SECTION 4: SEXUAL VIOLENCE PROTOCOLS

4-2 DEFINITIONS

Defining Acts Involved with Sex Offenses
The following state definitions are informational and are not used to classify crime statistics in the UND Annual Security Report.

Coercion – To exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance.

Deviate Sexual Act – Any form of sexual contact with an animal, bird, or dead person.

Object – Anything used in commission of a sexual act other than the person of the actor.

Sexual Act – 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.

Sexual Contact – 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.

Gross Sexual Imposition
1) A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:
   a. 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 NDCC 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.
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 NDCC section 12.1-06.2-01.

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.

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 NDCC section 14-03-03, knowing such other person to be within said degree of relationship, is guilty of a class C felony.

Domestic Violence – Includes physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members.

Stalking

1) As used in NDCC section12.1-17-07.1:
   a. “Course of conduct” means a pattern of conduct consisting of two or more acts evidencing a continuity of purpose. The term does not include constitutionally protected activity.
   b. “Immediate family” means a spouse, parent, child, or sibling. The term also includes any other individual who regularly resides in the household or who within the prior six months regularly resided in the household.
   c. “Stalk” means to engage in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person, and that serves no legitimate purpose. The course of conduct may be directed toward that person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment.

2) No person may intentionally stalk another person.

3) In any prosecution under this section, it is not a defense that the actor was not given actual notice that the person did not want the actor to contact or follow the person; nor is it a defense that the actor did not intend to frighten, intimidate, or harass the person. An attempt to contact or follow a person after being
given actual notice that the person does not want to be contacted or followed is prima facie evidence that the actor intends to stalk that person.

4) In any prosecution under this section, it is a defense that a private investigator licensed under NDCC chapter 43-30 or a peace officer licensed under chapter NDCC 12-63 was acting within the scope of employment.

5) If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

6) A person who violates this section is guilty of a class C felony if:
   a. The person previously has been convicted of violating NDCC sections 12.1-17-01, 12.1-17-01.1, 12.1-17-02, 12.1-17-04, 12.1-17-05, or 12.1-17-07, or a similar offense from another court in North Dakota, a court of record in the United States, or a tribal court, involving the victim of the stalking;
   b. The stalking violates a court order issued under NDCC chapter 14-07.1 protecting the victim of the stalking, if the person had notice of the court order; or
   c. The person previously has been convicted of violating this section.

7) If subdivision a does not apply, a person who violates this section is guilty of a class A misdemeanor.

Consent as a Defense

1) Assent does not constitute consent, within the meaning, 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.