limits in areas under the exclusive jurisdiction of the city.

39-29-09. Operation of off-highway vehicles.

1. An individual may not operate an off-highway vehicle on the roadway, shoulder, or inside bank or slope of any road, street, or highway except as provided in this chapter. Except in emergencies, an individual may not operate an off-highway vehicle within the right of way of any controlled-access highway. An individual may operate a registered off-highway vehicle on a gravel, dirt, or loose surface roadway. An individual may operate a registered off-highway vehicle on a paved highway designated and posted at a speed not exceeding fifty-five miles [88.51 kilometers] per hour. A licensed driver over sixteen years of age may operate a registered class III off-highway vehicle on a paved highway designated and posted at a speed not exceeding sixty-five miles [104.61 kilometers] per hour. An individual may not operate an off-highway vehicle on a paved highway if the vehicle is unable to attain a speed, on a paved level surface, of at least thirty miles [48.28 kilometers] per hour.

2. The operator of an off-highway vehicle may make a direct crossing of a street or highway only if:

a. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

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b. The off-highway vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the highway;

c. The operator yields the right of way to all oncoming traffic which constitutes an immediate hazard; and

d. In crossing a divided highway, the crossing is made only at an intersection of the highway with another public street or highway.

3. Unless an individual is operating a class I off-highway vehicle, an individual may not operate an off-highway vehicle unless it is equipped with at least one headlamp, one taillamp, and brakes, all in working order, which conform to standards prescribed by rule of the director, except when under the direct supervision of an off-highway vehicle instructor teaching a certified off-highway vehicle safety training course, the requirement for a headlamp and taillamp may be waived.

4. The emergency conditions under which an off-highway vehicle may be operated other than as provided by this chapter are only those that render the use of an automobile

impractical under the conditions and at the time and location in question.

5. An individual may not operate an off-highway vehicle in the following ways, which are declared to be unsafe and a public nuisance:

- a. At a rate of speed greater than reasonable or proper under all the surrounding circumstances.
- b. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage to another person or the property of another person.
- c. While under the influence of intoxicating liquor or a controlled substance.
- d. Without a lighted headlamp and taillamp except when used by an off-highway vehicle instructor during a certified off-highway vehicle safety training course.
- e. In any tree nursery or planting in a manner that damages growing stock.
- f. Without a manufacturer-installed or equivalent muffler in good working order and connected to the off-highway vehicle's exhaust system.
- g. On any private land where the private land is posted prohibiting trespassing. The name and address of the person posting the land and the date of posting must appear on each sign in legible characters. The posted signs must be readable from outside the land and be placed conspicuously at a distance of not more than eight hundred eighty yards [804.68 meters] apart. Land entirely enclosed by a fence or other enclosure is sufficiently posted by posting of these signs at or on all gates through the fence or enclosure.

6. Except as provided in section 39-29-10, an individual may not operate an off-highway vehicle without having in possession a valid driver's license or permit.

7. When an off-highway vehicle is operated within the right of way of any road, street, or highway, during times or conditions that warrant the use of lights by other motor vehicles, the off-highway vehicle must be operated in the same direction as the direction of other motor vehicles traveling on the side of the roadway immediately adjacent to the side of the right of way traveled by the off-highway vehicle.

8. An individual may not operate an off-highway vehicle within the right of way of any highway while towing a sled, skid, or other vehicle, unless the object towed is connected to the off-highway vehicle by a hinged swivel and secure hitch.

9. An individual under the age of eighteen years may not operate, ride, or otherwise be propelled on an off-highway vehicle unless the person wears a safety helmet meeting United States department of transportation standards.

10. An operator of an off-highway vehicle may not carry a passenger while operating the vehicle unless the off-highway vehicle is equipped and recommended by the manufacturer to carry a passenger and the passenger is carried as recommended by the manufacturer.

11. Unless otherwise provided by law, an off-highway vehicle may be operated on an aggregate road surface only when designated as part of an active off-highway vehicle trail by the managing entity.

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12. A person who is performing pest control or survey work for a political subdivision may operate an all-terrain vehicle on the bottom, backslope, inside slope, and shoulder of a highway other than a controlled-access highway.

39-29-09.1. Equipment.

To operate an off-highway vehicle on a paved highway or gravel, dirt, or loose surface roadway under subsection 1 of section 39-29-09, the off-highway vehicle must be equipped with a mirror in compliance with section 39-27-09, a horn in compliance with section 39-27-15, a speedometer and odometer in compliance with section 39-27-16, a brake light, a lighted headlamp in compliance with section 39-27-17.1, and a motor of at least three hundred fifty cubic centimeters.

39-29-10. Operation by persons under age sixteen.

Except as otherwise provided in this section, an individual under sixteen years of age who is not in possession of a valid operator's license or permit to operate an off-highway vehicle may not, except upon the lands of the individual's parent or guardian or as a participant in an organized sporting event that involves the use of off-highway vehicles, operate an off-highway vehicle. An individual at least twelve years of age may operate an off-highway vehicle if the individual has completed an off-highway vehicle safety training course prescribed by the director

of the parks and recreation department and has received the appropriate off-highway vehicle safety certificate issued by the director of the parks and recreation department. The failure of an operator to exhibit an off-highway vehicle safety certificate on demand to any official authorized to enforce this chapter is presumptive evidence that that person does not hold a certificate. Fees collected from each individual receiving certification must be deposited in the off-highway vehicle trail tax fund for off-highway vehicle safety education and training programs.

39-29-11. Enforcement.

Only peace officers of this state and their respective duly authorized representatives may enforce this chapter.

39-29-12. Penalties.

Violation of subdivision b, c, or g of subsection 5 of section 39-29-09 is a class B misdemeanor. Violation of any other provision of section 39-29-09 is an infraction for which a fee of twenty dollars must be assessed. Violation of section 39-29-02 or subsection 2 of section 39-29-04 is an infraction, for which a fee of fifty dollars must be assessed. If the individual provides proof of registration since the violation, the fee may be reduced by one-half. Violation of any other provision of this chapter is an infraction, for which a fee of ten dollars must be assessed.

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## **2024 North Dakota Century Code Title 39 - Motor Vehicles Chapter 39-30 - Motor Vehicle Chop Shops**

### **CHAPTER 39-30**

#### **MOTOR VEHICLE CHOP SHOPS**

39-30-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Chop shop" means any building, lot, or other premises where one or more persons knowingly, as defined by section 12.1-02-02, engage in altering, destroying, disassembling, dismantling, reassembling, or storing any motor vehicle, or motor vehicle part known to be illegally obtained by theft, fraud, or conspiracy to defraud, in order to either:

a. Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number of the motor vehicle or motor vehicle part, in order to misrepresent the identity of the motor vehicle or motor vehicle part, or to prevent the identification of the motor vehicle or motor vehicle part; or

b. Sell or dispose of the motor vehicle or motor vehicle part.

2. "Motor vehicle" includes every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, which is self-propelled or which may be connected to and towed by a self-propelled device, and includes any and all other land-based devices that are self-propelled but which are not designed for use upon a highway, including farm machinery and construction equipment.

3. "Person" includes a natural person, company, corporation, limited liability company, unincorporated association, partnership, professional corporation, professional limited liability company, and any other legal entity.

4. "Unidentifiable" means that the uniqueness of a motor vehicle or motor vehicle part cannot be established by either expert law enforcement investigative personnel specially trained and experienced in motor vehicle theft investigative procedures and motor vehicle identification examination techniques, or by expert employees of not-for-profit motor vehicle theft prevention agencies specially trained and experienced in motor vehicle theft investigation procedures and motor vehicle identification examination techniques.

5. "Vehicle identification number" means a number or numbers, a letter or letters, a character or characters, a datum or data, a derivative or derivatives, or a combination or combinations thereof, used by the manufacturer or the department of transportation for the purposes of uniquely identifying a motor vehicle or motor vehicle part. The term includes a number or numbers, a letter or letters, a character or characters, a datum or data, a derivative or derivatives, or a combination or combinations thereof.

39-30-02. Violations and penalties.

1. It is a class B felony if any person knowingly, as defined in section 12.1-02-02, and with intent that a violation of subsection 2 be committed:

- a. Owns, operates, or conducts a chop shop;
  - b. Transports any motor vehicle or motor vehicle part to or from a location knowing it to be a chop shop; or
  - c. Sells, transfers, purchases, or receives any motor vehicle or motor vehicle part either to or from a location knowing it to be a chop shop.
2. Any person who knowingly, as defined in section 12.1 -02-02, alters, counterfeits, defaces, destroys, disguises, falsifies, forges, obliterates, or knowingly removes a vehicle identification number, with the intent to misrepresent the identity or prevent the identification of a motor vehicle or motor vehicle part, is guilty of a class B felony.
- 3.a. Any person who buys, disposes, sells, transfers, or possesses a motor vehicle or motor vehicle part, with knowledge that the vehicle identification number of the motor vehicle or motor vehicle part has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed, is guilty of a class B felony.

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- b. The provisions of subdivision a do not apply to a motor vehicle scrap processor who, in the normal legal course of business and in good faith, processes a motor vehicle or motor vehicle part by crushing, compacting, or other similar methods, provided that any vehicle identification number is not removed from the motor vehicle or motor vehicle part prior to or during any such processing.
- c. The provisions of subdivision a do not apply to any owner or authorized possessor of a motor vehicle or motor vehicle part which has been recovered by law enforcement authorities after having been stolen or when the condition of the vehicle identification number of the motor vehicle or motor vehicle part is known to or has been reported to law enforcement authorities. It is presumed that law enforcement authorities have knowledge of all vehicle identification numbers on a motor vehicle or motor vehicle part which are altered, counterfeited, defaced, disguised, falsified, forged, obliterated, or removed, when law enforcement authorities deliver or return the motor vehicle or motor vehicle part to its owner or authorized possessor after it has been recovered by law enforcement authorities after having been reported stolen.
4. No prosecution may be brought, and no person may be convicted, of any violation under this section, if acts of the person otherwise constituting a violation were done in good faith in order to comply with the laws or regulations of any state or territory of the United States or of the federal government of the United States.
5. The sentence imposed upon a person convicted of any violation of this section may not be reduced to less than four years imprisonment for a second conviction of any violation of this section, or less than eight years for a third or subsequent conviction of any violation of this section, and no sentence imposed upon a person for a second or subsequent conviction of any violation of this section may be suspended or reduced until the person has served the minimum period of imprisonment provided in this section. A person convicted of a second or subsequent violation of this section is not eligible for probation, parole, furlough, or work release.
- 6.a. In addition to any punishment, a person who violates this section, must be ordered to make restitution to the lawful owner or owners of the stolen motor vehicle or vehicles or the stolen motor vehicle part or parts, or to the owner's insurer to the extent that the owner has been compensated by the insurer, and to any other person for any financial loss sustained as a result of a violation of this section.
- As used in this section, "financial loss" includes loss of earnings, out-of-pocket and other expenses, repair and replacement costs, and claims payments. As used in this section, "lawful owner" includes an innocent bona fide purchaser for value of a stolen motor vehicle part who does not know that the motor vehicle or part is stolen or an insurer to the extent that the insurer has compensated a bona fide purchaser for value.
- b. The court shall determine the extent and method of restitution. In an extraordinary case, the court may determine that the best interests of the victim and justice would not be served by ordering restitution. In any such case, the court shall make and enter specific written findings on the record concerning the

extraordinary circumstances presented which militated against restitution.

39-30-03. Seizure of equipment.

1.Any tool, implement, or instrumentality, including a motor vehicle or motor vehicle part, used or possessed in connection with any violation of section 39 -30-02 may be seized by a member of a state or local law enforcement agency upon process issued by any court of competent jurisdiction.

2.Seizure of property described in subsection 1 may be made by a member of a state or local law enforcement agency without process:

a.If in accordance with any applicable law or regulation;

b.If the seizure is incident to inspection under an administrative inspection warrant;

c.If the seizure is incident to search made under a search warrant;

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d.If the seizure is incident to a lawful arrest;

e.If the seizure is made pursuant to a valid consent to search;

f.If the property seized has been the subject of a prior judgment in favor of the state in a criminal proceeding or in an injunction or forfeiture proceeding under section 39-30-05; or

g.If there are reasonable grounds to believe that the property is directly or indirectly dangerous to health or safety.

3.When property is seized under this section, the seizing agency may:

a.Place the property under seal; or

b.Remove the property to a place selected and designated by the seizing party.

39-30-04. Forfeiture of property.

1.The following are subject to forfeiture unless obtained by theft, fraud, or conspiracy to defraud and the rightful owner is known or can be identified and located:

a.Any tool;

b.Any implement; or

c.Any instrumentality, including any motor vehicle or motor vehicle part, whether owned or unowned by the person from whose possession or control it was seized, which is used or possessed either in violation of section 39 -30-02 or to promote or facilitate a violation of section 39 -30-02.

2.Any motor vehicle, other conveyance, or motor vehicle part used by any person as a common carrier is subject to forfeiture under this section if the owner or other person in charge of the motor vehicle, other conveyance, or motor vehicle part is a consenting party to a violation of section 39 -30-02.

3.Any motor vehicle, motor vehicle part, other conveyance, tool, implement, or instrumentality is not subject to forfeiture under this section by reason of any act or omission that the owner proves to have been committed or omitted without the owner's knowledge or consent.

4.a.Seizing agencies shall utilize their best efforts to identify any seized motor vehicle or motor vehicle part to determine ownership or the identity of any other person having a right or interest in it. In its reasonable identification and owner location attempts, the seizing agency shall cause the stolen motor vehicle files of all law enforcement agencies to be searched for stolen or wanted information on motor vehicles similar to the seized motor vehicle or consistent with the seized motor vehicle part.

b.If a motor vehicle or motor vehicle part has an apparent value in excess of one thousand dollars:

(1)The seizing agency shall consult with an expert of the type specified in subsection 4 of section 39 -30-01; and

(2)The seizing party shall request searches of the online and offline files of the national crime information center and the national automobile theft bureau when files have been searched with negative results.

5.A forfeiture of a motor vehicle, motor vehicle part, or other conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission forming the ground for the forfeiture.

6.Property, described in subsection 1, seized and held for forfeiture, is not subject to replevin and is subject only to the order and judgments of a court of competent

jurisdiction hearing the forfeiture proceedings.

7.a. A state's attorney in the county where the seizure occurs shall bring an action for forfeiture in a court of competent jurisdiction. The forfeiture action must be brought within sixty days from the date of seizure except when the state's attorney in the sound exercise of discretion determines that no forfeiture action should be brought because of the rights of property owners, lienholders, or secured creditors, or because of exculpatory, exonerating, or mitigating facts and circumstances.

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b. The state's attorney shall give notice of the forfeiture proceeding by mailing a copy of the complaint in the forfeiture proceeding to each person whose right, title, or interest is of record maintained in the department of transportation, or any other department of the state, or any other state or territory of the United States, or of the federal government if the property is required to be registered in any such department.

c. Notice of the proceeding must be given to any other person as may appear, from the facts and circumstances, to have any right, title, or interest in or to the property.

d. The owner of the property, or any person having or claiming right, title, or interest in the property may within sixty days after the mailing of such notice file a verified answer to the complaint and may appear at the hearing on the action for forfeiture.

e. The state's attorney must show at a forfeiture hearing, by a preponderance of the evidence, that the property was used in the commission of a violation of section 39-30-02 or was used or possessed to facilitate such violation.

f. The owner of property may show by a preponderance of the evidence that the owner did not know, and did not have reason to know, that the property was to be used or possessed in the commission of any violation or that any of the exceptions to forfeiture are applicable.

g. Unless the state's attorney makes the required showing, the court shall order the property released to the owner. If the state's attorney has made such a showing, the court may order:

(1) The property be destroyed by the agency that seized it or some other agency designated by the court;

(2) The property be delivered and retained for use by the agency that seized it or some other agency designated by the court; or

(3) The property be sold at public sale.

8. A copy of a forfeiture order must be filed with the sheriff of the county in which the forfeiture occurs and with each federal or state department with which the property is required to be registered. The order, when filed, constitutes authority for the issuance to the agency to which the property is delivered and retained for use or to any purchaser of the property of a title certificate, registration certificate, or other special certificate as may be required by law considering the condition of the property.

9. Proceeds from the sale at public auction, after payment of all reasonable charges and expenses incurred by the agency designated by the court to conduct the sale in storing and selling the property, must be paid to the general fund of the county of seizure.

10. No motor vehicle, either seized under section 39 -30-03 or forfeited under this section, may be released by the seizing agency or used or sold by an agency designated by the court unless any altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed vehicle identification number is corrected by the issuance and affixing of either assigned or replacement vehicle identification number plates as may be appropriate under laws of this state.

11. No motor vehicle part having any altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed vehicle identification number may be disposed of upon forfeiture except by destruction. This subsection does not apply to any motor vehicle part that is assembled with and constitutes part of a motor vehicle.

12. No motor vehicle or motor vehicle part may be forfeited under this section solely on the basis that it is unidentifiable. Instead of forfeiture, any seized motor vehicle or motor vehicle part that is unidentifiable must be the subject of a written report sent by the

seizing agency to the department of transportation. The report must include a description of the motor vehicle or motor vehicle part, its color, if any, the date, time, and place of its seizure, the name of the person from whose possession or control it was seized, the grounds for its seizure, and the location where it is held or stored.

13. When a seized unidentifiable motor vehicle or motor vehicle part has been held for sixty days or more after the notice to the department of transportation specified in Page No. 4

subsection 12 has been given, the seizing agency, or its agent, shall cause the motor vehicle or motor vehicle part to be sold at public sale to the highest bidder. Notice of the time and place of sale must be posted in a conspicuous place for at least thirty days prior to the sale on the premises where the motor vehicle or motor vehicle part has been stored.

14. If a seized unidentifiable motor vehicle or motor vehicle part has an apparent value of one thousand dollars or less, the seizing agency shall authorize the disposal of the motor vehicle or motor vehicle part, provided that no such disposition may be made less than sixty days after the date of seizure.

15. The proceeds of the public sale of an unidentifiable motor vehicle or motor vehicle part must be deposited in the general fund of the state or other governmental unit after deduction of any reasonable and necessary towing and storage charges.

16. Seizing agencies shall utilize their best efforts to arrange for the towing and storing of motor vehicles and motor vehicle parts in the most economical manner possible. The owner of a motor vehicle or a motor vehicle part may not be required to pay more than the minimum reasonable costs of towing and storage.

17. A seized motor vehicle or motor vehicle part that is neither forfeited nor unidentifiable must be held subject to the order of the court in which the criminal action is pending or, if a request for its release from such custody is made, until the state's attorney has notified the defendant or the defendant's attorney of such request and both the prosecution and defense have been afforded a reasonable opportunity for an examination of the property to determine its true value and to produce or reproduce, by photographs or other identifying techniques, legally sufficient evidence for introduction at trial or other criminal proceedings. Upon expiration of a reasonable time for the completion of the examination, which may not exceed fourteen days from the date of service upon the defense of the notice of request for return of property, the property must be released to the person making such request after satisfactory proof of the person's entitlement to possession. Notwithstanding the foregoing, upon application by either party with notice to the other, the court may order retention of the property if it determines that retention is necessary in the furtherance of justice.

18. When a seized vehicle is forfeited, restored to its owner, or disposed of as unidentifiable, the seizing agency shall retain a report of the transaction for a period of at least one year from the date of the transaction.

19. When an applicant for a certificate of title or salvage certificate presents to the department of transportation proof that the applicant purchased or acquired a motor vehicle at a public sale conducted pursuant to this section and such fact is attested to by the seizing agency, the department of transportation shall issue a certificate of title, salvage certificate for the motor vehicle upon receipt of the statutory fee, properly executed application for a certificate of title, or other certificate of ownership, and the affidavit of the seizing agency that a state -assigned number was applied for and affixed to the motor vehicle prior to the time that the motor vehicle was released by the seizing agency to the purchaser.

39-30-05. Civil proceedings and remedies.

1. The attorney general, any state's attorney, or any aggrieved person may institute civil proceedings against any person in any court of competent jurisdiction seeking relief from conduct constituting a violation of any provision of this chapter. If the plaintiff in such a proceeding proves the alleged violation, or its threat, by a preponderance of the evidence, any court of competent jurisdiction after due provision for the rights of innocent persons, shall grant relief by entering any appropriate order or judgment, including:

a. Ordering any defendant to be divested of any interest in any property;

b. Imposing reasonable restrictions upon the future activities or investments of any

defendant, including prohibiting any defendant from engaging in the same type of endeavor as the defendant was engaged in previously;

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c. Ordering the suspension or revocation of a license, permit, or prior approval granted by any public agency or any other public authority;

d. Ordering the surrender of the charter of a corporation organized under the laws of the state or the revocation of a certificate authorizing a foreign corporation to conduct business within the state upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct made unlawful by this chapter and that, for the prevention of future criminal conduct, the public interest requires the charter of the corporation be surrendered and the corporation dissolved or the certificate revoked; or

e. Ordering the surrender of the certificate of organization of a limited liability company organized under the laws of the state or the revocation of a certificate authorizing a foreign limited liability company to conduct business within the state upon finding that the board of governors or a managerial agent acting on behalf of the limited liability company, in conducting the affairs of the limited liability company, has authorized or engaged in conduct made unlawful by this chapter and that, for the prevention of future criminal conduct, the public interest requires that the certificate of organization of the limited liability company be surrendered and the limited liability company dissolved or the certificate revoked.

2. In a proceeding under this section, injunctive relief must be granted in conformity with the principles that govern the granting of relief from injury or threatened injury in other cases, but no showing of special or irreparable injury must be made. Pending final determination of a proceeding under this section, a temporary restraining order or a preliminary injunction may be issued upon a showing of immediate danger of significant injury, including the possibility that any judgment for money damages might be difficult to execute, and, in a proceeding initiated by an aggrieved person, upon the execution of proper bond against injury for an injunction improvidently granted.

3. Any person injured, directly or indirectly, by conduct constituting a violation by any person of section 39 -30-02, in addition to any other relief, has a cause of action for threefold the actual damages sustained by the person.

4. A final judgment or decree rendered against the defendant in any civil or criminal proceeding estops the defendant in any subsequent civil action or proceeding brought by any person as to all matters to which the judgment or decree would be an estoppel between the parties to the civil or criminal proceeding.

5. Notwithstanding any other provision of law providing a shorter period of limitations, a civil action under this section may be commenced at any time within five years after the conduct made unlawful under section 39 -30-02 terminates or the cause of action accrues or within any longer statutory period that may be applicable. If any action is brought by a state's attorney to punish, prevent, or restrain any activity made unlawful under section 39-30-02, the running of the period of limitations is suspended during the pendency of such action and for two years following its termination.

6. Personal service of any process in any action under this section may be made upon any person outside the state if the person has engaged in any conduct constituting a violation of section 39 -30-02 in this state. The person is deemed to have thereby submitted to the jurisdiction of the courts of this state for the purposes of this provision.

7. Obtaining any civil remedy under this section does not preclude obtaining any other civil or criminal remedy under either this chapter or any other provision of law. Civil remedies under this section are supplemental and not mutually exclusive.

39-30-06. Venue.

A criminal prosecution for any violation may be commenced in any county without regard to place of occurrence.

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39-32-01. Definition of intrastate driver.

As used in this chapter, "intrastate driver" means a driver who will be operating a commercial motor vehicle within this state for a seven -consecutive-day period.

39-32-02. Intrastate exemptions from hours of service regulations.

1.The following intrastate drivers are not subject to hours of service regulations:

a.A driver of an authorized emergency vehicle ;

b.A driver who operates a motor vehicle in intrastate commerce if the gross vehicle weight, gross vehicle weight rating, gross combination weight, and gross combination weight rating are less than twenty-six thousand one pounds [11793.86 kilograms] unless the vehicle is used to transport hazardous materials requiring a placard, the vehicle is designed to transport more than eight passengers, including the driver, for compensation, or the vehicle is designed or used to transport sixteen or more people, including the driver not for compensation; or

c.A driver of a tow truck operating at the request of a law enforcement officer.

2.Except for a driver included in subsection 1, a motor carrier may not permit or require any intrastate driver to drive and an intrastate driver may not drive:

a.More than twelve cumulative hours following ten consecutive hours off duty ;

b.For any period after the end of the sixteenth hour after coming on duty following ten consecutive hours off duty; or

c.After having been on duty for seventy hours in any period of seven consecutive days.

3.Hours of service limitations do not apply to an intrastate driver operating a commercial vehicle to provide emergency relief during an emergency declared by the governor .

Under this subsection, an emergency is the result of any natural activities, including a tornado, windstorm, thunderstorm, snowstorm, ice storm, blizzard, drought, mudslide, flood, high water, earthquake, forest fire, explosion, blackout, or other occurrence, natural or manmade, which interrupts delivery of essential services, such as electricity, medical care, sewer, water, telecommunications transmissions, or essential supplies, such as food and fuels, or otherwise threatens human life or public welfare.

4.Hours of service limitations do not apply to an intrastate driver transporting agricultural commodities or farm supplies, including farm equipment or machinery, for agricultural purposes in this state during planting and harvesting seasons from January first through December thirty-first, if the transportation is limited to an area within a one hundred fifty air-mile radius from the source of the commodities or the distribution point for the farm supplies.

5.An intrastate driver is exempt from maintaining a record of duty status if:

a.The driver operates within a one hundred fifty air -mile radius from the driver's normal work-reporting location or from the official worksite of the vehicle;

b.At least ten consecutive hours off duty separate each twelve hours on duty;

c.The driver, except for a driver salesperson, returns to the work -reporting location and is released from work within twelve consecutive hours; and

d.The motor carrier maintains and retains for a period of six months accurate time records showing the time the driver reports for duty and is released from duty each day.

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**2024 North Dakota Century Code Title 39 - Motor Vehicles Chapter 39-33 - Driver and Motor Vehicle Record Privacy**

**CHAPTER 39-33**

**DRIVER AND MOTOR VEHICLE RECORD PRIVACY**

39-33-01. Definitions.

As used in this chapter:

1."Department" means the department of transportation or an authorized agent or contractor of the department responsible for compiling and maintaining motor vehicle records.

2."Disclose" means to engage in any practice or conduct to make available and make known personal information contained in a motor vehicle record about a person to any other person by any means of communication.

3."Express consent" means consent in writing, including consent conveyed electronically

which bears an electronic signature as defined by law.

4. "Highly restricted personal information" means an individual's photograph or image, social security number, and medical or disability information.

5. "Individual record" means a motor vehicle record containing personal information about a designated person who is the subject of the record as identified in a request.

6. "Motor vehicle record" means any record that pertains to a motor vehicle operator's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by the department, or other state or local agency authorized to issue any of such forms of credentials. A record includes all books, papers, photographs, photostats, cards, films, tapes, recordings, electronic data, printouts, or other documentary materials regardless of physical form or characteristics.

7. "Person" does not include an agent of this state.

8. "Personal information" means information that identifies a person, including an individual's photograph or computerized image, social security number, driver identification number, name, address, telephone number, and medical or disability information. The term does not include the five -digit zip code of an address, information on vehicular accidents, driving or equipment -related violations, and operator's license or registration status.

39-33-02. Disclosure and use of personal information from department records prohibited.

1. Notwithstanding any other provision of law, except as provided in sections 39 -33-03, 39-33-04, and 39-33-05, the department may not knowingly disclose personal information about any person obtained by the department in connection with a motor vehicle record.

2. Notwithstanding any other provision of law, except as provided in subsections 1, 4, 6, and 9 of section 39 -33-05, the department may not knowingly disclose highly restricted personal information about any person without the express consent of the person to whom such information pertains. This does not in any way affect the use of organ donation information on an individual's operator's license or affect the administration of organ donation initiatives in the state.

39-33-03. Required disclosures.

Personal information referred to in section 39 -33-02 must be disclosed for use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and removal of nonowner records from the original owner records of motor vehicle manufacturers in accordance with federal law.

39-33-04. Disclosure with consent.

Personal information referred to in section 39 -33-02 may be disclosed to any requester, if the requester demonstrates in the form and manner prescribed by the department that the requester has obtained the written consent of the person who is the subject of the information.

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39-33-05. Permitted disclosures.

The department may disclose personal information referred to in section 39 -33-02 to any person, on proof of the identity of the person requesting a record and representation by the requester that the use of the personal information will be strictly limited to one or more of the following:

1. For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person acting on behalf of a government agency in carrying out its functions.

2. For use in connection with matters of motor vehicles or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original owner records of motor vehicle manufacturers.

3. For use in the normal course of business by a legitimate business or its agents, employees, or contractors:

a. To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

b. If the information as so submitted is not correct or is no longer correct, to obtain

the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

4. For use in connection with any proceeding in any court or government agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of any court.

5. For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.

6. For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting.

7. For use in providing notice to the owner or lienholder of a towed or impounded vehicle.

8. For use by any licensed private investigative agency or licensed security service for any purpose permitted under this section.

9. For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license which is required under the Commercial Motor Vehicle Safety Act of 1986 [title XII of Pub. L. 99 -570].

10. For use in connection with the operation of private toll transportation facilities.

11. For any use specifically authorized by law that is related to the operation of a motor vehicle or public safety.

12. For any other use in response to requests for individual motor vehicle records if the department has obtained the express consent of the person to whom such personal information pertains.

13. For bulk distribution for surveys, marketing, or solicitations if the department has obtained the express consent of the person to whom such personal information pertains.

39-33-06. Fees.

Disclosure of personal information required or permitted under sections 39 -33-03, 39-33-04, and 39-33-05 is subject to payment by the requesting person to the department of all fees for the information required by law, or the terms of any contract with the requesting person, on the terms for payment as may be required or agreed.

39-33-07. Additional conditions.

Before the disclosure of personal information under sections 39 -33-03, 39-33-04, and 39-33-05, the department may require reasonable assurance concerning the identity of the requesting person, the use to be only as authorized, and the consent of the person who is the

subject of the information to be obtained. These conditions may include the making and filing of a written application in a form and containing information and certification requirements as the department may prescribe.

39-33-08. Resale or redisclosure.

1. An authorized recipient of personal information may resell or redisclose the information for any use permitted under section 39 -33-05.

2. The department shall require any authorized recipient who resells or rediscloses personal information to maintain for a period of not less than five years records as to the person receiving the information and the permitted use for which it was obtained and to make these records available for inspection by the department upon request.

39-33-09. Regulations and waiver procedure.

Upon receiving a request for personal information that is not subject to disclosure in accordance with the exception provisions of sections 39 -33-03, 39-33-04, and 39-33-05, the department may mail a copy of the request to each individual who is the subject of the information, informing the individual of the request, together with a statement to the effect that disclosure is prohibited and will not be made unless the individual affirmatively elects to waive the individual's rights to privacy under this chapter.

39-33-10. Penalty for false representation.

Any person requesting the disclosure of personal information from department records who misrepresents that person's identity or makes a false statement to the department on any application required to be submitted pursuant to this chapter is guilty of a class A misdemeanor.

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## **Title: title-5**

### **2024 North Dakota Century Code Title 5 - Alcoholic Beverages Chapter 5-04 - Beer Wholesaler and Brewer Relationships**

#### **CHAPTER 5-04**

#### **BEER WHOLESALER AND BREWER RELATIONSHIPS**

##### **5-04-01. Definitions.**

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

1. "Agreement" means one or more of the following:
  - a. A commercial relationship between a licensed beer wholesaler and a licensed brewer of a definite or indefinite duration which is not required to be evidenced in writing.
  - b. A relationship whereby the beer wholesaler is granted the right to offer and sell a brand or brands of beer offered by a brewer.
  - c. A relationship whereby the beer wholesaler, as an independent business, constitutes a component of a brewer's distribution system.
  - d. A relationship whereby the beer wholesaler's business is substantially associated with a brewer's brand or brands, designating the brewer.
  - e. A relationship whereby the beer wholesaler's business is substantially reliant on a brewer for the continued supply of beer.
  - f. A written or oral arrangement for a definite or indefinite period whereby a brewer grants a license to a beer wholesaler to use a brand, trade name, trademark, or service mark, and in which there is a community of interest in the marketing of goods or services at wholesale or retail.
2. "Ancillary business" means a business owned by a wholesaler, a stockholder of a wholesaler, or a partner of a wholesaler, the primary business of which is directly related to the transporting, storing, or marketing of the brewer's products with whom the wholesaler has an agreement.
3. "Beer wholesaler" or "wholesaler" means any licensee, as outlined in section 5 -03-01, importing or causing to be imported into this state or purchasing or causing to be purchased within this state, any beer for sale or resale to retailers or wholesalers licensed pursuant to chapter 5 -02 or 5-03, without regard to whether the business of the person is conducted under the terms of an agreement with a licensed brewer.
4. "Brand" means any word, name, group of letters, symbol, or combination thereof, that is adopted and used by a brewer or importer to identify a specific beer product, and to distinguish that beer product from another beer product.
5. "Brand extension" is any brand that incorporates all or a substantial part of the unique features of a pre-existing brand of the same brewer or importer and which relies to a significant extent on the goodwill associated with that pre-existing brand.
6. "Brewer" means every licensed brewer or importer of beer located within or without this state who enters into an agreement with any beer wholesaler licensed to do business in this state.
7. "Person" means a natural person, corporation, limited liability company, partnership, trust, agency, or other entity as well as the individual officers, directors, or other persons in active control of the activities of each such entity. "Person" also includes heirs, assigns, personal representatives, conservators, and guardians.
8. "Territory" or "sales territory" means the area of primary sales responsibility designated by any agreement between any beer wholesaler and brewer for the brand or brands of any brewer.

##### **5-04-02. Inducement or coercion prohibited.**

No brewer may:

1. Induce or coerce, or attempt to induce or coerce, any beer wholesaler to accept delivery of any alcoholic beverage or any other commodity which has not been ordered by the beer wholesaler.
2. Induce or coerce, or attempt to induce or coerce, any beer wholesaler to enter any agreement or take any action that would violate any law or rule of this state by threatening to amend, cancel, terminate, or refuse to renew any agreement existing between a brewer and a beer wholesaler.
3. Require a wholesaler to assent to any condition, stipulation, or provision limiting the

wholesaler's right to sell any other brewer's product anywhere in this state, provided the sale of another brewer's product does not materially impair the quality of service or quantity of sales of the existing brand or brands of the brewer seeking to impose the condition, stipulation, or provision.

4. Require a wholesaler to submit specific, confidential information regarding competitive brands, as a condition of renewal or continuation of an agreement.

5. Fail to provide each wholesaler of its brands with a written contract which conforms to this chapter and embodies the brewer's agreement with each wholesaler.

5-04-03. Dual distributorship prohibited.

No brewer who designates a sales territory for which a wholesaler shall be primarily responsible shall enter into an additional agreement with any other beer wholesaler for its brand or brands of beer in the same territory. No wholesaler may deliver beer to a retail account outside a sales territory designated by the brewer of a particular brand or brands.

5-04-04. Agreement cancellation.

Notwithstanding the terms, provisions, or conditions of any agreement, no brewer may amend, cancel, terminate, or refuse to renew any agreement, or cause a wholesaler to resign from an agreement, unless good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuation, or causing a resignation. "Good cause" does not include the sale or purchase of a brewer. "Good cause" includes, but is not limited to, the following:

1. Revocation of the wholesaler's license to do business in this state.

2. The wholesaler's bankruptcy or insolvency.

3. Assignment for the benefit of creditors or similar disposition of the wholesaler's assets.

4. The wholesaler's failure to comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon the wholesaler by the brewer.

In any dispute over an amendment, cancellation, termination, or nonrenewal, the brewer has the burden of proving the existence of good cause. If a wholesaler initiates a civil action, the brewer bears the burden of proving the existence of good cause after a prima facie showing by the wholesaler that good cause does not exist.

5-04-05. Notice of intent to terminate.

Except as otherwise provided in this section, a brewer shall provide a wholesaler with at least ninety days prior written notice of any intent to amend, terminate, cancel, or not renew any agreement. The notice must state all the reasons for the intended amendment, termination, cancellation, or nonrenewal. The wholesaler has ninety days after receiving notice in which to rectify any claimed deficiency. If the deficiency is rectified within ninety days of notice, the proposed amendment, termination, cancellation, or nonrenewal is void. The notice provisions of this section do not apply if the reason for the termination, cancellation, or nonrenewal is:

1. The wholesaler's bankruptcy or insolvency.

2. An assignment for the benefit of creditors or similar disposition of the business assets.

3. Revocation of the wholesaler's license.

4. Conviction or a plea of guilty or no contest to a charge of violating a law relating to the business that materially affects the wholesaler's ability to remain in business.

5-04-06. Assignment, transfer, or sale of business.

No brewer may unreasonably withhold consent to any assignment, transfer, or sale of the wholesaler's business whenever the wholesaler to be substituted meets the material and reasonable qualifications and standards required of the brewer's wholesalers.

No brewer may unreasonably refuse, withhold, or unduly delay its approval of the issuance, sale, or transfer by a corporate beer wholesaler of its capital stock or any other corporate equity or debt security.

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5-04-07. Reasonable compensation for wrongful cancellation.

1. Any brewer which amends, cancels, terminates, or refuses to renew any beer agreement, or causes a wholesaler to resign from an agreement, unless for "good cause" as defined by section 5 -04-04, or which unreasonably withholds consent to any assignment, transfer, or sale of a wholesaler's business, shall pay the wholesaler reasonable compensation for the value of the wholesaler's business with relationship to the terminated brand or brands. The value of the wholesaler's business includes, but is not limited to, the fair market value of the wholesaler's business with respect to the terminated brand or brands, including the value of any ancillary business of the wholesaler and the goodwill of the business or ancillary business. The value of the

wholesaler's business may not exceed the wholesaler's actual damages.

2.If the brewer and the beer wholesaler are unable to mutually agree on reasonable compensation for the value of the wholesaler's business, the matter must be submitted to a neutral arbitrator to be selected by the parties or, if they cannot agree, by the presiding district judge of the district in which the wholesaler's main office is located. All arbitration costs shall be divided equally between the wholesaler and the brewer. The award of the neutral arbitrator shall be final and binding on the parties.

5-04-08. Judicial remedies.

If a brewer engages in conduct prohibited under this chapter, a wholesaler, with whom the brewer has an agreement pursuant to this chapter, may maintain a suit against the brewer. The venue of any legal action taken under this section, or pursuant to a dispute arising out of an agreement or breach thereof, or over the provisions of an agreement, is a court, state or federal, located in North Dakota, or where the wholesaler maintains its principal place of business in this state. The court may grant equitable relief as is necessary to remedy the effects of conduct which it finds to exist and which is prohibited under this chapter, including, but not limited to, declaratory judgment and injunctive relief. The court may award actual damages and costs. If the court finds the brewer has acted in bad faith in invoking amendment, termination, cancellation, or nonrenewal under this chapter or has unreasonably withheld its consent to any assignment, transfer, or sale of the wholesaler's agreement, the court may also award reasonable attorney's fees.

5-04-09. Product price.

No brewer, whether by means of a term or condition of an agreement or otherwise, may fix or maintain the price at which the wholesaler sells any alcoholic beverage.

5-04-10. Retaliatory action prohibited.

A brewer may not take retaliatory action against a wholesaler who files or manifests an intention to file a complaint of alleged violation of state or federal law or regulation by the brewer with the appropriate state or federal regulatory authority. "Retaliatory action" includes, but is not limited to, refusal without good cause to continue the agreement, or a material reduction in the quality of service or quantity of products available to the wholesaler under the agreement.

5-04-11. Wholesaler management.

No brewer may require or prohibit any change in management or personnel of any wholesaler unless the current or potential management or personnel fails to meet essential, reasonable, and nondiscriminatory requirements.

5-04-12. Discrimination prohibited.

No brewer may discriminate among its North Dakota wholesalers in the price of beer sold to the North Dakota wholesalers or in price promotions. No wholesaler may refuse to sell to any licensed alcoholic beverage retailer in its sales territory. No wholesaler may discriminate among the licensed alcoholic beverage retailers in its sales territory in the price of beer sold to the retailers or in price promotions.

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5-04-13. Waiver prohibited.

No brewer may require any wholesaler to waive compliance with any provision of this chapter. Nothing in this chapter may be construed to limit or prohibit good -faith dispute settlements voluntarily entered into by the parties. However, no provision of any written agreement may require the law of any state other than North Dakota to govern the relationship of the parties.

5-04-14. Sale of brewer.

Except for good cause, as defined by section 5 -04-04, the purchase of a brewer as defined in section 5-04-01, when the purchaser continues in business as a brewer, shall obligate the new brewer to all terms and conditions of the agreement in effect on the date of purchase. "Purchase", for the purposes of this chapter, includes the sale of stock, sale of assets, merger, lease, transfer, or consolidation.

5-04-15. Application to agreements.

The provisions of this chapter cover agreements in existence on July 1, 1981, as well as agreements entered into after July 1, 1981.

5-04-16. Right of free association.

No brewer or wholesaler may restrict or inhibit, directly or indirectly, the right of free association among brewers or wholesalers for any lawful purpose.

5-04-17. Chapter to apply when in conflict with title 51.

The provisions of this chapter apply in any instances when the provisions of this chapter conflict with the unfair practice provisions of title 51.

5-04-18. Same brands - Assignment of brand extensions.

Different categories of products manufactured and marketed under a common identifying trade name are the same brand. For example, "old faithful" includes "old faithful", "old faithful light", "old faithful draft", "old faithful dry", and other products identified principally by the old faithful name. Differences in packaging do not establish different brands. A brewer or importer may assign a brand extension only to the wholesaler with an exclusive sales territory to the brand that is the basis for the brand extension. This limitation does not apply to assignments of brand extensions to wholesalers which were made by a brewer or importer before August 1, 1995. If, before August 1, 1995, a brewer or importer assigned a brand extension to a wholesaler that is without exclusive sales territory to the brand that is the basis of the brand extension, any additional brand extension must be assigned to the wholesaler who first had the brand.

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