

Applicable Laws of the State of North Dakota

I. Committee on Protection and Advocacy

North Dakota Century Code Chapter 25-01.3

This law establishes a reporting duty for mental health professionals, caretakers, facilities and others with reasonable cause to suspect that developmentally disabled individuals have been abused. These persons must report the circumstances of the abuse to the Committee on Protection and Advocacy. This committee has statutory authority to protect the rights of the disabled.

Any willful use of offensive, abusive or demeaning language by a caretaker that causes mental anguish for any person who is developmentally disabled is abuse.

Any knowing, reckless or intentional acts or failures to act which cause injury or death to a developmentally disabled or mentally ill person or which places that person at risk of injury or death are also abusive.

Rape or sexual assault of a developmentally disabled or mentally ill person, corporal punishment or striking of a developmentally disabled or mentally ill person; the use of excessive force and the placement of bodily restraints on developmentally disabled or mentally ill persons, or use of bodily or chemical restraints on a developmentally disabled or mentally ill person which are not in compliance with federal or state laws and administrative regulations are abusive.

By law a facility means any school, residence center, group home, nursing home, foster home, boarding home, or other facility operated by any public or private agency, organization or institution, which provides services to a person with developmental disabilities or mental illness comes under this act. The law applies to those operations in the diocese, which come under the definition of a facility.

All employees of the diocese who allow or permit the unauthorized disclosure of reports or complaints under this law are held accountable for an infraction under North Dakota law. Employees who willfully fail to report the abuse of developmentally disabled or mentally ill persons are also guilty of an infraction.

II. Vulnerable Adult Protection Service Act North Dakota Century Code Chapter 50-25.2

This law also provides a mechanism to report abusive behavior and take legal action to protect victims. Reports of abusive behavior are made to the North Dakota Department of Human Services or law enforcement officials.

The law here defines abuse as any willful act or omission of a caregiver or any other person, which results in physical injury, mental anguish, unreasonable confinement, sexual abuse or exploitation, or financial exploitation to or of a vulnerable adult.

Under the definition of abuse, physical injury means damage to bodily tissue caused by non-therapeutic conduct, which includes fractures, bruises, lacerations, internal injuries, dislocations, physical pain, illness, or impairment of physical function. Mental anguish is defined as psychological or emotional damage that requires medical treatment or care, or is characterized by behavioral change or physical symptoms. An adult, for the purpose of this act, includes any minor who is emancipated by marriage.

The caregiver is defined as any person who has assumed the legal responsibility, or a contractual obligation for the care of a vulnerable adult, or has voluntarily assumed responsibility for the care of a vulnerable adult. The term includes a facility operated by any public or private agency, organization, or institution which provides services to, and has assumed responsibility for the care of a vulnerable adult. Vulnerable adult means an adult who has a substantial mental or functional impairment.

III. Child Abuse and Neglect Law North Dakota Century Code 50-25.1

This law requires that reports be made for child abuse or neglect to the North Dakota Department of Human Services.

A person responsible for a child's welfare means that child's parent(s), guardian, foster parent(s), an employee of a public or private school or non-residential child

care facility, an employee of a public or private or residential home, institution or agency, or other person responsible for the child's health and welfare in a residential setting.

The law further states quite clearly that an abused child means an individual under the age of 18 years who is suffering from or was subjected to any act in violation of Sections 12.1-08-01 through 12.1-20-08 (a sex offense).

In accord with this law, harm means negative changes in a child's health which occur when a person responsible for the child's health and welfare either inflicts, or allows to be inflicted, upon the child, physical or mental injury, including injuries sustained as a result of excessive corporal punishment; or commits, allows to be committed or conspires to commit, against the child, a sex offense. The duty to report is uppermost for the protection of the child.

A listing is given of persons required and permitted to report such as, any physician, nurse, dentist, optometrist, medical examiner, or coroner, or any other medical or mental health professional, religious practitioner of the healing arts, school teacher, administrator, school counselor, addiction counselor, social worker, day care center, or any other child care worker, police or law enforcement officer, or a member of the clergy having knowledge of or reasonable cause to suspect a child is abused, or neglected shall report the circumstances to the North Dakota Department of Social Services if the knowledge or suspicion is derived from information received by that person in that person's official or professional capacity. A member of the clergy, however, is not required to report such circumstances if the knowledge or suspicion is derived from information received in the capacity of spiritual advisor.

Further, the law provides that any person having reasonable cause to suspect that a child is abused or neglected may report such circumstances to the North Dakota Department of Social Services.

It is imperative that the clergy report these matters to the Department and it may be a fine line between getting the information generally by seeing and observing versus obtaining the information in the capacity of spiritual advisor. If there is any question in the mind of a priests or deacon as to how the information was obtained, contact the chancery who will consult diocesan legal counsel for

guidance regarding the legality of the matter.

IV. Sexual Abuse

The area of sexual abuse overlaps all three of the above-mentioned sections of North Dakota law. This is not only important from the definitional aspect, but we now enter the area of criminal law. This comes from the criminal code, Section 12.1-20.

The law provides serious punishments ranging from misdemeanors to felonies. The definitions that we will now be discussing overlap into the three civil areas above, and therefore, must be looked upon as the definitional underpinnings not only for criminal liability but that of civil liability under the Chapters previously mentioned. There are several main areas that need to be looked at.

The reader should familiarize her/himself with the North Dakota Century Code 12.1-20-02 for definitions of sexual act and sexual contact.

The North Dakota Century Code uses the term gross sexual imposition and that may not convey a meaningful description of what is being discussed. Gross sexual imposition in North Dakota is what, in years past, was known as rape.

Gross sexual imposition occurs when a person engages in a sexual act with:

1. another by force, threat or kidnapping.
2. another whose ability to control their conduct has been impaired by intoxicants or drugs without their knowledge.
3. another who is under the age of fifteen years.
4. another who is unaware that a sexual act is being committed.
5. another who has a mental defect or disability.

This is a most serious crime punishable as a Class A felony, or in some instances, as a Class B. A Class A felony is punishable by twenty years imprisonment, a \$20,000 fine or both; a Class B felony is punishable by ten years imprisonment and a \$10,000 fine or both.

The North Dakota Century Code also speaks of sexual imposition. This is defined as engaging in a sexual act or contact with another, or causing another to engage

in such act or contact if the actor compels the other person to submit by any threat that would render a person of reasonable firmness incapable of resisting. This is classified as a Class C felony, which is punishable by five years imprisonment or a \$5,000 fine, or both. If the victim is fifteen years or older it is a Class B felony.

There is also the crime of corruption or solicitation of minors. An adult who engages in a sexual act with a minor or who causes a minor to engage in a sexual act, is guilty of a Class A misdemeanor. If the adult is at least 22 years of age and the minor is 15 years of age or older, the crime is a Class C felony. A Class A misdemeanor is punishable by a maximum fine of \$1,000 or one year imprisonment or both. If an adult solicits a person under the age of 15 to engage in sexual conduct that is a Class A misdemeanor as well.

It is also a crime to cause another to engage in a sexual act if the other person is in the official custody or detained in a hospital, prison, or other institution, and the actor has supervisory or disciplinary authority over the person. This, by North Dakota law, is a Class A misdemeanor.

Additionally, North Dakota outlaws sexual assault and defines it as sexual contact with another if the actor knows or has a reasonable cause to believe that the contact is offensive to the other person or if the actor knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders her/him incapable of understanding the nature of her/his conduct.

Intermixed in this legislation are the crimes of fornication, adultery, unlawful cohabitation, incest, indecent exposure, bigamy and deviate sex acts. These are all important for purposes of definitions, not only in the criminal law, but also in the civil law as previously pointed out.

The North Dakota Century Code Chapter 14-02.4 specifically prohibits sexual harassment.