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CHAPTER THIRTEEN OFFENSES

ARTICLE 1 - In General

13.0101 Criminal Attempt (Source: NDCC 12.1-06-01)

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

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

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 to commit an infraction is an infraction.

13.0102 Criminal Conspiracy (Source: NDCC 12.1-06-04)

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 proscribed by the ordinances of this city, and any one or more of such persons does an overt act to effect an objective of the conspiracy. The agreement need not be explicit, but may be implicit in the fact of collaboration or existence of other circumstances.

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

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

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.

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

Conspiracy shall be subject to the same penalty as that provided for the offense or offenses constituting the objective of the conspiracy.

13.0103 Aiding Consummation of a Crime (Source: NDCC 12.1-08-04)

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

13.0104 Public Servants Permitting Escape (Source: NDCC 12.1-08-07)

A public servant concerned in official detention, as defined by NDCC 12.1-08-06(3), pursuant to process issued by a court, judge, or magistrate is guilty of an offense against the ordinances of this city if he negligently permits an escape.

13.0105 Criminal Contempt

The municipal court has power to punish for contempt of its authority only for the following offenses;

Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

Misbehavior of any of its officers in their official transactions;

Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

Except as otherwise provided a criminal contempt proceeding under this section shall be deemed a prosecution for an offense for the purposes of NDCC 12.1-01 through NDCC 12.1-32 and article V of this chapter.

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.

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.

13.0106 Hindering Proceedings by Disorderly Conduct

A person is guilty of an offense if he recklessly hinders an official city proceeding by noise or violent or tumultuous behavior or disturbance.

Intentional hindering by disorderly conduct must be prosecuted in state court since the punishment authorized is higher than that authorized for municipal courts. However, the conduct might also fall within the scope of criminal contempt under 13.0105.

The proceedings intended to be covered under this offense are official proceedings as defined in NDCC 12.1-01-04(22) involving agencies or branches of the city government.

13.0107 Impersonating Officials

A person is guilty of an offense if he falsely pretends to be a public servant of this city and acts as if to exercise the authority of such public servant.

This offense parallels NDCC 12.1-13-04(1)(a). If the offender "obtains a thing of value" as a result of his pretension, he is guilty of the greater offense prohibited by NDCC 12.1-13-04(1)(b) which is classified as a class A misdemeanor and thus must be prosecuted in state court. It is also the intention of this chapter to cover only impersonation of city officials.

13.0108 Discrimination in Public Places (Source: NDCC 12.1-14-04)

A person is guilty of an offense 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.

13.0109 Preventing Exercise of Civil Rights (Source: NDCC 12.1-14-05)

A person is guilty of an offense 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.

13.0110 Individuals Under Twenty-One Years of Age Prohibited from Using Alcoholic Beverages or Entering Licensed Premises - Penalty. (Source: NDCC 5-01-08)

1. Except as permitted in this section and section 5-02-06, an individual under twenty-one years of age may not manufacture or attempt to manufacture, purchase or attempt to purchase, consume or have recently consumed other than during a religious service, be under the influence of, be in possession of, or furnish money to any individual for the purchase of an alcoholic beverage.
2. An individual under twenty-one years of age may not enter any licensed premises where alcoholic beverages are being sold or displayed, except:
 - a. A restaurant if accompanied by a parent or legal guardian;
 - b. In accordance with section 5-02-06;
 - c. If the individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages;
 - d. If the individual is a law enforcement officer or other public official who enters the premises in the performance of official duty; or
 - e. If the individual enters the premises for training, education, or research purposes under the supervision of an individual twenty-one or more years of age with prior notification of the local licensing authority.
3. A violation of this section is a class B misdemeanor. For a violation of subsection 2, the court also shall sentence a violator to alcohol and drug education.
4. The court, under this section, may refer the individual to an outpatient addiction facility licensed by the department of human services for evaluation and appropriate counseling or treatment.
5. The offense of consumption occurs in the county of consumption or the county where the offender is arrested.
6. An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until

assistance arrived and remained on the scene, or was the individual in need of medical assistance and cooperated with medical assistance and law enforcement personnel on the scene. The maximum number of individuals that may be immune for any one occurrence is five individuals.

13.0111 Misrepresentation of Age - Penalty - Licensee May Keep Book. (Source: NDCC 5-01-08)

Any person who misrepresents or misstates that person's age or the age of any other person or who misrepresents that person's age through presentation of any document purporting to show that person to be of legal age to purchase alcoholic beverages is guilty of a class B misdemeanor. Any licensee may keep a book and may require anyone who has shown documentary proof of that person's age, which substantiates that person's age to allow the purchase of alcoholic beverages, to sign the book if the age of that person is in question. The book must show the date of the purchase, the identification used in making the purchase and the appropriate numbers of such identification, the address of the purchaser, and the purchaser's signature.

ARTICLE 2 – Offenses Against Persons

13.0201 Simple Assault (NDCC 12.1-17-01)

A person is guilty of an offense if he;

1. Willfully causes bodily injury to another human being; or
2. Negligently causes bodily injury to another human being by means of firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
3. Consent to the conduct causing bodily injury by all persons injured by the conduct is defense if:
 - A. The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or
 - B. 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.
4. Assent does not constitute consent, within meaning of this ordinance, 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.

This section parallels the simple assault offense in NDCC 12.1-17-01 and the consent provisions in NDCC 12.1-17-08. It essentially follows lay usage in covering what was under common law more technically a battery. Common law assault is now covered more descriptively as terrorizing, NDCC 12.1-17-04; menacing, NDCC 12.1-17-05; criminal coercion, NDCC 12.1-17-06; or, harassment, NDCC 12.1-17-07. More serious assault (battery) is covered by state law under aggravated assault, NDCC 12.1-17-02 or, if simple assault upon a peace officer acting in an official capacity, as class C felony under NDCC 12.1-17-01.

13.0202 Sexual Assault (Source: NDCC 12.1-20-07)

A person who knowingly has sexual contact with another, or who causes such other person to have sexual contact with him, is guilty of an offense if:

1. He knows or has reasonable cause to believe that the contact is offensive to the other person;
2. He knows or has reasonable cause to believe that the other person suffers from a mental disease or defect that renders him or her incapable of understanding the nature of his or her conduct;
3. He or some with his knowledge has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge intoxicants or other means for the purpose of preventing resistance;
4. The other person is in an official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over him or her.

13.0203 Harassment (Source: NDCC12.1-17-07 (1-B & C))

A person is guilty of an offense if, with the intent to frighten or harass another he;

1. Makes a telephone call anonymously or in offensively course language; or
2. Makes repeated telephone calls, whether or not a conversation ensues, with no purpose of legitimate communication.

ARTICLE 3 – Offenses Against Property

13.0301 Criminal Mischief (Source: NDCC 12.1-21-05 & 40-05-06)

A person is guilty of an offense if he;

1. Willfully tampers with tangible property of another so as to endanger person or property; or
2. Willfully damages tangible property of another.

Conduct is punishable as criminal mischief under this chapter when any pecuniary loss if intentionally caused is not in excess of one hundred dollars; if he recklessly caused is not in excess of two thousand dollars; and if the damages to tangible property of another are not by means of an explosive or destructive device.

The penalty for the offense of criminal mischief may not exceed a fine of one thousand (\$1,000.00) dollars, imprisonment for thirty (30) days, or both such fine and imprisonment.

13.0302 Tampering With or Damaging A Public Service (Source: NDCC 12.1-21-06)

A person is guilty of an offense if he negligently causes a substantial interruption or impairment of a public communication, transportation, supply of water, gas, power, or other public service by;

1. Tampering with or damaging the tangible property of another;
2. Incapacitating an operator of such service; or
3. Negligently damaging the tangible property of another by fire, explosive, or other dangerous means.

13.0303 Consent as a Defense and Definition "of Another" For Criminal Mischief or Tampering With a Public Service (Source: NDCC12.1-21-07 & 08)

For Prosecutions of criminal mischief under 13.0301 or tampering with or damaging a public service under 13.0302;

1. Whenever 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.

2. Property is that "of another" if anyone other than the actor has a possessor or proprietary interest therein.

13.0304 Criminal Trespass (Source: NDCC 12.1-22-03{3})

A person is guilty of an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the person in charge of the premises or other authorized person or by posting in a manner reasonably likely to come to the attention of intruders.

13.0305 Consolidated Theft Offenses (NDCC 12.1-23-01)

Conduct denominated in 13.0306 to 13.0308 constitutes a single offense designed to include the separate offenses heretofore known as larceny, stealing, purloining, embezzlement, obtaining money or property by false pretense, extortion, blackmail, fraudulent conversation, receiving stolen property, misappropriation of public funds, swindling, and the like.

A charge of theft under 13.0306 to 13.0308 that fairly appraises 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 a charge if his conduct falls under 13.0306 to 13.0308, 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.

13.0306 Theft of Property (NDCC 12.1-23-02)

A person is guilty of an offense if he;

1. Knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with the intent to deprive the owner thereof;

2. Knowingly obtains the property of another by deception with intent to deprive the owner thereof, or intentionally deprives another of his property by deception; or

3. Knowingly receives, retains, or disposes of property of another that has been stolen, with intent to deprive the owner thereof.

13.0307 Theft of Services (Source: NDCC 12.1-23-03)

A person is guilty of an offense if he;

1. He intentionally obtains services, known by him to be available only for compensation, by deception, 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.

13.0308 Theft of Property Lost, Mislaid, or Delivered by Mistake (Source: NDCC 12.1-23-04)

A person is guilty of an offense 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.

13.0309 Thefts Punishable Under City Ordinance (Source: NDCC 12.1-23-05)

Theft under 13.0306 to 13.0308 may be punished as an offense against the city ordinances if 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 he was stealing, or which the actor could reasonably have anticipated to have been the property or services involved, does not exceed fifty dollars, and if;

1. The theft was committed by threat;
2. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft; and
3. The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of his official duties;
4. The property stolen is not a firearm, ammunition, explosive or destructive device, or an automobile, aircraft, or other motor-propelled vehicle;
5. The property does not consist of any government file record, document, or other government paper stolen from any government office or from any public servant;
6. The defendant is not in the business of buying or selling stolen property and he does not receive, retain, or dispose of the property in the course of the business;
7. The property stolen does not consist of any implement, paper, or other thing uniquely associated with the preparation of any money, stamp, bond, or other document, instrument, or obligation of the State of North Dakota;
8. The property does not consist of livestock taken from the premises of the owner; and
9. The property stolen does not consist of a key or other implement uniquely suited to provide access to property the theft of which would be a felony and was not stolen to gain such access.

13.0310 Defrauding Secured Creditors (Source: NDCC 12.1-23-08)

A person is guilty of an offense if he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with intent to prevent collection of the debt represented by the security interest if the property does not have a value exceeding five hundred dollars determined as in the preamble of 13.0309.

13.0311 Retail Theft - Shoplifting

1. Presumption. Any person concealing upon his person or among his belongings, or causing to be concealed upon the person or among the belongings of another, unpurchased merchandise displayed, held, offered, or stored for sale in a mercantile establishment and removing it to a point beyond the last station for receiving payments in that retail mercantile establishment shall be prima facie presumed to have so concealed such merchandise with the intention of permanently depriving the merchant of possession or of the full retail value of such merchandise.

2. Detention of suspect - Procedure. Any peace officer or merchant who reasonably believes that a person has committed, or is in the process of committing, theft may detain such person, on or off the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes;

A. To require the person to identify himself.

B. To verify such identification.

C. To determine whether such person has in his possession unpurchased merchandise, and, if so, to recover such merchandise.

D. To inform a peace officer of the detention of the person and surrender custody of that person to a peace officer.

E. In the case of a minor, to inform a peace officer, the parents, guardian, or other private person interested in the welfare of that minor of this detention and to surrender custody of said minor to the person informed.

3. Definitions. As used in this section, unless the context requires otherwise;

A. Merchandise: means any item of tangible personal property, and specifically includes shopping carts.

B. Merchant: means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, franchisee, or independent contractor or such owner or operator.

C. Retail mercantile establishment: means any place where merchandise is displayed, held, offered, or stored for sale to the public.

D. Premises of a retail mercantile establishment: includes, but is not limited to, the retail mercantile establishment, any common use areas in shopping centers, and all parking areas set aside by a merchant, or on behalf of a merchant, for the parking of vehicles for the convenience of the patrons of said retail mercantile establishment.

E. Person: means any natural person or individual.

F. Full retail value: means the merchant's stated or advertised price of the merchandise.

G. Shopping cart: means those push carts of the type or types which are commonly provided by grocery stores, drugstores, or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store.

H. An item is "concealed" within the meaning of this section if, even though there is some notice of its presence, the item itself is not visible through ordinary observation.

4. Theft of merchandise displayed, held, offered, or stored for sale in a mercantile establishment from that establishment when open for business is "Shoplifting" for which the offender may be assessed a penalty upon conviction not exceeding one thousand dollars, imprisonment for thirty days, or both such fine and imprisonment.

13.0312 Defenses and Proof as to Theft and Related Offenses (NDCC 12.1-23-09)

1. It is a defense to a prosecution under 13.0305 to 13.0313 that:

A. The actor honestly believed that he had a claim to the property or services involved which he was entitled to assert in the manner which forms the basis for the charge against him; 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 13.0305 to 13.0313 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 sale of 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. It shall be prima facie case of theft under 13.0305 to 13.0313 if:

A. 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 him as part of his official duties or if an audit reveals a shortage or falsification of his accounts.

B. 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.

C. 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.

13.0313 Definitions (NDCC 12.1-23-10)

DECEPTION:

1. Creating or reinforcing a false impression, including false impressions as to fact, law, status, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not substantially perform the promise unless it is part of a continuing scheme to defraud; or

2. Preventing another from acquiring information which would affect his judgment of a transaction; or

3. 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; or

4. Failing to correct an impression which the actor knows to have become false due to subsequent events; or

5. 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; or

6. Using a credit card, charge plate, or any other instrument that 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

A. Where such instrument has been stolen, forged, revoked, or cancelled, or where for any other reason its use by the actor is unauthorized, and

B. Where the actor does not have intention and ability to meet all obligations to the issuer arising out of his use of the instrument; or

7. 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.

DEPRIVE:

1. 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; or

2. 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

3. To dispose of property or to use it or transfer any interest in it under circumstances that makes its restoration, in fact unlikely.

FIDUCIARY:

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 or other organization which is a fiduciary.

FINANCIAL INSTITUTION:

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 and collective investment.

OBTAIN:

1. In relation to property, to bring about a transfer or purported transfer of an interest in the property, whether to the actor or another; or
2. In relation to services, to secure performance thereof.

PROPERTY:

Any money, tangible or intangible property, property (whether real or personal) the location of which can be changed (including things growing on, or 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.

PROPERTY OF ANOTHER:

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 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.

RECEIVING:

Acquiring possession, control, or title, or lending on the security of the property.

SERVICES:

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 vehicle or other property.

STOLEN:

Property that has been the subject of theft or robbery or a vehicle that is received from a person who is then in violation of NDCC 12.1-23-06.

THREAT:

An expressed purpose, however communicated, too;

1. Cause bodily injury in the future to the person threatened or to any other person; or
2. Cause damage to property; or
3. Subject person threatened to any other person to physical confinement or restraint; or
4. Engage in other conduct constituting a crime; or

5. Accuse anyone of a crime; or
6. Expose a secret or to 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; or
7. Reveal any information sought to be concealed by the person threatened; or
8. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
9. Take or withhold official action as a public servant, or cause a public servant to take or withhold official action; or
10. 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; or
11. Cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes; or
12. Do any other act which would not in itself substantially benefit the actor or 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. Upon the charge of theft, the receipt of property in consideration for taking or withholding official action shall be deemed to be theft by threat regardless of whether the owner voluntarily parted with his property or himself initiated the scheme.

13.0314 Making or Uttering Slugs (Source: NDCC 12.1-24-05)

1. A person is guilty of an offense if he makes or utters a slug or slugs which do not exceed fifty dollars in value with the intent to deprive a supplier of property or service sold or offered by means of a coin machine or with the knowledge that he is facilitating such a deprivation of another.

2. 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.

13.0315 – Injury or removal of public property

No person in the city shall willfully, maliciously, wantonly, negligently or otherwise injure, deface, destroy or remove real property or improvements thereto, or moveable property belonging to the city.

13.0316 - Littering

No person in the city shall throw or permit to be deposited or scattered upon any sidewalk, alley, street, bridge or public passageway, or upon any private property, any waste, litter, refuse, rubbish or other material of any kind.

13.0317 - Tampering with vehicles

No person in the city shall, without the consent of the owner or person in charge of a vehicle, climb into or upon such vehicle with the intent to commit any crime, malicious mischief or injury thereto, or who, while a vehicle is at rest and unattended, shall attempt to manipulate any of the levers, starting devices, brakes or other mechanism thereof or to set such vehicle in motion. The provisions of this section shall not apply when such act is done in an emergency or by or under the direction of any officer in the regulation of traffic or the performance of any official duty.

13.0318 - Obstructing passageways

No person in the city shall place or erect upon public way or passageway to any building an obstruction of any type. The provisions of this section shall not prevent the duly authorized or required placing of temporary barriers or warning signs for the purpose of safeguarding the public.

13.0319 - Removal of earth

No person shall move, disturb, or take any earth, stone or other material from any public street, alley, park or other public ground.

ARTICLE 4 - OFFENSES AGAINST PUBLIC ORDER, HEALTH, SAFETY AND SENSIBILITIES

13.0401 ENGAGING IN A RIOT (Source: NDCC 12.1-25-01 [2] & [3])

1. A person is guilty of an offense if he engages in a riot.
2. "Riot means a public disturbance involving an assemblage of five or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function.
3. A person shall be convicted under 13.0401 or 13.0402 of attempt or conspiracy to commit an offense under this section only if he engages in the prohibited conduct under circumstances in which there is a substantial likelihood that his conduct will imminently produce a violation of this section. Mere presence at a riot is not an offense under this section.

13.0402 DISOBEDIENCE OF PUBLIC SAFETY ORDERS UNDER RIOT CONDITIONS

(Source: NDCC 12.1-25-04)

A person is guilty of an offense if, during a riot as defined in 13.0401 [2], or when one is immediately impending, he disobeys a reasonable public safety order to move, disperse, or refrain from specified activities in the immediate vicinity of the riot. A public safety order is an order designed to prevent or control disorder, or promote the safety of persons or property, issued by the senior law enforcement official on the scene.

13.0403 DISORDERLY CONDUCT (Source: NDCC 12.1-31-01 [1])

1. A person is guilty of violating the ordinances of this city if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another is harassed, annoyed or alarmed by his behavior, he;

- A. Engages in fighting, or in violent, tumultuous or threatening behavior;

B. In a public place, uses abusive, insulting, or offensive language, or an abusive, insulting, or offensive gesture, under circumstances in which such language by its utterance, or gesture, is likely to cause or provoke a disturbance or breach of the peace:

C. Makes unreasonable noise.

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, he solicits such contact.

G. Creates a hazardous or seriously alarming condition by any act that he is not licensed or privileged to do.

H. Enters on the property of another and for lewd or unlawful purpose looks into a dwelling on the property through any window or opening in the dwelling.

I. Not being a peace officer, discharges a firearm or a dangerous weapon as defined in NDCC 62.1-01-01(1), or displays a dangerous weapon, in a public place.

J. Exposes his genital under circumstances in which, in fact, his conduct is likely to be observed by a person who would be offended or alarmed, and with the intent to arouse or gratify the sexual desire of any person, including the actor.

K. Throws any missile in a public place or in any place where there is any person to be endangered thereby, although no injury to any person ensues; or

L. Creates, by chemical means, a noxious and unreasonable odor in a public place.

2. A person whose conduct violates subdivisions "A" through "G" of subsection "1" is guilty of an offense. A person whose conduct violates subdivisions "H" through "L" of subsection "1" is guilty of an infraction.

3. Prosecutions under subdivisions B, E, and F of subsection 1 shall be instituted only upon complaint to a law enforcement officer by someone other than a law enforcement officer.

(Sources: In general see NDCC 12.1-31-01 Subsection 1:

Subdivision b: NDCC 12.1-31-01 [3]

WI. Stat. Ann. 947.01;

MN. Stat. Ann. 609.715;

LA. Rev. Stat. 14.103

Subdivision g: NDCC 12.1-31-01 [7];

OR. Rev. Stat. 166.025 [1] [h]

Subdivision h: TX. Penal Code 42.01 [a] [7];

IL. Ann. Stat. Crim. Code 26-1 [a] [6]

Subdivision i: TX. Penal Code 42.01 [a] [8] & [9]

CO. Rev. Stat. Ann. 18-9-106 [e] & [f]

Subdivision j: NDCC 12.1-27-04, repealed by HB 1043, 44th Legislative Assembly of ND (1975)

Subdivision k: NDCC 62-04-02, repealed by HB 2039, 44th Legislative Assembly of ND (1975)

Subdivision l: TX. Penal Code 42.01 [a] [3]

Subsection 2 is derived from the Proposed New Federal Criminal Code 1861 [2]

Subsection 3 is derived from the proposed New Federal Criminal Code 1861 [4])

13.0404 Defense when conduct consists of speech or other expression

1. If conduct that would otherwise violate 13.0403 (1) c, or 13.0403 (1) d, consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political, or religious questions, the actor must be ordered to move, disperse, or otherwise remedy the violation prior to his arrest if he has not harmed the interests of others which those sections seek to protect.

2. The order required by this section may be given by a peace officer, a fireman, a person with authority to control the use of the premises, or any person directly affected by the violation.

3. It is a defense to prosecution under 13.0403 (1) c, or d:

- A. that in circumstances in which this section requires an order, no order was given;
- B. That an order, if given, was manifestly unreasonable in scope; or
- C. That an order, if given, was promptly obeyed. (Source: TX Penal Code 42.04.)

13.0405 Loitering

1. A person commits an infraction if he;

A. Loiters in a place, at a time or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons and property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a peace officer, refused to identify himself, or manifestly tries to conceal himself or any object.

B. Loiters in or about a school, college, or university building or grounds, not having any reason or relationship involving custody of, or responsibility for, a pupil or student, or any other specific, legitimate reason for being there, and not having written permission from a school administrator or other person authorized to grant such permission.

2. The word “loiter” means to delay or stand idly around.

3. Unless flight by the actor or other circumstance makes it impractical, a peace officer shall prior to any arrest for an infraction under this section, afford the actor an opportunity to dispel any alarm that would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct.

4. No person shall be convicted of an offense under this section if the peace officer did not comply with subsection 3, or if it appears at trial that the explanation given by the actor was true and, if believed by the peace officer at the time, would have dispelled the alarm.

5. It shall be an affirmative defense that the defendant’s acts were lawful and he was exercising his right of lawful assembly as a part of a peaceful and orderly petition for the redress of grievances, either in the course of labor disputes or otherwise.

Comment

There is serious doubt about the possibility of drafting an ordinance proscribing conduct constituting offenses such as loitering and vagrancy with sufficient precision and specificity to meet constitutional attacks based upon asserted vagueness and over breadth. A vagrancy ordinance similar to many ordinances currently in effect in North Dakota was held unconstitutional in Papachristou v. Jacksonville, 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed. 2d 110 (1972). For a general discussion of constitutional problems with loitering and vagrancy statutes and ordinances, see Annotations at 25 A.L.R. 3d 792 and 836 (1969).

13.0406 Disorderly house/disorderly vehicle

An individual who knowingly permits disorderly conduct as described in Section 13.0403 of this chapter to occur within or upon any premises, property or motor vehicle owned, possessed, or under the individual's control, is guilty of the offense of disorderly house/disorderly vehicle, which is an Offense.

13.0407 Prostitution

1. A person is guilty of the offense of prostitution if he;
 - A. Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business; or
 - B. Solicits another person with the intention of being hired to engage in sexual activity
2. Testimony of a person against his or her spouse shall be admissible to prove offenses under this section involving that spouse's prostitution.
3. In this section;
 - A. "Sexual Activity" means sexual act or sexual contact as those terms are defined in NDCC 12.1-20-02
 - B. A "house of prostitution" is any place where a person under the control, management, or supervision of another regularly carries on prostitution.
 - C. An "inmate" is a prostitute who acts as such in or through the agency of a house of prostitution.

Comment

The ordinance proscribing prostitution is derived from NDCC 12.1-29-03, 04, and 05. Definitions pertaining to the more serious offenses of promoting prostitution and facilitating prostitution have been omitted. Those two offenses are prohibited as class C felonies or class A misdemeanors, depending on the circumstances, by NDCC 12.1-20-01 and 02, respectively

13.0408 Objectionable materials or performance – Display to minors –Definitions – Penalty

1. A person is guilty of an offense 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. (Source: NDCC 12.1-27.1-03.1)

13.0409 - Throwing Missiles

It shall be unlawful for any persons in the city to throw any stone, snowball or any other missile upon or at any vehicle, building or other public or private property, or upon or at any person in any public or private way or place or enclosed or unenclosed ground.

13.0410 - False Alarms

No person in the city shall intentionally make, turn in, or give a false alarm of fire, or of need for police or ambulance assistance or aid or abet in the commission of such act.

13.0411 - False Reports

No person in the city shall make to, or file with the police department, and false, misleading, or unfounded statement or report concerning the commission or alleged commission of any crimes occurring in the city. Gives false information to a law enforcement officer that that person knows to be false, and that information may interfere with an investigation or may materially mislead a law enforcement officer.

13.0412 - Interference with Officers

No person in the city shall resist and police or fire officer any member of the police or fire departments, or any person duly empowered with police or fire authority, while in the discharge or apparent discharge of his duty, or in any way interfere with or hinder him in the discharge of his duty.

Article 5 – SENTENCING

13.0501 Classification of offenses

Offenses against the ordinances of this City are divided into two classes, as follows;

1. Offense, which is a Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand dollars, or both, may be imposed.
2. Infraction, for which a maximum fine of five hundred dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an 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 shall specify the offense is a misdemeanor.
3. All violations of the provisions of the ordinances of this city are offenses unless specifically labeled infractions or unless a different classification or punishment is specifically authorized.
(Source NDCC 12.1-32-01.

13.0502 Sentencing alternatives

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 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.

2. Except as provided by section, sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided by section 13.0501 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 13.0509.

3. 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.

4. 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.

5. 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 NDCC 12.1-32-07.1.

6. 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.

7. 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.

8. 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.

9. Unless otherwise specifically authorized in the statute defining the offense, a court may not include a minimum term of imprisonment as part of its sentence. (Source NDCC 12.1-32-02)

13.0503 Procedure for trial of infraction – Incidents

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 or to have a trial by jury unless the person may be subject to a sentence of imprisonment under subsection 2 of section 13.0501.

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 section 13.0502, except that a term of imprisonment may not be imposed except in accordance with subsection 3 of section 13.0506 or subsection 2 of section 13.0501

4. If a statute provides that conduct is an infraction without specifically including a requirement of culpability, no culpability is required.

5. Except as provided in this section, 13.0501 or 13.0502, or as the context may otherwise indicate a differentiation between the infraction classification and the offense classification, the term “offense” refers to all violations of the ordinances of this city including infractions. (Source NDCC 12.1-32-03.1)

1.0504 Special sanction for organizations

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. (Source NDCC 12.1-32-03)

13.0505 Factors to be considered in sentencing

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 that, 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 that 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. (Source NDCC 12.1-32-04)

13.0506 Imposition of fine – Response to non-payment

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 periods of imprisonment for failure to pay a fine:

- A. If the defendant was convicted of a misdemeanor, to a period not to exceed thirty days.
- (Source NDCC 12.1-32-05)

13.0507 Incidents of probation

1. Unless terminated as provided in subsection 2, the period during which a sentence to probation shall remain conditional and be subject to revocation is two years

2. 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.

3. Notwithstanding the fact that a sentence to probation can subsequently be modified or revoked, a judgment that includes such a sentence shall constitute a final judgment for all other purposes.

13.0508 Conditions of probation – Revocation

1. 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 forty 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.

2. 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 and 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; or
- H. Intensive supervision program.

3. 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 that 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 13.0509
- F. Pay a fine imposed after consideration of the provisions of section 13.0506, except when imposition of sentence is deferred.

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 or one year, whichever is less.

P. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 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.

4. When the court imposes a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the defendant must be given a certificate explicitly setting forth the conditions on which the defendant is being released.

5. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the probation remains conditional. If the defendant violates a condition of probation at any time 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 NDCC section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended execution of sentence, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.

6. The court may continue or modify probation conditions or revoke probation for a violation of probation conditions occurring before the expiration or termination of the period of probation notwithstanding that the order of the court is imposed after the expiration or termination has occurred. The petition for revocation must be issued within sixty days of the expiration or termination of probation.

7. 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.

8. 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.
(Source NDCC 12.1-32-07)

13.0509 Restitution or reparation – Procedures

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, unless the court states on the record, based upon the criteria in this subsection, the reason it does not order restitution or orders only partial restitution. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property. In determining whether to order restitution, the court shall take into account:

A. The reasonable damages sustained by the victim or victims of the criminal offense, which damages 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.

B. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.

C. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitation purpose in the case of the particular offender considered.

2. The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay under NDCC 54-23.4 unless the court, on the record, directs otherwise. 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, 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,

3. When the restitution ordered by the court under subsection 1 is the result of a finding that the defendant issued a check or draft without sufficient funds or without an account, the court shall impose as costs the greater of the sum of ten dollars or an amount equal to twenty-five percent of the amount of restitution ordered. The costs imposed under this subsection, however, may not exceed one thousand dollars. The state-employed clerks of district court shall remit the funds collected as costs under this subsection to the state treasurer for deposit in the restitution collection assistance fund. The funds deposited into the restitution collection assistance fund are appropriated to the judicial branch on a continuing basis for the purpose of defraying expenses incident to the collection of restitution, including operating expenses and the compensation of additional necessary personnel. The state's attorneys and county-employed clerks of district court shall remit the funds collected as costs under this subsection to the county treasurer to be deposited in the county general fund.

4. 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.

5. Under section 13.0508, the court may order that the defendant reimburse indigent defense costs and expenses as a condition of probation. The court shall notify the defendant, the defendant's probation officer, and the prosecuting attorney of the amount of costs and expenses to be reimbursed and of the defendant's right to a hearing on the reimbursement amount. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of seventy-five dollars per hour for appointed counsel services plus reasonable expenses. The reimbursement amount must include an application fee imposed under NDCC 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 requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the basis for the amount to be reimbursed must be demonstrated. 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.

6. 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.

7. 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 13.0508.

8. 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.

13.0510 Merger of sentences – Sentencing for multiple offenses

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 that imposed a sentence that 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. (Source NDCC 12.1-32-11)

Article 6 – Severability Clause

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

Article 7 – Penalties

Any person who is convicted of violating or failing to comply with any of the provisions of this Chapter may be punished by a fine of not more than \$1000.00 or by imprisonment not to exceed 30 days or both; and any person who is convicted of an offense classified as an infraction, shall be punishable in accordance with subsection 13.0501.