

## **CHAPTER 12.1-20 SEX OFFENSES**

### **12.1-20-01. General provisions.**

In sections 12.1-20-03 through 12.1-20-08:

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

### **12.1-20-02. Definitions.**

In sections 12.1-20-03 through 12.1-20-12:

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

### **12.1-20-03. Gross sexual imposition - Penalty.**

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

- c. That person knows or has reasonable cause to believe that the victim is unaware that sexual contact is being committed on the victim.
3.
  - a. An offense under this section is a class AA felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, if the actor's conduct violates subdivision a of subsection 1, or if the actor's conduct violates subdivision d of subsection 1 and the actor was at least twenty-two years of age at the time of the offense. For any conviction of a class AA felony under subdivision a of subsection 1, the court shall impose a minimum sentence of twenty years' imprisonment, with probation supervision to follow the incarceration. The court may deviate from the mandatory sentence if the court finds that the sentence would impose a manifest injustice as defined in section 39-01-01 and the defendant has accepted responsibility for the crime or cooperated with law enforcement. However, a defendant convicted of a class AA felony under this section may not be sentenced to serve less than five years of incarceration.
  - b. Otherwise the offense is a class A felony.
4. If, as a result of injuries sustained during the course of an offense under this section, the victim dies, the offense is a class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed.

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

1. An individual in adult court is guilty of an offense if the individual engages in any combination of three or more sexual acts or sexual contacts with a minor under the age of fifteen years during a period of three or more months. The offense is a class AA felony if the actor was at least twenty-two years of age at the time of the offense. Otherwise, the offense is a class A felony. The court may not defer imposition of sentence.
2. If more than three sexual acts or contacts are alleged, a jury must unanimously agree that any combination of three or more acts or contacts occurred. The jury does not need to unanimously agree which three acts or contacts occurred.
3. No other felony offense under this chapter involving the same victim may be charged in the same proceeding with a charge under this section unless the other charged offense occurred outside the time period charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section, but a separate count may be charged for each victim if more than one victim is involved.

#### **12.1-20-04. Sexual imposition.**

A person who engages in a sexual act or sexual contact with another, or who causes another to engage in a sexual act or sexual contact, is guilty of a class B felony if the actor:

1. Compels the other person to submit by any threat or coercion that would render a person reasonably incapable of resisting; or
2. Engages in a sexual act or sexual contact with another, whether consensual or not, as part of an induction, initiation, ceremony, pledge, hazing, or qualification to become a member or an associate of any criminal street gang as defined in section 12.1-06.2-01.

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

1. An adult who engages in, solicits with the intent to engage in, or causes another to engage in a sexual act with a minor, is guilty of a class A misdemeanor if the victim is a minor fifteen years of age or older.
2. An adult who solicits with the intent to engage in a sexual act with a minor under age fifteen or engages in or causes another to engage in a sexual act when the adult is at least twenty-two years of age and the victim is a minor fifteen years of age or older, is guilty of a class C felony.
3. An adult who commits a violation of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high

school is guilty of a class C felony. An adult who commits a violation of subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class B felony.

**12.1-20-05.1. Luring minors by computer or other electronic means.**

1. An adult is guilty of luring minors by computer or other electronic means when:
  - a. The adult knows the character and content of a communication that, in whole or in part, implicitly or explicitly discusses or depicts actual or simulated nudity, sexual acts, sexual contact, sadomasochistic abuse, or other sexual performances and uses any computer communication system or other electronic means that allows the input, output, examination, or transfer of data or programs from one computer or electronic device to another to initiate or engage in such communication with a person the adult believes to be a minor; and
  - b. By means of that communication the adult importunes, invites, or induces a person the adult believes to be a minor to engage in sexual acts or to have sexual contact with the adult, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for the adult's benefit, satisfaction, lust, passions, or sexual desires.
2. A violation of this section is a class A misdemeanor if the adult is less than twenty-two years of age and reasonably believes the minor is age fifteen to seventeen. If the adult is less than twenty-two years of age and reasonably believes the minor is under age fifteen, or the adult is twenty-two years of age or older and the adult reasonably believes the minor is age fifteen to seventeen, violation of this section is a class C felony. If the adult is twenty-two years of age or older and the adult reasonably believes the minor is under the age of fifteen, violation of this section is a class B felony. The court shall sentence an adult convicted of a class B or class C felony under this section to serve a term of imprisonment of at least one year, except the court may sentence an individual to less than one year if the individual did not take a substantial step toward meeting with the minor.
3. The attorney general may issue an administrative subpoena compelling an internet service provider or cellular phone company to provide subscriber information to a law enforcement agency investigating a possible violation of this section.

**12.1-20-06. Sexual abuse of wards.**

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

**12.1-20-06.1. Sexual exploitation by therapist - Definitions - Penalty.**

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

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

**12.1-20-07. Sexual assault.**

1. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if:
  - a. That person knows or has reasonable cause to believe that the contact is offensive to the other person;
  - b. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other person's conduct;
  - c. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means for the purpose of preventing resistance;
  - d. The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over that other person;
  - e. The other person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or
  - f. The other person is a minor, fifteen years of age or older, and the actor is an adult.
2. The offense is a class C felony if the actor's conduct violates subdivision b, c, d, or e of subsection 1, or subdivision f of subsection 1 if the adult is at least twenty-two years of age, a class A misdemeanor if the actor's conduct violates subdivision f of subsection 1 if the adult is at least eighteen years of age and not twenty-two years of age or older, or a class B misdemeanor if the actor's conduct violates subdivision a of subsection 1.

**12.1-20-08. Fornication.**

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

**12.1-20-09. Adultery.**

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

**12.1-20-10. Unlawful cohabitation.**

Repealed by S.L. 2007, ch. 131, § 4.

**12.1-20-11. Incest.**

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

**12.1-20-12. Deviate sexual act.**

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

**12.1-20-12.1. Indecent exposure.**

1. A person, with intent to arouse, appeal to, or gratify that person's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that person:
  - a. Masturbates in a public place or in the presence of a minor; or
  - b. Exposes one's penis, vulva, or anus in a public place or to a minor in a public or private place.
2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.2, or after being required to register under section 12.1-32-15.
3. A person who commits a violation of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class C felony. A person who commits a violation of subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class B felony.
4. The act of a woman discreetly breastfeeding her child is not a violation of this section.

**12.1-20-12.2. Surreptitious intrusion.**

1. An individual, with the intent to arouse, appeal to, or gratify that individual's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that individual does any of the following:
  - a. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously gazes, stares, or peeps into a house or place of dwelling of another.
  - b. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a house or place of dwelling of another.
  - c. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously gazes, stares, or peeps into a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.
  - d. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.
2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.1, or after being required to register under section 12.1-32-15.

**12.1-20-13. Bigamy.**

1. A person who marries another person, while married to another person, is guilty of a class C felony.
2. Subsection 1 does not extend to:
  - a. A person whose spouse has been absent for five successive years and is believed by him or her to be dead.
  - b. A person whose spouse has voluntarily absented himself and has continually remained without the United States for the space of five successive years.

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

**12.1-20-14. Admissibility of evidence concerning reputation of complaining witness - Gross sexual imposition and sexual imposition.**

Superseded by N.D.R.Ev. 412.

**12.1-20-15. Credibility of complaining witness attacked - Procedure.**

Superseded by N.D.R.Ev. 412.

**12.1-20-15.1. Admissibility of evidence of victim's manner of dress in sex offense cases.**

Superseded by N.D.R.Ev. 412.

**12.1-20-16. Appointment of a guardian ad litem in prosecution for sex offenses.**

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

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

1. As used in this section, unless the context otherwise requires:
  - a. "Body fluid" means semen, irrespective of the presence of spermatozoa; blood; or vaginal secretion.
  - b. "Transfer" means to engage in sexual activity by genital-genital contact, oral-genital contact, or anal-genital contact, or to permit the reuse of a hypodermic syringe, needle, or similar device without sterilization.
2. A person who, knowing that that person is or has been afflicted with acquired immune deficiency syndrome, afflicted with acquired immune deficiency syndrome related complexes, or infected with the human immunodeficiency virus, willfully transfers any of that person's body fluid to another person is guilty of a class A felony.
3. It is an affirmative defense to a prosecution under this section that if the transfer was by sexual activity, the sexual activity took place between consenting adults after full disclosure of the risk of such activity and with the use of an appropriate prophylactic device.

**12.1-20-18. Definitions.**

Repealed by S.L. 1993, ch. 129, § 5.

**12.1-20-19. Release of sexual offender from place of confinement - Duties of official in charge.**

Repealed by S.L. 1993, ch. 129, § 5.

**12.1-20-20. Duty to register.**

Repealed by S.L. 1993, ch. 129, § 5.

**12.1-20-21. Change of address - Duty to inform.**

Repealed by S.L. 1993, ch. 129, § 5.

**12.1-20-22. Duration of registration.**

Repealed by S.L. 1993, ch. 129, § 5.

**12.1-20-23. Penalty.**

Repealed by S.L. 1993, ch. 129, § 5.

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

1. As used in this section:
  - a. "Adult entertainment center" means any commercial facility at which motion pictures or videos that include explicit representations of sexual conduct are offered for viewing at that facility, but does not include the guest rooms of a hotel or motel.
  - b. "Sexual act" has the meaning prescribed in section 12.1-20-02.
  - c. "Sexual conduct" has the meaning prescribed in section 12.1-27.1-01.
2. It is an infraction for a person to willfully own, rent, lease, manage, or exercise control of any portion of an adult entertainment center if that portion contains:
  - a. Any partition between subdivisions of a room or area that has an opening that facilitates a sexual act between individuals on either side of the partition; or
  - b. A room, booth, stall, or partitioned portion of a room offered to individuals for a fee as an incident to viewing a video, motion picture, or similar entertainment, unless the room, booth, stall, or partitioned portion of the room has:
    - (1) At least one side open to an adjacent public space so that the area inside is visible to individuals in the adjacent public space; and
    - (2) The viewing area is lighted in a manner that the persons in that area are visible from the adjacent public space.
3. This section does not apply to an enclosure that is a private office space used by the owner, manager, or employees of the adult entertainment center if that office space is not held out or available to the public for the purpose of viewing a video, motion picture, or similar entertainment for a fee.
4. The state department of health or the state's attorney having jurisdiction may bring an action to enjoin a pattern of violations of this section.

**12.1-20-25. Sexual offender presence near schools prohibited.**

1. Except for purposes of voting in a school building used as a public polling place or attending an open meeting under chapter 44-04 in a school building, a sexual offender, as defined in section 12.1-32-15, who has pled guilty or been found guilty of or has been adjudicated delinquent of a class A misdemeanor or felony sexual offense against a minor or is required to register under section 12.1-32-15 or equivalent law of another state may not knowingly enter upon the real property comprising a public or nonpublic elementary, middle, or high school unless provided by this section or allowed on school property through compliance with a written policy adopted by the school board of a public school or governing body of a nonpublic school. The school board or governing body shall provide a copy of the policy to local law enforcement upon request.
2. If a school board or a governing body does not have a written policy on sexual offenders on school property, subsection 1 does not apply under the following circumstances:
  - a. The offender is a parent or guardian of a student attending the school and the offender, with the written permission of the school board or governing body of the

- school, or designee of the board or body, is attending a conference at the school with school personnel to discuss the progress of the student academically or socially, participating in a child review conference in which evaluation and placement decisions may be made regarding special education services, or attending a conference to discuss other student issues, including retention and promotion.
- b. The offender is a parent, guardian, or relative of a student attending or participating in a function at the school and the offender has requested advance permission from the school board or governing body, or designee of the board or body, and received permission allowing the offender's presence at the school function.
  - c. The offender is a student at the school with the written permission of the school board or governing body, or designee of the board or body.
  - d. The school board or governing body, or designee of the board or body, allows the offender on school property under other circumstances on a case-by-case basis.
3. An individual who violates this section is guilty of a class A misdemeanor.