

**ORDINANCE NO. 452**

**AN ORDINANCE REGULATING THE CRIMINAL CODES WITHIN THE CITY OF BEULAH, MERCER COUNTY, NORTH DAKOTA AND REPEALING ORDINANCES AND SECTION OF ORDINANCES IN CONFLICT THEREWITH, INCLUDING ORDINANCES 151, 229, 231, 352, and 410.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEULAH, MERCER COUNTY, NORTH DAKOTA, AS FOLLOWS:

**CHAPTER 12.1  
CRIMINAL CODE**

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**ARTICLE 12.1-01**  
**APPLICATION – PURPOSES – PROOF – DEFINITIONS**

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

1. Chapter 12.1 of the Beulah Municipal Code may be cited as the Beulah Criminal Code.
2. This chapter, 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 chapter if any of the elements of the offense occurred prior thereto.
3. In cases pending on or after the effective date of this chapter, and involving offenses committed prior thereto:
  - a. The provisions of this chapter 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 chapter 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 chapter 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 chapter 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 chapter; 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 city interest in law enforcement against specific offenses and to systematize the exercise of city criminal jurisdiction.

### **12.1-01-03. Proof and presumptions.**

N.D.C.C. § 12.1-01-03 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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;
  - 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 chapter 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 or ordinance 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 or ordinance 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.**

N.D.C.C. § 12.1-01-03.1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. In determining an individual's age for purposes of this chapter, 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.**

Words and phrases used in this chapter shall have the meanings and be defined as provided in the N.D.C.C. in Title 12.1, and N.D.C.C. § 12.1-01-04 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

1. "Act" or "action" means a bodily movement, whether voluntary or involuntary.
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 CO2 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.
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 chapter and in sections outside this chapter 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 chapter and in any statute outside this chapter which defines an offense means a county, city, school district, township, and any other local governmental entity created by law.
25. "Public servant" as used in this chapter and in any statute outside this chapter 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.
26. "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.
27. "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.
28. "Signature" includes any name, mark, or sign written or affixed with intent to authenticate any instrument or writing.
29. "Substantial bodily injury" means a substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ.
30. "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.
31. "Tier 1 mental health professional" has the same meaning as provided under section 25-01-01.

## **ARTICLE 12.1-02**

### **LIABILITY AND CULPABILITY**

#### **12.1-02-01. Basis of liability for offenses.**

N.D.C.C. § 12.1-02-01 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. A person commits an offense only if the person engages in conduct, including an act, an omission, or possession, in violation of a statute or ordinance which provides that the conduct is an offense.

2. A person who omits to perform an act does not commit an offense unless the person has a legal duty to perform the act, nor shall such an omission be an offense if the act is performed on the person's behalf by a person legally authorized to perform it.

#### **12.1-02-02. Requirements of culpability.**

N.D.C.C. § 12.1-02-02 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. For the purposes of this chapter, a person engages in conduct:
  - a. "Intentionally" if, when he engages in the conduct, it is his purpose to do so.
  - b. "Knowingly" if, when he engages in the conduct, he knows or has a firm belief, unaccompanied by substantial doubt, that he is doing so, whether or not it is his purpose to do so.
  - c. "Recklessly" if he engages in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct, except that, as provided in section 12.1-04-02, awareness of the risk is not required where its absence is due to self-induced intoxication.
  - d. "Negligently" if he engages in the conduct in unreasonable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.
  - e. "Willfully" if he engages in the conduct intentionally, knowingly, or recklessly.
2. If an ordinance or regulation thereunder defining a crime does not specify any culpability and does not provide explicitly that a person may be guilty without culpability, the culpability that is required is willfully.
3.
  - a. Except as otherwise expressly provided, where culpability is required, that kind of culpability is required with respect to every element of the conduct and to those attendant circumstances specified in the definition of the offense, except that where the required culpability is "intentionally", the culpability required as to an attendant circumstance is "knowingly".
  - b. Except as otherwise expressly provided, if conduct is an offense if it causes a particular result, the required degree of culpability is required with respect to the result.
  - c. Except as otherwise expressly provided, culpability is not required with respect to any fact which is solely a basis for grading.
  - d. Except as otherwise expressly provided, culpability is not required with respect to facts which establish that a defense does not exist, if the defense is defined in articles 12.1-01 through 12.1-06; otherwise, the least kind of culpability required for the offense is required with respect to such facts.
  - e. A factor as to which it is expressly stated that it must "in fact" exist is a factor for which culpability is not required.
4. Any lesser degree of required culpability is satisfied if the proven degree of culpability is higher.

5. Culpability is not required as to the fact that conduct is an offense, except as otherwise expressly provided in a provision outside this title.

#### **12.1-02-03. Mistake of fact in affirmative defenses.**

N.D.C.C. § 12.1-02-03 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Unless otherwise expressly provided, a mistaken belief that the facts which constitute an affirmative defense exist is not a defense.

#### **12.1-02-04. RESERVED FOR FUTURE USE**

#### **12.1-02-05. Causal relationship between conduct and result.**

N.D.C.C. § 12.1-02-05 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Causation may be found where the result would not have occurred but for the conduct of the accused operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the accused clearly insufficient.

### **ARTICLE 12.1-03-01 ACCOMPLICES – CORPORATIONS – AGENTS**

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

N.D.C.C. § 12.1-03-01 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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.**

N.D.C.C. § 12.1-03-02 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

- 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.

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

N.D.C.C. § 12.1-03-03 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.



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 an ordinance 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.**

Words and phrases used in this Article shall have the meanings and be defined as provided in the N.D.C.C. in Title 12.1, and N.D.C.C. § 12.1-01-04 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. In this article:
  - 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 article shall limit or extend the criminal liability of an unincorporated association.

### **ARTICLE 12.104 JUVENILES – INTOXICATION – FITNESS TO PROCEED**

#### **12.1-04-01. Juveniles.**

N.D.C.C. § 12.1-04-01 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. An individual under the age of ten years is deemed incapable of commission of an offense defined by the constitution or statutes of this state. The prosecution of an individual as an adult is barred if the offense was committed while the individual was less than fourteen years of age.
2. An individual ten years of age or older may be assessed for mental fitness or capacity under this chapter.

#### **12.1-04-02. Intoxication.**

N.D.C.C. § 12.1-04-02 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Intoxication is not a defense to a criminal charge. Intoxication does not, in itself, constitute mental disease or defect within the meaning of section 12.1-04-04. Evidence of intoxication is admissible whenever it is relevant to negate or to establish an element of the offense charged.
2. A person is reckless with respect to an element of an offense even though his disregard thereof is not conscious, if his not being conscious thereof is due to self-induced intoxication.

#### **12.1-04-03. *RESERVED FOR FUTURE USE***

#### **12.1-04-04. Definitions.**

N.D.C.C. § 12.1-04-04 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

As used in this article, unless the context otherwise requires:

1. "Fitness to proceed" means sufficient present ability to consult with the individual's counsel with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against the individual.
2. "Least restrictive appropriate setting" means available treatment or service that best meets the identified need and is no more restrictive of physical or social liberties than what is necessary to meet the need.
3. "Therapeutically appropriate treatment" means treatment that provides the individual the greatest probability of improvement or cure.

#### **12.1-04-04.1. Disposition of defendants - Lack of fitness to proceed - Records.**

N.D.C.C. § 12.1-04-04.1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. A defendant is presumed to be fit to stand trial, to plead, or to be sentenced.
2. An individual who lacks fitness to proceed may not be tried, convicted, or sentenced for the commission of an offense.
3. Any report filed pursuant to this article regarding "diagnosis, treatment, or treatment plans" must be kept confidential and may be reviewed only by the court or an appellate court, the state, the defense, the facility providing treatment as required by order of the court, and any other person as directed by the court.

#### **12.1-04-05. Notice of defense, filing.**

See N.D.R.Crim.P., Rule 12.2.

#### **12.1-04-06. Temporary detention for purposes of examination.**

N.D.C.C. § 12.1-04-06 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Whenever there is reason to doubt the defendant's fitness to proceed, the court may order temporary detention of the defendant for the purpose of an examination. The temporary detention must be in the least restrictive appropriate setting, including the state hospital, the life skills and transition center, or other suitable facility for a reasonable period, not to exceed thirty days, for such examination. In lieu of detention, the court may allow the defendant to remain in the defendant's present residential setting or other suitable residential setting for the purpose of examination, subject to any reasonable limitation the court may impose. A human service center may be considered if the court is aware an inquiry was made before the court ordered the evaluation to ensure appropriate resources exist at the human service center being ordered to conduct the examination. While the defendant is detained, the defendant's legal counsel, family, and others necessary to assist in the defendant's case must have reasonable opportunity to examine and confer with the defendant.

#### **12.1-04-07. Examination - Report - Hearing when contested.**

N.D.C.C. § 12.1-04-07 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Whenever there is reason to doubt the defendant's fitness to proceed, the court shall order the defendant be examined by a tier 1a mental health professional.
2. An examination must occur within fifteen days from notice of entry of the order served upon the tier 1a mental health professional. Attorneys shall disclose any materials necessary to examine the fitness of the individual to the tier 1a examiner contemporaneously with the order. For good cause shown, the court may grant an extension allowing an additional seven days to complete the examination.
3. The report of the examining mental health professional, whether for a retrospective evaluation of fitness or an evaluation of the defendant's current fitness, must be provided to the court in writing within thirty days of the date of the examination.
4. The report must include:
  - a. The identity of the individuals interviewed and records and other information considered.
  - b. Procedures, tests, and techniques utilized in the assessment.
  - c. The date and time of the examination of the defendant, and the identity of each individual present during the examination.
  - d. The relevant information obtained, other information not obtained, and the defendant's responses to questions related to the defendant's fitness to proceed, except for any restricted, proprietary, copyrighted, or other information subject to trade secret protection which the examiner believes may be relevant, and the findings made.
  - e. An opinion as to whether the defendant is fit to proceed, is able to understand the nature or purpose of the proceedings against the defendant, is able to effectively

communicate with counsel, and whether the defendant will attain fitness to proceed within the time frames set forth in section 12.1-04-08. If the examiner is unable to determine whether the defendant will attain fitness within a specified period of time, the report must include the reasoning. The report may include a general description of the type of treatment needed and of the therapeutically appropriate treatment or other appropriate treatment.

5. If the findings of the report are contested, the court shall hold a hearing before deciding whether the defendant currently lacks fitness to proceed and whether the defendant will attain fitness to proceed. Upon hearing, the prosecution and defense have the right to summon and cross-examine the persons responsible for the report and to offer evidence upon the issues.

#### **12.1-04-08. Suspension or dismissal of proceedings - Referral for services.**

N.D.C.C. § 12.1-04-08 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. If the court determines based upon a preponderance of the evidence that the defendant currently lacks fitness to proceed and the report as required under section 12.1-04-07 indicates a likelihood the defendant will attain fitness within a specified period of time from the date of the finding upon completion of a course of therapeutically appropriate treatment, the proceedings against the defendant must be suspended. For a defendant charged with a felony, the proceedings must be suspended for a period of up to one hundred eighty days. The court may extend the suspension for an additional three hundred sixty-five days if there is medical evidence to believe the defendant's fitness to proceed will be restored during the extended period. For a defendant charged with a misdemeanor, the proceedings must be suspended for a period no longer than the maximum term of imprisonment for the most serious offense charged. When the court determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding must be resumed. If prosecution of the defendant has not resumed or it is determined by the court, after a hearing if a hearing is requested, that the defendant will not regain fitness to proceed within the allotted time, the charges against the defendant must be dismissed.
2. If the court determines based upon a preponderance of the evidence that the defendant currently lacks fitness to proceed and that the defendant will not attain fitness to proceed, the proceedings must be dismissed. The court may at any time make a referral for other appropriate services. Other appropriate services include:
  - a. Determination of incapacity, by a district court with appropriate jurisdiction following petition by the state's attorney, for the appointment of a guardian or conservator pursuant to N.D.C.C. chapter 30.1-28 or 30.1-29; or
  - b. Civil commitment of the person pursuant to N.D.C.C. chapter 25-03.1.
3. If the court determines the defendant currently lacks fitness to proceed and the defendant may attain fitness to proceed under subsection 1, the court may enter an order for a course of treatment considering the least restrictive form of treatment therapeutically appropriate.
  - a. Unless excused by the court, in a proceeding to determine therapy in an attempt to attain fitness, the defendant shall be represented by trial counsel.

- b. If the court finds the individual is not able 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 to examine the individual.
  - c. In a motion hearing to resume prosecution, the state or prosecuting authority must show by a preponderance of the evidence the defendant has attained fitness to proceed.
- 4. If the court orders the defendant committed to a treatment facility in an attempt to attain fitness to proceed under subsection 1, the court shall provide the special custody and commitment terms in the order. The special terms of commitment must include an order for the defendant to accept all nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility, including the use of involuntary treatment with prescribed medication without the need for a separate commitment under N.D.C.C. chapter 25-03.1.
  - a. If the order does not indicate the terms of commitment, the director or superintendent of the treatment facility may determine the nature of the constraints necessary within the treatment facility to carry out the order of the court.
  - b. If the court orders an individual committed for therapeutic treatment to attain fitness to proceed, the court shall set a date consistent with the timeline established in this section for a review of the defendant's fitness to proceed. At least sixty days before the date specified for review, the director or director's designee or the superintendent of the treatment facility shall inquire as to whether the individual is represented by counsel and file a written report of the facts ascertained with the court.
- 5. If the parties to the action have reason to modify the special terms of the commitment order under this section, the parties shall make a motion to the court and the court shall determine by a preponderance of the evidence if the modification of the special terms is necessary and the least restrictive therapeutic alternative therapy in an attempt to attain fitness to proceed.
- 6. The custodian, guardian, or other person charged with the control of the defendant may take an appeal from the court's order in the manner provided by law.

#### **12.1-04-09. Legal objections to prosecution allowed.**

N.D.C.C. § 12.1-04-09 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible of fair determination prior to trial and without the personal participation of the defendant.

**ARTICLE 12.1-05**  
**JUSTIFICATION – EXCUSE – AFFIRMATIVE DEFENSES**

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

N.D.C.C. § 12.1-05-01 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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.**

N.D.C.C. § 12.1-05-02 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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.

**12.1-05-03. Self-defense.**

N.D.C.C. § 12.1-05-03 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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.

**12.1-05-04. Defense of others.**

N.D.C.C. § 12.1-05-04 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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;
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.**

N.D.C.C. § 12.1-05-05 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

1. Except as provided in N.D.C.C. § 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 N.D.C.C. § 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 N.D.C.C. § 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.**

N.D.C.C. § 12.1-05-06 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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.**

N.D.C.C. § 12.1-05-07 subsection 1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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



#### **12.1-05-08. Excuse.**

N.D.C.C. § 12.1-05-08 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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 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.**

N.D.C.C. § 12.1-05-09 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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, ordinance, 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.**

N.D.C.C. § 12.1-05-10 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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.**

N.D.C.C. § 12.1-05-11 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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.**

N.D.C.C. § 12.1-05-12 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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.
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.

### **ARTICLE 12.1-06 CRIMINAL ATTEMPT – CONSPIRACY**

#### **12.1-06-01. Criminal attempt.**

N.D.C.C. § 12.1-06-01 subsections 1 and 2 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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 N.D.C.C. § 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 if the crime attempted is an offense, except that 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 offense, an attempt to commit an offense shall be punished as an infraction. Criminal attempt of an infraction is an infraction.

**12.1-06-02. *RESERVED FOR FUTURE USE***

**12.1-06-03. *RESERVED FOR FUTURE USE***

**12.1-06-04. Criminal Conspiracy.**

N.D.C.C. § 12.1-06-04 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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 affect 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 affect 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 affect 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.**

N.D.C.C. § 12.1-06-05 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. The definition of an offense in sections 12.1-06-01 and 12.1-06-04 does not apply to another offense also defined in sections 12.1-06-01 and 12.1-06-04.
2. Whenever "attempt" or "conspiracy" is made an offense outside this article, it means attempt or conspiracy, as the case may be, as defined in this article.
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 12.1-06-04, 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 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;
    - (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.

## **ARTICLE 12.1-07 CARRYING CERTAIN FLAGS**

**12.1-07-01. *RESERVED FOR FUTURE USE***

**12.1-07-02. *RESERVED FOR FUTURE USE***

**12.1-07-03. Carrying in parade or the display of certain flags, ensigns, banners, and standards prohibited.**

N.D.C.C. § 12.1-07-03 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

No flag of any nation, state, country, or territory other than the flag of the United States or a state flag, or the flag of a friendly foreign nation, or the dependencies of such nations, shall be:

1. Carried in parade on any public street or highway within this state.
2. Exhibited in any hall or public place.
3. Displayed or exhibited:
  - a. On any vehicle.
  - b. On any building or premises.
  - c. In any other manner in public within the state.

**12.1-07-04. *RESERVED FOR FUTURE USE***

**12.1-07-05. Penalty.**

Any person who violates any of the provisions of section 12.1-07-03 is guilty of a class B misdemeanor.

## **ARTICLE 12.1-08 OBSTRUCTION OF LAW ENFORCEMENT**

**12.1-08-01. *RESERVED FOR FUTURE USE***

**12.1-08-02. *RESERVED FOR FUTURE USE***

**12.1-08-03. *RESERVED FOR FUTURE USE***

**12.1-08-04. Aiding consummation of crime.**

A person is guilty of the offense of aiding consummation of an offense against the ordinances of this city if he intentionally aids another to secrete, disguise, or convert the proceeds of a crime or otherwise profit from a crime.

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

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.

**12.1-08-06. *RESERVED FOR FUTURE USE***

**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 B misdemeanor if he negligently permits an escape. "Official detention" has the meaning prescribed in subsection 3 of N.D.C.C. § 12.1-08-06.

**12.1-08-08. *RESERVED FOR FUTURE USE***

**12.1-08-09. *RESERVED FOR FUTURE USE***

**12.1-08-10. *RESERVED FOR FUTURE USE***

**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. 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.

**ARTICLE 12.1-09  
TAMPERING**

**12.1-09-01. *RESERVED FOR FUTURE USE***

**12.1-09-02. *RESERVED FOR FUTURE USE***

### **12.1-09-03. Tampering with physical evidence.**

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. 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.

## **ARTICLE 12.1-10**

### **CONTEMPT – OBSTRUCTION OF JUDICIAL PROCEEDINGS**

#### **12.1-10-01. Criminal contempt.**

1. The municipal court has the power to punish for contempt of its authority only for the following offenses:
  - a. Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
  - b. Misbehavior of any of its officers in their official transactions; or
  - c. Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.
2. Except as otherwise provided, a criminal contempt proceeding under this section shall be deemed a prosecution for an offense for the purposes of N.D.C.C. Chapters 12.1-01 through 12.1-05, N.D.C.C. Chapter 12.1-32, and Article 12.1-32 of this Chapter.
3. A criminal contempt proceeding under this section is not a bar to subsequent prosecution for a specific offense if the court certifies in the judgment of conviction of criminal contempt, or the order terminating the proceeding without acquittal or dismissal, that a summary criminal contempt proceeding was necessary to prevent repetition of misbehavior disruptive of an ongoing proceeding and that subsequent prosecution as a specific offense is warranted. In a subsequent prosecution, the defendant shall receive credit for all time spent in custody and any fine paid by him pursuant to the criminal contempt proceeding.
4. This section shall not be construed to deprive a court of its power, by civil contempt proceedings, to compel compliance with its lawful writ, process, order, rule, decree, or command or to compensate a complainant for losses sustained by reason of disobedience or resistance thereto, in accordance with the prevailing usages of law and equity, including the power of detention.

#### **12.1-10-02. *RESERVED FOR FUTURE USE***

#### **12.1-10-03. *RESERVED FOR FUTURE USE***

#### **12.1-10-04. Hindering proceedings by disorderly conduct.**

A person is guilty of a class B misdemeanor if the person recklessly hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.

**ARTICLE 12.1-11  
FALSIFICATION**

**12.1-11-01. *RESERVED FOR FUTURE USE***

**12.1-11-02. *RESERVED FOR FUTURE USE***

**12.1-11-03. *RESERVED FOR FUTURE USE***

**12.1-11-04. *RESERVED FOR FUTURE USE***

**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. 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.

**ARTICLE 12.1-12  
*RESERVED FOR FUTURE USE***

**ARTICLE 12.1-13  
IMPERSONATION**

**12.1-13-01. *RESERVED FOR FUTURE USE***

**12.1-13-02. *RESERVED FOR FUTURE USE***

**12.1-13-03. *RESERVED FOR FUTURE USE***

**12.1-13-04. Impersonating officials.**

1. A person is guilty of an offense if he falsely pretends to be a public servant, other than a law enforcement officer, and acts as if to exercise the authority of such public servant.
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.



**ARTICLE 12.1-14  
CIVIL RIGHTS**

**12.1-14-01. *RESERVED FOR FUTURE USE***

**12.1-14-02. *RESERVED FOR FUTURE USE***

**12.1-14-03. *RESERVED FOR FUTURE USE***

**12.1-14-04. Discrimination in public places.**

N.D.C.C. § 12.1-14-04 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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.**

N.D.C.C. § 12.1-14-05 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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.

**ARTICLE 12.1-15  
*RESERVED FOR FUTURE USE***

**ARTICLE 12.1-16  
*RESERVED FOR FUTURE USE***

**ARTICLE 12.1-17**  
**ASSAULTS –HARASSMENT**

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

N.D.C.C. § 12.1-17-01 subsection 1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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. It is a greater offense, which must be prosecuted in state court 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 N.D.C.C. 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.

**12.1-17-02. *RESERVED FOR FUTURE USE***

**12.1-17-03. *RESERVED FOR FUTURE USE***

**12.1-17-04. *RESERVED FOR FUTURE USE***

**12.1-17-05. *RESERVED FOR FUTURE USE***

**12.1-17-06. *RESERVED FOR FUTURE USE***

**12.1-17-07. Harassment.**

1. A person is guilty of an offense if, with intent to frighten or harass another, the person:
  - a. *Reserved for future use*;
  - 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. 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.
3. 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.

**12.1-17-08. Consent as a defense.**

N.D.C.C. § 12.1-17-08 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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. *RESERVED FOR FUTURE USE***

**12.1-17-10. Hazing - Penalty.**

N.D.C.C. § 12.1-17-10 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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. If the actor's conduct causes physical injury, it is a higher offense, which must be prosecuted in district court.

**ARTICLE 12.1-18  
RESERVED FOR FUTURE USE**

**ARTICLE 12.1-19  
RESERVED FOR FUTURE USE**

**ARTICLE 12.1-20  
SEX OFFENSES**

**12.1-20-01. RESERVED FOR FUTURE USE**

**12.1-20-02. RESERVED FOR FUTURE USE**

**12.1-20-03. RESERVED FOR FUTURE USE**

**12.1-20-04. RESERVED FOR FUTURE USE**

**12.1-20-05. RESERVED FOR FUTURE USE**

**12.1-20-06. RESERVED FOR FUTURE USE**

**12.1-20-07. RESERVED FOR FUTURE USE**

**12.1-20-08. RESERVED FOR FUTURE USE**

**12.1-20-09. RESERVED FOR FUTURE USE**

**12.1-20-10. RESERVED FOR FUTURE USE**

**12.1-20-11. RESERVED FOR FUTURE USE**

**12.1-20-12. RESERVED FOR FUTURE USE**

**12.1-20-13. RESERVED FOR FUTURE USE**

**12.1-20-14. RESERVED FOR FUTURE USE**

**12.1-20-15. RESERVED FOR FUTURE USE**

**12.1-20-16. RESERVED FOR FUTURE USE**

**12.1-20-17. RESERVED FOR FUTURE USE**

**12.1-20-18. RESERVED FOR FUTURE USE**

**12.1-20-19. *RESERVED FOR FUTURE USE***

**12.1-20-20. *RESERVED FOR FUTURE USE***

**12.1-20-21. *RESERVED FOR FUTURE USE***

**12.1-20-22. *RESERVED FOR FUTURE USE***

**12.1-20-23. *RESERVED FOR FUTURE USE***

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

N.D.C.C. § 12.1-20-24 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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 N.D.C.C. § 12.1-20-02.
  - c. "Sexual conduct" has the meaning prescribed in N.D.C.C. § 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.

## **ARTICLE 12.1-21 DAMAGING PROPERTY OR PUBLIC SERVICES**

**12.1-21-01. *RESERVED FOR FUTURE USE***

**12.1-21-02. *RESERVED FOR FUTURE USE***

### **12.1-21-03. *RESERVED FOR FUTURE USE***

#### **12.1-21-03.1. Negligent act resulting in fire – Penalty.**

N.D.C.C. § 12.1-21-03.1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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. *RESERVED FOR FUTURE USE***

#### **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.
2. The offense is punishable under this ordinance if the actor recklessly causes pecuniary loss of two thousand dollars or less or if the actor intentionally causes pecuniary loss less than one hundred dollars.

#### **12.1-21-06. Tampering with or damaging a critical infrastructure facility or a public service - Penalty.**

N.D.C.C. § 12.1-21-06 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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 punishable under this ordinance if the actor engages in the conduct negligently.

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;
  - 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.

#### **12.1-21-07. Consent as a defense.**

N.D.C.C. § 12.1-21-07 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Whenever in this article 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 article property is that "of another" if anyone other than the actor has a possessory or proprietary interest therein.

#### **12.1-21-09. Tampering with, disabling, or falsely sounding a fire alarm - Tampering with or disabling fire suppression equipment.**

N.D.C.C. § 12.1-21-09 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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.
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.

### **ARTICLE 12.1-21.1 ANIMAL FACILITY DAMAGE**

#### **12.1-21.1-01. Definitions.**

N.D.C.C. § 12.1-21.1-01 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

In this article, 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 enter an animal facility and use or attempt to use a camera, video recorder, or any other video or audio recording equipment. This section does not apply to lawful activities of a governmental agency carrying out its duties under law.

#### **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 this article is guilty of a class B misdemeanor.

**ARTICLE 12.1-22**  
**ENTERING OFFENSES**

**12.1-22-01. *RESERVED FOR FUTURE USE***

**12.1-22-02. *RESERVED FOR FUTURE USE***

**12.1-22-03. Criminal trespass - Noncriminal offense on posted property.**

N.D.C.C. § 12.1-22-03 sections 3-6(3-6) and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. *Reserved for future use.*
2. *Reserved for future use.*
- 3.

- a. An individual is guilty of a class B misdemeanor if, knowing the individual is not licensed or privileged to do so, the individual enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the owner or an individual authorized by the owner or by posting in a manner reasonably likely to come to the attention of intruders. The name of the person posting the premises must appear on each sign in legible characters.
- b. Even if the conduct of the owner or individual authorized by the owner varies from the provisions of subdivision a, an individual may be found guilty of violating subdivision a if the owner or individual authorized by the owner substantially complied with subdivision a and notice against trespass is clear from the circumstances.
- c. An individual who violates subdivision a is guilty of a class A misdemeanor for the second or subsequent offense within a two-year period.

4.

- a. A peace officer may cite an individual who, knowing the individual is not licensed or privileged to do so, entered or remained in a place as to which notice against trespass is given by posting in a manner reasonably likely to come to the attention of intruders or a place enclosed by a fence as defined in subsection 2, with a noncriminal offense. An individual cited under this subsection may not be prosecuted under subsection 2 or 3 for the same offense.
- b. The fine for a citation under subdivision a is two hundred fifty dollars for each violation.
- c. The peace officer citing the individual shall:
  - (1) Take the name and address of the individual; and
  - (2) Notify the individual of the right to request a hearing if posting bond by mail.
- d. The peace officer may not take the individual into custody or require the individual to proceed with the peace officer to any other location for the purpose of posting bond. The officer shall provide the individual with an envelope for use in mailing the bond.

- e. An individual cited may appear before the designated official and pay the statutory fine for the violation at or before the time scheduled for hearing.
  - f. If the individual has posted bond, the individual may forfeit bond by not appearing at the designated time.
  - g. If the individual 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 envelope or 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 individual is deemed to have admitted to the violation and to have waived the right to a hearing on the issue of commission of the violation. 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.
  - h. 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 or suspend the statutory fine or bond.
  - i. A citing peace officer may not receive the statutory fine or bond.
  - j. The bond required to secure appearance before the judge must be identical to the statutory fine established in subdivision b.
5. An individual is guilty of a class B misdemeanor if that individual remains upon the property of another after being requested to leave the property by a duly authorized individual. An individual who violates this subsection is guilty of a class A misdemeanor for the second or subsequent offense within a two-year period.
6. This section does not apply to a peace officer in the course of discharging the peace officer's official duties.

## **ARTICLE 12.1-23**

### **THEFT AND RELATED OFFENSES**

#### **12.1-23-01. Consolidation of theft offenses.**

N.D.C.C. § 12.1-23-01 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Conduct denominated theft in sections 12.1-23-02 to 12.1-23-04 constitutes a single offense designed to include the separate offenses heretofore known as larceny, stealing, purloining, embezzlement, obtaining money or property by false pretenses, extortion, blackmail, fraudulent conversion, receiving stolen property, misappropriation of public funds, swindling, and the like.
2. An indictment, information, or complaint charging theft under sections 12.1-23-02 to 12.1-23-04 which fairly apprises the defendant of the nature of the charges against him shall not be deemed insufficient because it fails to specify a particular category of theft. The defendant may be found guilty of theft under such an indictment, information, or complaint if his conduct falls under sections 12.1-23-02 to 12.1-23-04, so long as the conduct proved

is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case he must meet.

#### **12.1-23-02. Theft of property.**

N.D.C.C. § 12.1-23-02 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

A person is guilty of theft if he:

1. Knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;
2. Knowingly obtains the property of another by deception or by threat with intent to deprive the owner thereof, or intentionally deprives another of his property by deception or by threat; or
3. Knowingly receives, retains, or disposes of property of another which has been stolen, with intent to deprive the owner thereof.

#### **12.1-23-03. Theft of services.**

N.D.C.C. § 12.1-23-03 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

A person is guilty of theft if:

1. He intentionally obtains services, known by him to be available only for compensation, by deception, threat, false token, or other means to avoid payment for the services; or
2. Having control over the disposition of services of another to which he is not entitled, he knowingly diverts those services to his own benefit or to the benefit of another not entitled thereto. Where compensation for services is ordinarily paid immediately upon their rendition, as in the case of hotels, restaurants, and comparable establishments, absconding without payment or making provision to pay is prima facie evidence that the services were obtained by deception.

#### **12.1-23-04. Theft of property lost, mislaid, or delivered by mistake.**

N.D.C.C. § 12.1-23-04 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

A person is guilty of theft if he:

1. Retains or disposes of property of another when he knows it has been lost or mislaid; or
2. Retains or disposes of property of another when he knows it has been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property, and with intent to deprive the owner of it, he fails to take readily available and reasonable measures to restore the property to a person entitled to have it.

#### **12.1-23-05. Thefts punishable under city ordinance.**

N.D.C.C. § 12.1-23-05 subsection 5 through 7 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1.
  - a. Theft under this article of property or services of a value not exceeding five hundred dollars is a class B misdemeanor for a first offense if:
    - (1) The theft was committed by shoplifting; or
    - (2) The following three factors are met:
      - a) The theft was not committed by threat;
      - b) The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft; and
      - c) The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of official duties.
  - b. The special classification provided in paragraph 2 of subdivision a applies if the offense is classified under this subsection in the charge or if, at sentencing, the required factors are established by a preponderance of the evidence.
  - c. A second or third offense under paragraph 1 of subdivision a occurring within three years is a class A misdemeanor, subject to prosecution in district court.
2. Notwithstanding subsection 3 of section 12.1-06-01, an attempt to commit a theft under this article is punishable equally with the completed offense when the actor has completed all of the conduct which the actor believes necessary on the actor's part to complete the theft except receipt of the property.
3. For purposes of grading, the amount involved in a theft under this article is the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that the actor was stealing, or which the actor could reasonably have anticipated to have been the property or services involved. Thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be charged as one offense and the amounts proved to have been stolen may be aggregated in determining the grade of the offense.

#### **12.1-23-06. *RESERVED FOR FUTURE USE***

#### **12.1-23-07. Misapplication of entrusted property.**

A person is guilty of a class B misdemeanor for misapplication of entrusted property if the person disposes of, uses, or transfers any interest in property valued up to five hundred dollars that has been entrusted to the person as a fiduciary, or in the person's capacity as a public servant or an officer, director, agent, employee of, or a person controlling a financial institution, in a manner that the person knows is not authorized and that the person knows to involve a risk of loss or detriment to the owner of the property or to the government or other person for whose benefit the property was entrusted.

**12.1-23-08. *RESERVED FOR FUTURE USE***

**12.1-23-08.1 *RESERVED FOR FUTURE USE***

**12.1-23-08.2 *RESERVED FOR FUTURE USE***

**12.1-23-08.3 *RESERVED FOR FUTURE USE***

**12.1-23-08.4. Duplication of keys.**

N.D.C.C. § 12.1-23-08.4 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Except as provided in subsection 2, no person shall duplicate or make a key from another key marked with the words "Do Not Duplicate", "Do Not Copy", or words of similar intent.
2. It shall be an affirmative defense to prosecution under subsection 1 that:
  - a. The person made or duplicated the key for his employer, solely for use within the employer's place of business.
  - b. The person for whom the key was made or duplicated owns the lock which the key fits.
3. Any person who violates any provision of this section is guilty of a class B misdemeanor.

**12.1-23-09. Defenses and proof as to theft and related offenses.**

N.D.C.C. § 12.1-23-09 subsection 1 through 3 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. It is a defense to a prosecution under this chapter that:
  - a. The actor reasonably believed that the actor had a claim to the property or services involved which the actor was entitled to assert in the manner which forms the basis for the charge against the actor; or
  - b. The victim is the actor's spouse, but only when the property involved constitutes household or personal effects or other property normally accessible to both spouses and the parties involved are living together. The term "spouse", as used in this section, includes persons living together as husband and wife.
2. It does not constitute a defense to a prosecution for conduct constituting an offense in violation of this chapter that:
  - a. Stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed;
  - b. A facility or an opportunity to engage in such conduct, including offering for sale property not stolen as if it were stolen, was provided; or
  - c. Mere solicitation that would not induce an ordinary law-abiding person to engage in such conduct was made by a law enforcement officer to gain evidence against a person predisposed to engage in such conduct.

3.

- a. It is a prima facie case of theft under this chapter if it is shown that a public servant or an officer, director, agent, employee of, or a person connected in any capacity with a financial institution has failed to pay or account upon lawful demand for money or property entrusted to the person as part of that person's official duties or if an audit reveals a shortage or falsification of the person's accounts.
- b. It is a prima facie case of theft under this chapter if it is shown that a person, having successfully bid on and obtained an item at an auction, removed the item from the auction premises without paying or making provisions to pay for the item.
- c. Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.
- d. Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.

#### **12.1-23-10. Definitions for theft and related offenses.**

N.D.C.C. § 12.1-23-10 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

In this article:

1. "Dealer in property" means a person who buys or sells property as a business.
2. "Deception" means:
  - a. Creating or reinforcing a false impression as to fact, law, status, value, intention, or other state of mind; or obtaining or attempting to obtain public assistance by concealing a material fact, making a false statement or representation, impersonating another, concealing the transfer of property without adequate consideration, or using any other fraudulent method; but deception as to a person's intention to perform a promise may not be inferred from the fact alone that the person did not substantially perform the promise unless it is part of a continuing scheme to defraud;
  - b. Preventing another from acquiring information which would affect his judgment of a transaction;
  - c. Failing to correct a false impression which the actor previously created or reinforced, or which he knows to be influencing another to whom he stands in a fiduciary or confidential relationship;
  - d. Failing to correct an impression which the actor previously created or reinforced and which the actor knows to have become false due to subsequent events;
  - e. Failing to disclose a lien, adverse claim, or other impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained or in order to continue to deprive another of his property, whether such impediment is or is not valid, or is or is not a matter of official record;

- f. Using a credit card, charge plate, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer:
    - (1) Where such instrument has been stolen, forged, revoked, or canceled, or where for any other reason its use by the actor is unauthorized; and
    - (2) Where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument; or
  - g. Any other scheme to defraud. The term "deception" does not, however, include falsifications as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares in communications addressed to the public or to a class or group.
3. "Deprive" means:
    - a. To withhold property or to cause it to be withheld either permanently or under such circumstances that a major portion of its economic value, or its use and benefit, has, in fact, been appropriated;
    - b. To withhold property or to cause it to be withheld with the intent to restore it only upon the payment of a reward or other compensation; or
    - c. To dispose of property or use it or transfer any interest in it under circumstances that make its restoration, in fact, unlikely.
  4. "Fiduciary" means a trustee, guardian, executor, administrator, receiver, or any other person acting in a fiduciary capacity, or any person carrying on fiduciary functions on behalf of a corporation, limited liability company, or other organization which is a fiduciary.
  5. "Financial institution" means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.
  6. "Obtain" means:
    - a. In relation to property, to bring about a transfer or purported transfer of an interest in the property, whether to the actor or another.
    - b. In relation to services, to secure performance thereof.
  7. "Property" means any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed (including things growing on, affixed to, or found in land and documents although the rights represented thereby have no physical location), contract right, chose-in-action, interest in or claim to wealth, credit, or any other article or thing of value of any kind. "Property" also means real property the location of which cannot be moved if the offense involves transfer or attempted transfer of an interest in the property.
  8. "Property of another" means property in which a person other than the actor or in which a government has an interest which the actor is not privileged to infringe without consent, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person or government might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has a security interest therein, even if legal title is in the creditor pursuant to a conditional sales



- contract or other security agreement. "Owner" means any person or a government with an interest in property such that it is "property of another" as far as the actor is concerned.
9. "Receiving" means acquiring possession, control, or title, or lending on the security of the property.
  10. "Services" means labor, professional service, transportation, telephone, mail or other public service, gas, electricity and other public utility services, accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other property.
  11. "Shoplifting" means to willfully take possession of any merchandise owned, held, offered, or displayed for sale, by a merchant, store, or other mercantile establishment, with the intent to deprive the owner of the merchandise. The term includes:
    - a. Removing merchandise from a store or other mercantile establishment without paying for the merchandise;
    - b. Concealing a nonpurchased good or merchandise;
    - c. Altering, transferring, or removing a price marking on a good or merchandise;
    - d. Transferring a good from one container to another; and
    - e. Causing the amount paid for a good or merchandise to be less than the stated retail price.
  12. "Stolen" means property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of N.D.C.C. section 12.1-23-06.
  13. "Threat" means an expressed purpose, however communicated, to:
    - a. Cause bodily injury in the future to the person threatened or to any other person;
    - b. Cause damage to property;
    - c. Subject the person threatened or any other person to physical confinement or restraint;
    - d. Engage in other conduct constituting a crime;
    - e. Accuse anyone of a crime;
    - f. Expose a secret or publicize an asserted fact, whether true or false, tending to subject a person living or deceased, to hatred, contempt, or ridicule or to impair another's credit or business repute;
    - g. Reveal any information sought to be concealed by the person threatened;
    - h. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
    - i. Take or withhold official action as a public servant, or cause a public servant to take or withhold official action;
    - j. Bring about or continue a strike, boycott, or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent;
    - k. Cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes; or
    - l. Do any other act which would not in itself substantially benefit the actor or a group he represents but which is calculated to harm another person in a substantial manner with respect to his health, safety, business, employment, calling, career, financial condition, reputation, or personal relationship.
  14. "Traffic" means:
    - a. To sell, transfer, distribute, dispense, or otherwise dispose of to another person; or

- b. To buy, receive, possess, or obtain control of, with intent to sell, transfer, distribute, dispense, or otherwise dispose of to another person.

**12.1-23-11. *RESERVED FOR FUTURE USE***

**12.1-23-12. *RESERVED FOR FUTURE USE***

**12.1-23-13. *RESERVED FOR FUTURE USE***

**12.1-23-14. Detention of persons suspected of unlawful use or removal of theft detection devices - Reasonable cause.**

N.D.C.C. § 12.1-23-14 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. The activation of an antishoplifting or inventory control device as a result of a person exiting the establishment or a protected area within the establishment constitutes reasonable cause for the detention of the person exiting by the owner or operator of the establishment or by an agent or employee of the owner or operator, provided sufficient notice has been posted to advise the patrons that the device is being utilized. Each detention must be made in a reasonable manner and only for a reasonable period of time sufficient for any inquiry into the circumstances surrounding the activation of the device or for the recovery of goods.
2. If the taking into custody and detention of the person by a law enforcement officer, security officer, merchant, or merchant's employee is done in compliance with the requirements of this section, the law enforcement officer, security officer, merchant, or merchant's employee may not be held criminally or civilly liable, including any liability for false arrest, false imprisonment, unlawful detention, malicious prosecution, intentional infliction of emotional distress, or defamation.

**12.1-23-15. Purchase of beer kegs - Penalty.**

N.D.C.C. § 12.1-23-15 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

A recycler, scrap metal dealer, or scrapyard operator may not purchase a metal beer keg, whether damaged or undamaged, except from the brewer or the brewer's authorized representative, if:

1. The keg is clearly marked as the property of a brewery manufacturer; or
2. The keg's identification markings have been made illegible.

A person who willfully violates this section is guilty of a class B misdemeanor.

**ARTICLE 12.1-23.1  
THEFT OF CABLE TELEVISION**

**12.1-23.1-01. Theft of cable television services - Penalty.**

N.D.C.C. § 12.1-23.01-01 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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.

**ARTICLE 12.1-24  
COUNTERFEITING**

**12.1-24-01. *RESERVED FOR FUTURE USE***

**12.1-24-02. *RESERVED FOR FUTURE USE***

**12.1-24-03. *RESERVED FOR FUTURE USE***

**12.1-24-04. *RESERVED FOR FUTURE USE***

**12.1-24-05. Making or uttering slugs.**

N.D.C.C. § 12.1-24-05 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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.

**ARTICLE 12.1-25**  
***RESERVED FOR FUTURE USE***

**ARTICLE 12.1-26**  
***RESERVED FOR FUTURE USE***

**ARTICLE 12.1-27**  
***RESERVED FOR FUTURE USE***

**ARTICLE 12.1-27.1**  
**OBSCENITY CONTROL**

**12.1-27.1-01. *RESERVED FOR FUTURE USE***

**12.1-27.1-02. *RESERVED FOR FUTURE USE***

**12.1-27.1-03. *RESERVED FOR FUTURE USE***

**12.1-27.1-03.1. Objectionable materials or performance - Display to minors - Definitions - Penalty.**

N.D.C.C. § 12.1-27.01-03.1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

- 1. A person is guilty of a class B misdemeanor if he willfully displays at newsstands or any other business establishment frequented by minors, or where minors are or may be invited as a part of the general public, any photograph, book, paperback book, pamphlet, or magazine, the exposed cover or available content of which exploits, is devoted to, or is

principally made up of depictions of nude or partially denuded human figures posed or presented in a manner to exploit sex, lust, or perversion for commercial gain.

2. As used in this section:

- a. "Nude or partially denuded human figures" means less than completely and opaquely covered human genitals, pubic regions, female breasts or a female breast, if the breast or breasts are exposed below a point immediately above the top of the areola, or human buttocks; and includes human male genitals in a discernibly turgid state even if completely and opaquely covered.
- b. "Where minors are or may be invited as a part of the general public" includes any public roadway or public walkway.
- c. The above shall not be construed to include a bona fide school, college, university, museum, public library, or art gallery.

**12.1-27.1-03.2. Exhibition of X-rated motion picture in unscreened outdoor theater - Penalty.**

N.D.C.C. § 12.1-27.01-03.2 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Any person who, knowing of its character, exhibits any motion picture rated X by the motion picture association of America in any outdoor theater where the screen is visible beyond the limits of the theater audience area, so that the motion picture may be seen and its content or character distinguished by normal unaided vision by a minor viewing it from beyond the limits of the theater audience area, is guilty of a class B misdemeanor.

**12.1-27.1-03.3. Creation, possession, or dissemination of sexually expressive images prohibited - Exception.**

N.D.C.C. § 12.1-27.1-03.3(2-4) and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. *Reserved for future use.*
2. A person is guilty of a class B misdemeanor if, knowing of its character and content, that person acquires and knowingly distributes any sexually expressive image that was created without the consent of the subject of the image.
3. This section does not authorize any act prohibited by any other law. If the sexually expressive image is of a minor and possession does not violate N.D.C.C. section 12.1-27.2-04.1, a parent or guardian of the minor may give permission for a person to possess or distribute the sexually expressive image.
4. This section does not apply to any book, photograph, video recording, motion picture film, or other visual representation sold in the normal course of business through wholesale or retail outlets that possess a valid sales tax permit or used by an attorney, attorney's agent, or any other person obtaining evidence for a criminal investigation or pending civil action, or by a medical professional or a peace officer acting within that individual's scope of employment.

## **ARTICLE 12.1-28 GAMBLING**

### **12.1-28-01. Gambling – Definitions**

N.D.C.C. § 12.1-28-01(1) and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

As used in this chapter, “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.

### **12.1-28-02. Gambling**

N.D.C.C. § 12.1-28-02(1) and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Except as permitted by law, 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.

## **ARTICLE 12.1-29 PROSTITUTION**

### **12.1-29-01. *RESERVED FOR FUTURE USE***

### **12.1-29-02. *RESERVED FOR FUTURE USE***

### **12.1-29-03. Prostitution.**

N.D.C.C. § 12.1-29-03 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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.**

N.D.C.C. § 12.1-29-04 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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.**

N.D.C.C. § 12.1-29-05 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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.
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.**

N.D.C.C. § 12.1-29-06 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Except as provided in N.D.C.C. 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 a class B misdemeanor for a first offense.

#### **12.1-29-07. Offender education program.**

N.D.C.C. § 12.1-29-07 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

A sentence for an offense under section 12.1-29-06 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.

**ARTICLE 12.1-30**  
***RESERVED FOR FUTURE USE***

**ARTICLE 12.1-31**  
**MISCELLANEOUS OFFENSES**

**12.1-31-01. Disorderly conduct.**

N.D.C.C. § 12.1-31-01(1)(a-i) and (2) and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. An individual is guilty of a class B misdemeanor if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another person is harassed, annoyed, or alarmed by the individual's behavior, the individual:
  - a. Engages in fighting, or in violent, tumultuous, or threatening behavior;
  - b. Makes unreasonable noise;
  - c. In a public place, uses abusive or obscene language, knowingly exposes that individual's penis, vulva, or anus, or makes an obscene gesture;
  - d. Obstructs vehicular or pedestrian traffic or the use of a public facility;
  - e. Persistently follows a person in or about a public place or places;
  - f. While loitering in a public place for the purpose of soliciting sexual contact, the individual solicits the contact;
  - g. Creates a hazardous, physically offensive, or seriously alarming condition by any act that serves no legitimate purpose;
  - h. Engages in harassing conduct by means of intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person; or
  - i. Uses a fixed optical device that enhances or records a visual occurrence to view through any window of another person's property; or uses a surveillance camera to capture an image from the dwelling or accessory structure of another person; however, an individual using a surveillance camera has seven days from notice by a law enforcement officer to direct or shield the camera so as to not capture an image from another person's dwelling or accessory structure before there is an offense.
  - j. Urinates or defecates on a public street or sidewalk or in a public place not designated as a restroom;
  - k. Possesses or is in control of any disorderly residence or place of public resort by which the peace, comfort, or decency of the immediate neighborhood is disturbed; or
  - l. Creates, by chemical means, a noxious and unreasonable odor in a public place.



2. This section does not apply to constitutionally protected activity. If an individual claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

**12.1-31-01.1. Disorderly conduct at a funeral - Penalty.**

N.D.C.C. § 12.1-31-01.1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. For purposes of this section:
  - a. "Funeral" means the ceremonies, rituals, processions, and memorial services held at a funeral site in connection with the burial, cremation, or memorial of a deceased individual.
  - b. "Funeral site" means a church, synagogue, mosque, funeral home, mortuary, cemetery, gravesite, mausoleum, or other place at which a funeral is conducted or is scheduled to be conducted within the next hour or has been conducted within the last hour.
2. An individual is guilty of disorderly conduct at a funeral if the individual:
  - a. Engages, with knowledge of the existence of a funeral site, in any loud singing, playing of music, chanting, whistling, yelling, or noisemaking within one thousand feet [300.48 meters] of any ingress or egress of that funeral site if the volume of the singing, music, chanting, whistling, yelling, or noisemaking is likely to be audible at and disturbing to the funeral site; or
  - b. Displays, with knowledge of the existence of a funeral site and within one thousand feet [300.48 meters] of any ingress or egress of that funeral site, any visual images that convey fighting words or actual or veiled threats against any other individual.
3. Disorderly conduct at a funeral is a class B misdemeanor for the first offense.

**12.1-31-02. *RESERVED FOR FUTURE USE***

**12.1-31-03. Sale of tobacco, electronic smoking devices, or alternative nicotine products to an individual under twenty-one years of age and use by an individual under twenty-one years of age prohibited.**

N.D.C.C. § 12.1-31-03 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1.
  - a. It is an infraction for any person to sell or furnish to an individual under twenty-one years of age, or procure for an individual under twenty-one years of age, cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products. As used in this subdivision, "sell" includes dispensing from a vending machine under the control of the actor.

- b. It is an infraction for any person to display or offer for sale cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through a self-service display. This subdivision does not apply to a:
    - (1) Vending machine or other coin-operated machine that is permitted under section 12.1-31-03.1; or
    - (2) Self-service display that is located in a tobacco specialty store.
2. It is a noncriminal offense for an individual under twenty-one years of age to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products. However, an individual under twenty-one years of age may purchase and possess tobacco, electronic smoking devices, or alternative nicotine products as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco, electronic smoking devices, or alternative nicotine products retailer, or association of tobacco, electronic smoking devices, or alternative nicotine products retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.
3. Subsections 1 and 2 do not apply to an individual under twenty-one years of age who possesses cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be used for smoking or chewing, electronic smoking devices, or alternative nicotine products when required in the performance of the individual's duties as an employee.
4. It is a noncriminal offense for an individual under twenty-one years of age to present or offer to another individual a purported proof of age which is false, fraudulent, or not actually that individual's own proof of age, for the purpose of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products.
5. *RESERVED FOR FUTURE USE*
6. An individual fourteen years of age or older found to have violated subsection 2 or 4 must pay a fee of twenty-five dollars.
  - a. Any individual who has been cited for a violation of subsection 2 or 4 may appear before a court of competent jurisdiction and pay the fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the fee or bond, or both. If the individual cited follows the procedures of this subdivision, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court must be identical to the fee. This subdivision does not allow a citing officer to receive the fee or bond.
  - b. If an individual cited for a violation of subsection 2 or 4 does not choose to follow the procedures provided under subdivision a, that individual may request a hearing on the issue of the commission of the violation cited. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance. At the time of a request for a hearing on the issue

on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.

- c. The failure to post bond or to pay an assessed fee is punishable as a contempt of court, except an individual may not be imprisoned for the contempt.
7. The prosecution must prove the commission of a cited violation under subsection 2 or 4 by a preponderance of the evidence.
8. A law enforcement officer that cites a minor for violation of this section shall mail a notice of the violation to the parent or legal guardian of the minor within ten days of the citation.
9. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or to an alternative sentence or sanction including community service.
10. As used in this section:
  - a. "Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. The term does not include any cigarette, cigar, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, any electronic smoking device, or any product regulated as a drug or device by the United States food and drug administration under chapter V of the Federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.].
  - b. "Electronic smoking device" means any electronic product that delivers nicotine or other substances to the individual inhaling from the device, including, an electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic smoking device does not include drugs, devices, or combination products approved for sale by the United States food and drug administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].
  - c. "Self-service display" means a display that contains cigarettes, cigarette papers, cigars, snuff, tobacco in any other form which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products and is located in an area that is openly accessible to the retailer's customers, and from which customers can readily access those products without the assistance of a salesperson. A display case that holds those products behind locked doors does not constitute a self-service display.
  - d. "Tobacco specialty store" means a retail store that:
    - (1) Derives at least seventy-five percent of its revenue from the sale of cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products; and
    - (2) Does not permit minors to enter the premises unless accompanied by a parent or legal guardian.
  - e. "Vending machine" means a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or other means of payment that is designed or used for vending purposes, including machines or devices that use remote control locking mechanisms.

### **12.1-31-03.1. Vending machines prohibited - Penalty.**

N.D.C.C. § 12.1-31-03.1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through a vending machine, except as provided in subsection 2.
2. Subsection 1 does not apply to:
  - a. A vending machine that is located in an area in which individuals under twenty-one years of age are not permitted access; or
  - b. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through the operation of a device that requires a salesperson to control the dispensation of such product.
3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through any vending machine, if those products are placed together with any nontobacco product, other than matches, in the vending machine.
4. As used in this section, "electronic smoking devices" and "alternative nicotine products" have the same meaning as in section 12.1-31-03.

### **12.1-31-03.2. Child-resistant packaging for liquid nicotine containers.** (Contingent expiration date - See note)<sup>1</sup>

N.D.C.C. § 12.1-31-03.2 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Any nicotine liquid container that is sold at retail in this state must satisfy the child-resistant effectiveness standards set forth in title 16, CFR, part 1700, section 15(b)(1), when tested in accordance with the method described in title 16, CFR, part 1700, section 20.
2. As used in this section, "nicotine liquid container" means a bottle or other container of a liquid or other substance containing nicotine in which the liquid or substance is sold, marketed, or intended for use in an electronic smoking device. The term does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in an electronic smoking device, provided that the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.
3. Any person that engages in retail sales of liquid nicotine containers in violation of this section is subject to a civil penalty of not more than five hundred dollars for each separate

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<sup>1</sup> As provided by S.L. 2015, ch. 111, § 6, this section is effective until the date the Attorney General certifies to the Legislative Council that final regulations issued by the United States Food and Drug Administration or another federal agency are in effect which mandate child-resistant effectiveness standards for liquid nicotine containers, and after that date is ineffective.

violation of this section, to be recovered by any enforcement authority designated by the city or political subdivision in which the violation occurred.

**12.1-31-03.3. Sale of flavored e-liquid to minors prohibited - Penalty.**

N.D.C.C. § 12.1-31-03.3 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. A person may not sell, offer for sale, or distribute in this state any flavored e-liquid or electronic smoking device containing flavored e-liquid to an individual under twenty-one years of age.
2. A person that violates subsection 1 and is not a manufacturer is subject to a fine of five hundred dollars for each individual package of flavored e-liquid product or electronic smoking device containing flavored e-liquid sold or offered for sale.

**12.1-31-04. *RESERVED FOR FUTURE USE***

**12.1-31-05. *RESERVED FOR FUTURE USE***

**12.1-31-06. *RESERVED FOR FUTURE USE***

**12.1-31-07. *RESERVED FOR FUTURE USE***

**12.1-31-08. *RESERVED FOR FUTURE USE***

**12.1-31-09. *RESERVED FOR FUTURE USE***

**12.1-31-10. Sale of bidis prohibited - Penalty.**

N.D.C.C. § 12.1-31-10 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

It is an infraction for any person to sell the tobacco product commonly referred to as bidis or beedies. For purposes of this section, "bidis" or "beedies" means a product containing tobacco which is wrapped in temburni leaf, also known as diospyros melanoxylon, or tendu leaf, also known as diospyros exculpra.

**12.1-31-11. False representation of marital status.**

N.D.C.C. § 12.1-31-11 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

An individual is guilty of a class B misdemeanor if the individual lives openly and notoriously with an individual of the opposite sex as a married couple without being married to the other individual and falsely represents the couple's status as being married to each other.

**12.1-31-12. *RESERVED FOR FUTURE USE***

### **12.1-31-13. Tattooing, branding, subdermal implants, scarifying, and piercing - Minors.**

N.D.C.C. § 12.1-31-13 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. As used in this section:
  - a. "Brand" means the use of heat, cold, or any chemical compound to imprint permanent markings on an individual's skin.
  - b. "Pierce" means the puncture of any part of an individual's body to insert studs, pins, rings, chains, or other jewelry or adornment.
  - c. "Scarify" means to cut, tear, or abrade an individual's skin for the purpose of creating a permanent mark or design on the skin.
  - d. "Subdermal implant" means to insert a foreign object beneath the skin to decorate an individual's body.
  - e. "Tattoo" means to mark the skin of an individual by insertion of permanent colors through puncture of the skin.
2. It is a class B misdemeanor for a person, other than a licensed health care professional acting within that professional's scope of practice, to tattoo, brand, subdermal implant, scarify, or pierce an individual who is under eighteen years of age unless the tattooing, branding, subdermal implanting, scarifying, or piercing takes place in the presence of and with the written consent of the individual's parent or legal guardian.
3. It is a class B misdemeanor for a person to sell, trade, or otherwise provide materials or kits for tattooing, self-tattooing, branding, self-branding, scarifying, self-scarifying, subdermal implanting, self-subdermal implanting, body piercing, or self-body piercing to an individual who is under eighteen years of age.

### **12.1-31-14. Surreptitious intrusion or interference with privacy.**

N.D.C.C. § 12.1-31-14 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of another, the individual:
  - a. Enters upon another's property and surreptitiously gazes, stares, or peeps into a house or place of dwelling of another; or
  - b. Enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a house or place of dwelling of another.
2. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of an occupant, the individual:
  - a. Surreptitiously gazes, stares, or peeps into a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy; or
  - b. Surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a tanning booth, a sleeping room

in a hotel, or other place where a reasonable individual would have an expectation of privacy.

3. An individual is guilty of an infraction if the individual enters upon another's property and installs any device for observing, recording, or photographing wildlife while the owner of the device is absent unless:
  - a. The individual has written permission from the owner or an individual authorized by the owner of the property; and
  - b. The device has a permanently affixed metal or plastic tag with a registration number issued by the game and fish department, or the individual's name, address, and telephone number.
4. In a prosecution under this section, it is an affirmative defense that an individual was acting pursuant to N.D.C.C. section 50-10.2-02.1.

#### **12.1-31-15. *RESERVED FOR FUTURE USE***

#### **12.1-31-16. Curfew**

1. It is unlawful for persons under the age of eighteen (18) years to loiter, idle, wander, stroll, play in or upon, or drive or ride about in a vehicle, or be in or upon the public streets, highways, roads, alleys, or public buildings, places, or grounds, between the hours of 11:00 p.m. and 5:00 a.m.
  - a. This section does not apply to persons accompanied by a parent, guardian, or other adult person having their care and custody, or to persons upon emergency errands, or legitimate business directed by their parents, guardian, or other adult person having their care and custody, or to persons traveling to or from a location outside the City on legitimate business.
  - b. This section also does not apply to a person in attendance at, or traveling between that person's home and a place of legitimate employment or an event or activity sponsored by or associated with a school, church, or similar organization, or an organized sporting, political, theatrical, or other like event or activity, within thirty (30) minutes of the end of the work shift, or the conclusion of the event or activity.
2. **Duty of Parents.** It shall be unlawful for any parent, guardian, or other person having the legal care and custody of any child under eighteen (18) years of age, to allow or permit any such child, ward, or other person under such age, while in such legal custody, to loiter, idle, wander, stroll, play in or upon, or drive or ride about in a vehicle, or be in or upon the public streets, highways, roads, alleys, or public buildings, places, or grounds within the city of Beulah, Mercer County, North Dakota, within the time prescribed by, or contrary to, the provisions of this article.
3. **Penalty.** Any person violating the provisions of this article shall, upon conviction, be guilty of an infraction.

**ARTICLE 12.1-32**  
**PENALTIES AND SENTENCING**

**12.1-32-01. Classification of offenses – Penalties.**

Offenses are divided into classes, which are denominated and subject to maximum penalties, as follows:

1. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand five hundred dollars, or both, may be imposed.
2. Infraction, for which a maximum fine of one thousand dollars may be imposed. Any person convicted of an infraction who, within one year before commission of the infraction of which the person was convicted, has been convicted previously at least twice of the same offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint must specify the offense is a misdemeanor. This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

**12.1-32-01.1. Organizational fines.**

N.D.C.C. § 12.1-32-01.1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Any organization, as defined in section 12.1-03-04, shall, upon conviction, be subject to a maximum fine for a class B misdemeanor of twenty thousand dollars. Nothing in this section shall be construed as preventing the imposition of the sanction provided for in section 12.1-32-03, nor as preventing the prosecution of agents of the organization under section 12.1-03-03.

**12.1-32-02. Sentencing alternatives - Credit for time in custody - Diagnostic testing.**

N.D.C.C. § 12.1-32-02 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
  - a. Payment of the reasonable costs of the person's prosecution.
  - b. Probation.
  - c. A term of imprisonment, including intermittent imprisonment:
    - (1) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
    - (2) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based or faith-based programs.
  - d. A fine.



- e. Restitution for damages resulting from the commission of the offense.
- f. Restoration of damaged property or other appropriate work detail.
- g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.

Except as provided by section 12.1-32-06.1, sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, or as provided specifically in a statute defining an offense. This subsection does not permit the unconditional discharge of an offender following conviction. A sentence under subdivision e or f must be imposed in the manner provided in section 12.1-32-08. If the person is sentenced to a term of imprisonment, the court may prohibit the person from contacting the victim during the term of imprisonment. For purposes of this subsection, "victim" means victim as defined in N.D.C.C. section 12.1-34-01.

2. Credit against any sentence to a term of imprisonment must be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed or as a result of the conduct on which such charge was based. "Time spent in custody" includes time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal. The total amount of credit the defendant is entitled to for time spent in custody and any credit for sentence reduction under N.D.C.C. section 12-44.1-32 or 12-54.1-01 the defendant is entitled to must be stated in the criminal judgment.
3. A court may suspend the execution of all or a part of the sentence imposed. The court shall place the defendant on probation during the term of suspension.
4. A court, upon application or its own motion, may defer imposition of sentence. The court must place the defendant on probation during the period of deferment. An order deferring imposition of sentence is reviewable upon appeal from a verdict or judgment. In any subsequent prosecution, for any other offense, the prior conviction for which imposition of sentence is deferred may be pleaded and proved, and has the same effect as if probation had not been granted or the information or indictment dismissed under section 12.1-32-07.1.
5. A court may, prior to imposition of sentence, order the convicted offender committed to an appropriate licensed public or private institution for diagnostic testing for such period of time as may be necessary, but not to exceed thirty days. The court may, by subsequent order, extend the period of commitment for not to exceed thirty additional days. The court may also order such diagnostic testing without ordering commitment to an institution. Validity of a sentence must not be challenged on the ground that diagnostic testing was not performed pursuant to this subsection.
6. All sentences imposed must be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement must become part of the record of the case.
7. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of the defendant, the court orders the term to commence at some other time

### **12.1-32-03. Special sanction for organizations.**

N.D.C.C. § 12.1-32-03 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

When an organization is convicted of an offense, the court may, in addition to any other sentence which may be imposed, require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense, by mail or by advertising in designated areas or by designated media or otherwise.

### **12.1-32-03.1. Procedure for trial of infraction - Incidents.**

N.D.C.C. § 12.1-32-03.1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Except as provided in this subsection, all procedural provisions relating to the trial of criminal cases as provided in the statutes or rules relating to criminal procedure shall apply to the trial of a person charged with an infraction. A person charged with an infraction is not entitled to be furnished counsel at public expense nor to have a trial by jury unless the person may be subject to a sentence of imprisonment under subsection 2 of section 12.1-32-01.
2. Except as provided in this title, all provisions of law and rules of criminal procedure relating to misdemeanors shall apply to infractions, including, but not limited to, the powers of law enforcement officers, the jurisdiction of courts, the periods for commencing action and bringing a case to trial, and the burden of proof.
3. Following conviction of an infraction, the offender may be sentenced in accordance with subsection 1 of section 12.1-32-02, except that a term of imprisonment may not be imposed except in accordance with subsection 3 of section 12.1-32-05, or subsection 2 of section 12.1-32-01.
4. If a statute provides that conduct is an infraction without specifically including a requirement of culpability, no culpability is required.

### **12.1-32-04. Factors to be considered in sentencing decision.**

N.D.C.C. § 12.1-32-04 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations regarding the desirability of sentencing an offender to imprisonment:

1. The defendant's criminal conduct neither caused nor threatened serious harm to another person or his property.
2. The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property.
3. The defendant acted under strong provocation.

4. There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct.
5. The victim of the defendant's conduct induced or facilitated its commission.
6. The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which was sustained.
7. The defendant has no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period of time before the commission of the present offense.
8. The defendant's conduct was the result of circumstances unlikely to recur.
9. The character, history, and attitudes of the defendant indicate that he is unlikely to commit another crime.
10. The defendant is particularly likely to respond affirmatively to probationary treatment.
11. The imprisonment of the defendant would entail undue hardship to himself or his dependents.
12. The defendant is elderly or in poor health.
13. The defendant did not abuse a public position of responsibility or trust.
14. The defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise cooperated.

Nothing herein shall be deemed to require explicit reference to these factors in a presentence report or by the court at sentencing.

#### **12.1-32-05. Imposition of fine - Response to nonpayment.**

N.D.C.C. § 12.1-32-05 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. The court, in making a determination of the propriety of imposing a sentence to pay a fine, shall consider the following factors:
  - a. The ability of the defendant to pay without undue hardship.
  - b. Whether the defendant, other than a defendant organization, gained money or property as a result of commission.
  - c. Whether the sentence to pay a fine will interfere with the defendant's capacity to make restitution.
  - d. Whether a sentence to pay a fine will serve a valid rehabilitative purpose.
2. The court may allow the defendant to pay any fine imposed in installments. When a defendant is sentenced to pay a fine, the court shall not impose at the same time an alternative sentence to be served in the event that the fine is not paid.
3. If the defendant does not pay the fine, or make any required partial payment, the court, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant should not be imprisoned for nonpayment. Unless the defendant shows that his default is excusable, the court may sentence him to the following period of imprisonment for failure to pay a fine: If the defendant was convicted of a misdemeanor, to a period not to exceed thirty days.

#### **12.1-32-06. *RESERVED FOR FUTURE USE***

**12.1-32-06.1. Length and termination of probation - Additional probation for violation of conditions - Penalty.**

N.D.C.C. § 12.1-32-06.1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Except as provided in this section, the length of unsupervised probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than two years for a misdemeanor or infraction from the later of the date of:
  - a. The order imposing probation;
  - b. The defendant's release from incarceration; or
  - c. Termination of the defendant's parole.
2. Except as provided in this section, the length of supervised probation imposed in conjunction with a sentence of probation or a suspended execution or deferred imposition of sentence may not extend for more than three hundred sixty days for a class B misdemeanor offense from the later of the date of:
  - a. The order imposing probation;
  - b. The defendant's release from incarceration; or
  - c. Termination of the defendant's parole.
3. If the defendant has pled or been found guilty of an offense for which the court imposes a sentence of restitution or reparation for damages resulting from the commission of the offense, the court may, following a restitution hearing pursuant to section 12.1-32-08, impose additional periods of unsupervised probation not to exceed five years for each additional period imposed.
4. If the defendant has pled or been found guilty of a misdemeanor sexual offense in violation of article 12.1-20, the court may impose additional periods of probation not to exceed two years for each additional period imposed.
5. In misdemeanor cases, in consequence of violation of probation conditions, the court may impose additional probation if the defendant has not served the maximum sentence of imprisonment available to the court at the time of initial sentencing or deferment or the total time on probation authorized under this section.
  - a. For misdemeanor cases, the total time on probation may not exceed three years.
  - b. The court shall allow the defendant credit for a sentence of probation from the date the defendant began probation until the date a petition to revoke probation was filed with the court. If the defendant is on supervised probation, the defendant is not entitled to credit for a sentence of probation for any period the defendant has absconded from supervision. The total amount of credit a defendant is entitled to for time spent on probation must be stated in the criminal judgment or order of revocation of probation.
6. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
7. Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes.

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

N.D.C.C. § 12.1-32-07 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. The court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court.
2. The conditions of probation must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which the probation remains subject to revocation. The court shall order supervision costs and fees of not less than fifty-five dollars per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship. If the offender has not paid the full amount of supervision fees and costs before completion or termination of probation, the court may issue an order, after opportunity for hearing, to determine the amount of supervision fees and costs that are unpaid. The order may be filed, transcribed, and enforced by the department of corrections and rehabilitation in the same manner as civil judgments rendered by a district court of this state.
3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:
  - a. Community service;
  - b. Day reporting;
  - c. Curfew;
  - d. Home confinement;
  - e. House arrest;
  - f. Electronic monitoring;
  - g. Residential halfway house;
  - h. Intensive supervision program;

- i. Up to five non-successive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours;
  - j. Participation in the twenty-four seven sobriety program; or
  - k. One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.
4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate and may include any one or more of the following:
- a. Work faithfully at a suitable employment or faithfully pursue a course of study or of career and technical education training that will equip the defendant for suitable employment.
  - b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
  - c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
  - d. Support the defendant's dependents and meet other family responsibilities.
  - e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.
  - f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05.
  - g. Refrain from excessive use of alcohol or any use of narcotics or of another dangerous or abusable drug without a prescription.
  - h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.
  - i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
  - j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
  - k. Report to a probation officer at reasonable times as directed by the court or the probation officer.
  - l. Submit to a medical examination or other reasonable testing for the purpose of determining the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
  - m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
  - n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
  - o. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted.
  - p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed or provided at public expense for the defendant. When reimbursement of indigent defense costs and expenses is imposed

as a condition of probation, the court shall proceed as provided in subsection 4 of section 12.1-32-08.

- q. Provide community service for the number of hours designated by the court.
  - r. Refrain from any subscription to, access to, or use of the internet.
5. When the court imposes a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the defendant must be given a certificate explicitly setting forth the conditions on which the defendant is being released.
  6. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time before the expiration or termination of the period for which the probation remains conditional. If the defendant violates a condition of probation at any time before the expiration or termination of the period, the court may continue the defendant on the existing probation, with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under section 12.1-32-02 at the time of initial sentencing or deferment.
  7. The court may continue or modify probation conditions or revoke probation for a violation of probation conditions occurring before the expiration or termination of the period of probation notwithstanding that the order of the court is imposed after the expiration or termination has occurred. The petition for revocation must be issued within sixty days of the expiration or termination of probation.
  8. Jurisdiction over a probationer may be transferred from the court that imposed the sentence to another court of this state with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection may exercise all powers permissible under this chapter over the defendant.
  9. Notwithstanding any other provision of law, the court may authorize the defendant to assist law enforcement officers in an investigation of a criminal offense upon the terms and conditions as the court may require by written order. The court shall hold a hearing in camera before issuing an order under this subsection. The order must be sealed and is subject to inspection only upon order of the court.

**12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of indigent defense costs and expenses - Conditions - Collection of restitution for insufficient funds checks - Continuing appropriation.**

N.D.C.C. § 12.1-32-08 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Before imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount of restitution. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence the court may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court. In determining the amount of restitution, the court shall take into account the reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to

the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20. The court shall fix the amount of restitution or reparation and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. Any payments made pursuant to the order must be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, unless the court directs otherwise, be filed without filing fee, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced. Upon thirty days' written notice to the victim's last known address, the court may order the judgment imposing a duty to pay restitution or reparation be docketed in the same manner as a civil judgment under N.D.C.C. section 29-26-22.1.

2. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.
3.
  - a. Under section 12.1-32-07, the court may order that the defendant reimburse indigent defense costs and expenses as a condition of probation. 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 following a revocation or other post-judgment proceeding, shall notify the defendant, the defendant's probation officer, and the prosecuting attorney of the presumed amount of costs and expenses to be reimbursed, as determined by the commission on legal counsel for indigents, and of the right to a hearing on the reimbursement amount. The reimbursement amount must include an application fee imposed under N.D.C.C. section 29-07-01.1 if the fee has not been paid before disposition of the case and the court has not waived payment of the fee. 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 and method of reimbursement, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.
  - b. A defendant who is required to reimburse indigent defense costs and expenses as a condition of probation and who is not willfully in default in that reimbursement may at any time petition the court that imposed the condition to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.
  - c. If at any time the court finds that the defendant is able to reimburse costs and expenses and has willfully failed to do so, the court may continue, modify, or



enlarge the conditions of probation or revoke probation as provided in subsection 6 or 7, as applicable, of section 12.1-32-07.

4. If the court finds that the defendant is unable to pay a fine, supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations, the court may order the defendant to perform reasonable assigned work in lieu of all or part of a fine, a supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations. The defendant may not perform reasonable assigned work in lieu of restitution or reparations unless the person entitled to restitution or reparations has consented in writing or on the record.

**12.1-32-09. *RESERVED FOR FUTURE USE***

**12.1-32-10. *RESERVED FOR FUTURE USE***

**12.1-32-11. Merger of sentences - Sentencing for multiple offenses.**

N.D.C.C. § 12.1-32-11 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Unless the court otherwise orders, when a person serving a term of commitment imposed by a court of this state is committed for another offense or offenses, the shorter term or the shorter remaining term shall be merged in the other term. When a person on probation or parole for an offense committed in this state is sentenced for another offense or offenses, the period still to be served on probation or parole shall be merged in any new sentence of commitment or probation. A court merging sentences under this subsection shall forthwith furnish each of the other courts previously involved and the penal facility in which the defendant is confined under sentence with authenticated copies of its sentence, which shall cite the sentences being merged. A court which imposed a sentence which is merged pursuant to this subsection shall modify such sentence in accordance with the effect of the merger.
2. When sentenced only for misdemeanors, a defendant may not be consecutively sentenced to more than one year.

**12.1-32-12. *RESERVED FOR FUTURE USE***

**12.1-32-13. *RESERVED FOR FUTURE USE***

**12.1-32-14. *RESERVED FOR FUTURE USE***

**12.1-32-15. *RESERVED FOR FUTURE USE***

**12.1-32-16. Restitution to be required of certain offenders - Penalty.**

N.D.C.C. § 12.1-32-16 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Notwithstanding any other provision in this chapter, whenever a person whose license has been suspended for nonpayment of child support under N.D.C.C. section 50-09-08.6 is convicted of engaging in activity for which the license was required, the court shall require as a condition of the sentence that the person pay restitution in the amount of two hundred fifty dollars, or a higher amount set by the court, as specified in subdivision e of subsection 4 of section 12.1-32-07. Any restitution ordered under this section must be paid to the state disbursement unit for distribution under N.D.C.C. section 14-09-25.

SAVINGS CLAUSE. provision of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

SEVERABILITY. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed, including, but not limited to, Ordinance No. 151, 229, 231, 352 and 410.

EFFECTIVE DATE. The Ordinance shall be in full force and effect after its final passage and approval and publication of its title and penalty clause.

DATED this 25<sup>th</sup> day of January, 2023.

  
\_\_\_\_\_  
JEFF GOOSS  
Mayor

ATTEST:

  
\_\_\_\_\_  
HEATHER FEREBEE  
City Auditor

Introduction and First Reading: January 11, 2023

Second Reading: January 25, 2023

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