

North Dakota

CHAPTER 12.1-20

SEX OFFENSES

12.1-20-01. General provisions. In sections 12.1-20-03 through 12.1-20-08:

1. When the criminality of conduct depends on a child's being below the age of fifteen, it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than fourteen.
2. When criminality depends on the victim being a minor, it is an affirmative defense that the actor reasonably believed the victim to be an adult.

12.1-20-02. Definitions. In sections 12.1-20-03 through 12.1-20-12:

1. "Deviate sexual act" means any form of sexual contact with an animal, bird, or dead person.
2. "Object" means anything used in commission of a sexual act other than the person of the actor.
3. "Sexual act" means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any other portion of the human body and the penis, anus, or vulva; or the use of an object which comes in contact with the victim's anus, vulva, or penis. For the purposes of this subsection, sexual contact between the penis and the vulva, the penis and the anus, any other portion of the human body and the anus or vulva, or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.
4. "Sexual contact" means any touching, whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires.

12.1-20-03. Gross sexual imposition.

1. A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:
 - a. He compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;
 - b. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance;
 - c. He knows that the victim is unaware that a sexual act is being committed upon him or her;
 - d. The victim is less than fifteen years old; or
 - e. He knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct.

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2. A person who engages in sexual contact with another, or who causes another to engage in sexual contact, is guilty of an offense if:

- a. The victim is less than fifteen years old; or
 - b. He compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being.
3. An offense under this section is a class A felony if in the course of the offense the actor inflicts serious bodily injury upon the victim or if his conduct violates subdivision a or d of subsection 1. Otherwise the offense is a class B felony.

12.1-20-03.1. Continuous sexual abuse of a child.

1. An individual in adult court is guilty of a class A felony if the individual engages in any combination of three or more sexual acts or sexual contacts with a minor under the age of fifteen years during a period of three or more months. The court may not

defer imposition of sentence, nor may the court suspend any part of the specified sentence, either at the time of or after the imposition of the sentence, unless the court first finds that the offense was the defendant's first violation of this chapter and that extenuating or mitigating circumstances exist which justify a suspension. The court shall announce the circumstances that justify a suspension in open court when sentence is imposed and recite these circumstances in the sentence or order suspending part of the sentence.

2. If more than three sexual acts or contacts are alleged, a jury must unanimously agree that any combination of three or more acts or contacts occurred. The jury does not need to unanimously agree which three acts or contacts occurred.

3. No other felony offense under this chapter involving the same victim may be charged in the same proceeding with a charge under this section unless the other charged offense occurred outside the time period charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section, but a separate count may be charged for each victim if more than one victim is involved.

12.1-20-04. Sexual imposition. A person who engages in a sexual act or sexual contact with another, or who causes another to engage in a sexual act or sexual contact, is guilty of a class B felony if the actor:

1. Compels the other person to submit by any threat that would render a person of reasonable firmness incapable of resisting; or

2. Engages in a sexual act or sexual contact with another, whether consensual or not, as part of an induction, initiation, ceremony, pledge, hazing, or qualification to become a member or an associate of any criminal street gang as defined in section 12.1-06.2-01.

12.1-20-05. Corruption or solicitation of minors.

1. An adult who engages in, solicits with the intent to engage in, or causes another to engage in a sexual act with a minor, is guilty of a class A misdemeanor if the victim is a minor fifteen years of age or older.

2. An adult who solicits with the intent to engage in a sexual act with a minor under age fifteen or engages in or causes another to engage in a sexual act when the adult is at least twenty-two years of age and the victim is a minor fifteen years of age or older, is guilty of a class C felony.

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12.1-20-05.1. Luring minors by computer. An adult is guilty of luring minors by computer when:

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

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

3. A violation of this section is a class A misdemeanor, but if the adult is twenty-two years of age or older or the adult reasonably believes the minor is under the age of fifteen, violation of this section is a class C felony.

12.1-20-06. Sexual abuse of wards. A person who engages in a sexual act with another person, or any person who causes another to engage in a sexual act is guilty of a class C felony if the other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over the other person.

12.1-20-06.1. Sexual exploitation by therapist - Definitions - Penalty. Any person who is or who holds oneself out to be a therapist and who intentionally has sexual contact, as defined in section 12.1-20-02, with a patient or client during any treatment, consultation, interview, or examination is guilty of a class C felony. Consent by the complainant is not a defense under this section. A complaint of a violation of this section may be made to the police department of the city in which the violation occurred, the sheriff of the county in which the violation occurred, or the bureau of criminal investigation. Local law enforcement agencies and the bureau of criminal investigation shall cooperate in investigations of violations of this section. As used in this section, unless the context or subject matter otherwise requires:

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

12.1-20-07. Sexual assault.

1. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if:

- a. That person knows or has reasonable cause to believe that the contact is offensive to the other person;
- b. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other person's conduct;
- c. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the victim's knowledge intoxicants, a Page No. 3 controlled substance as defined in chapter 19-03.1, or other means for the purpose of preventing resistance;
- d. The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over that other person;
- e. The other person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or
- f. The other person is a minor, fifteen years of age or older, and the actor is an adult.

2. The offense is a class C felony if the actor's conduct violates subdivision b, c, d, or e of subsection 1, or subdivision f of subsection 1 if the adult is at least twenty-two years of age, a class A misdemeanor if the actor's conduct violates subdivision f of subsection 1 if the adult is at least eighteen years of age and not twenty-two years of age or older, or a class B misdemeanor if the actor's conduct violates subdivision a of subsection 1.

12.1-20-08. Fornication. An individual is guilty of a class A misdemeanor if the individual engages in a sexual act in a public place. A minor engaging in a sexual act is guilty of a class B misdemeanor, unless that sexual act was committed against the minor in violation of sections 12.1-20-01 through 12.1-20-07.

12.1-20-09. Adultery.

1. A married person is guilty of a class A misdemeanor if he or she engages in a sexual act with another person who is not his or her spouse.
2. No prosecution shall be instituted under this section except on the complaint of the spouse of the alleged offender, and the prosecution shall not be commenced later than one year from commission of the offense.
3. The court shall grant immunity from prosecution under this section to a person subject to prosecution under this section who, as part of a divorce, annulment, or separation proceeding, provides information regarding sexual acts with another

person.

12.1-20-10. Unlawful cohabitation. A person is guilty of a class B misdemeanor if he or she lives openly and notoriously with a person of the opposite sex as a married couple without being married to the other person.

12.1-20-11. Incest. A person who intermarries, cohabits, or engages in a sexual act with another person related to him within a degree of consanguinity within which marriages are declared incestuous and void by section 14-03-03, knowing such other person to be within said degree of relationship, is guilty of a class C felony.

12.1-20-12. Deviate sexual act. A person who performs a deviate sexual act with the intent to arouse or gratify his sexual desire is guilty of a class A misdemeanor.

12.1-20-12.1. Indecent exposure.

1. A person, with intent to arouse, appeal to, or gratify that person's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that person:

a. Masturbates in a public place or in the presence of a minor; or

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b. Exposes one's penis, vulva, or anus in a public place or to a minor in a public or private place.

2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.2, or after being required to register under section 12.1-32-15.

12.1-20-12.2. Surreptitious intrusion.

1. An individual, with the intent to arouse, appeal to, or gratify that individual's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that individual does any of the following:

a. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously gazes, stares, or peeps in the window or any other aperture of a house or place of dwelling of another.

b. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of a house or place of dwelling of another.

c. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously gazes, stares, or peeps in the window or other aperture of a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.

d. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or other aperture of a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.

2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.1, or after being required to register under section 12.1-32-15.

12.1-20-13. Bigamy.

1. A person who marries another person, while married to another person, is guilty of a class C felony.

2. Subsection 1 does not extend to:

a. A person whose spouse has been absent for five successive years and is believed by him or her to be dead.

b. A person whose spouse has voluntarily absented himself and has continually remained without the United States for the space of five successive years.

c. A person whose former marriage has been pronounced void, null, or dissolved by the judgment of a competent court.

12.1-20-14. Admissibility of evidence concerning reputation of complaining witness - Gross sexual imposition and sexual imposition. Superseded by N.D.R.Ev. 412.

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12.1-20-15. Credibility of complaining witness attacked - Procedure. Superseded by N.D.R.Ev. 412.

12.1-20-15.1. Admissibility of evidence of victim's manner of dress in sex offense cases. Superseded by N.D.R.Ev. 412.

12.1-20-16. Appointment of a guardian ad litem in prosecution for sex offenses. A minor or a person with a developmental disability who is a material or prosecuting witness in a criminal proceeding involving an act in violation of sections 12.1-20-01 through 12.1-20-08, or section 12.1-20-11 may, at the discretion of the district court, have the witness' interests represented by a guardian ad litem at all stages of the proceedings arising from the violation. The appointment may be made upon the order of the court on its own motion or at the request of a party to the action. The guardian ad litem may, but need not, be a licensed attorney and must be designated by the court after due consideration is given to the desires and needs of the minor or the person with a developmental disability. A person who is also a material witness or prosecuting witness in the same proceeding may not be designated guardian ad litem. The guardian ad litem must receive notice of and may attend all depositions, hearings, and trial proceedings to support the minor or the person with a developmental disability and advocate for the protection of the minor or the person with a developmental disability but may not separately introduce evidence or directly examine or cross-examine witnesses. The expenses of the guardian ad litem, when approved by the judge, must be paid by the supreme court. The state shall also pay the expenses of the guardian ad litem in commitment proceedings held in district court pursuant to chapter 25-03.1.

12.1-20-17. Transfer of body fluid that may contain the human immunodeficiency virus - Definitions - Defenses - Penalty.

1. As used in this section, unless the context otherwise requires:

a. "Body fluid" means semen, irrespective of the presence of spermatozoa; blood; or vaginal secretion.

b. "Transfer" means to engage in sexual activity by genital-genital contact, oral-genital contact, or anal-genital contact, or to permit the reuse of a hypodermic syringe, needle, or similar device without sterilization.

2. A person who, knowing that that person is or has been afflicted with acquired immune deficiency syndrome, afflicted with acquired immune deficiency syndrome related complexes, or infected with the human immunodeficiency virus, willfully transfers any of that person's body fluid to another person is guilty of a class A felony.

3. It is an affirmative defense to a prosecution under this section that if the transfer was by sexual activity, the sexual activity took place between consenting adults after full disclosure of the risk of such activity and with the use of an appropriate prophylactic device.

12.1-20-18. Definitions. Repealed by S.L. 1993, ch. 129, § 5.

12.1-20-19. Release of sexual offender from place of confinement - Duties of official in charge. Repealed by S.L. 1993, ch. 129, § 5.

12.1-20-20. Duty to register. Repealed by S.L. 1993, ch. 129, § 5.

12.1-20-21. Change of address - Duty to inform. Repealed by S.L. 1993, ch. 129, § 5.

12.1-20-22. Duration of registration. Repealed by S.L. 1993, ch. 129, § 5.

12.1-20-23. Penalty. Repealed by S.L. 1993, ch. 129, § 5.

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12.1-20-24. Facilitation of sexual acts in public.

1. As used in this section:

a. "Adult entertainment center" means any commercial facility at which motion pictures or videos that include explicit representations of sexual conduct are

offered for viewing at that facility, but does not include the guest rooms of a hotel or motel.

b. "Sexual act" has the meaning prescribed in section 12.1-20-02.

c. "Sexual conduct" has the meaning prescribed in section 12.1-27.1-01.

2. It is an infraction for a person to willfully own, rent, lease, manage, or exercise control of any portion of an adult entertainment center if that portion contains:

a. Any partition between subdivisions of a room or area that has an opening that facilitates a sexual act between individuals on either side of the partition; or

b. A room, booth, stall, or partitioned portion of a room offered to individuals for a fee as an incident to viewing a video, motion picture, or similar entertainment, unless the room, booth, stall, or partitioned portion of the room has:

(1) At least one side open to an adjacent public space so that the area inside is visible to individuals in the adjacent public space; and

(2) The viewing area is lighted in a manner that the persons in that area are visible from the adjacent public space.

3. This section does not apply to an enclosure that is a private office space used by the owner, manager, or employees of the adult entertainment center if that office space is not held out or available to the public for the purpose of viewing a video, motion picture, or similar entertainment for a fee.

4. The state department of health or the state's attorney having jurisdiction may bring an action to enjoin a pattern of violations of this section.

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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, publish, distribute, circulate, disseminate, present, exhibit, or advertise.

4. "Sexual conduct" means actual or simulated sexual intercourse, sodomy, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals, including the further definitions of sodomy and sadomasochistic abuse under section 12.1-27.1-01.

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. A person is guilty of a class B 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.

12.1-27.2-03. Promoting or directing an obscene 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 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 C 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.

12.1-27.2-04.1. Possession of certain materials prohibited. A person is guilty of a class A misdemeanor following a first offense or a class C felony following a second or subsequent offense if, knowing of its character and content, that person knowingly possesses any motion picture, photograph, or other visual representation that includes sexual conduct by a minor.

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:

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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;

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; or

3. The defendant had no financial interest in promoting a sexual performance by a minor, other than employment in a theater, which employment does not include compensation based upon any proportion of the receipts arising from promotion of the sexual performance, and that person was in no way responsible for acquiring the material for sale, rental, or exhibition.

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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