

SENATE BILL NO. 2161

Introduced by

Senators Robinson, Bakke, Lyson

Representatives Carlisle, DeKrey, Kroeber

1 A BILL for an Act to amend and reenact section 12.1-32-15 of the North Dakota Century Code,
2 relating to registration of sexual offenders; and to provide for an appropriation to the attorney
3 general to finance computerized sexual registration sites.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 12.1-32-15 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12.1-32-15. Offenders against children and sexual offenders - Sexually violent**
8 **predators - Registration requirement - Penalty.**

9 1. As used in this section:

- 10 a. "A crime against a child" means a violation of chapter 12.1-16, section
11 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04,
12 subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01,
13 12.1-18-02, 12.1-18-05, chapter 12.1-29, or subdivision a of subsection 1 or
14 subsection 2 of section 14-09-22, or an equivalent ordinance, in which the
15 victim is a minor or is otherwise of the age required for the act to be a crime or
16 an attempt to commit these offenses.
- 17 b. "Department" means the department of corrections and rehabilitation.
- 18 c. "Mental abnormality" means a congenital or acquired condition of an
19 individual that affects the emotional or volitional capacity of the individual in a
20 manner that predisposes that individual to the commission of criminal sexual
21 acts to a degree that makes the individual a menace to the health and safety
22 of other individuals.

- 1 d. "Predatory" means an act directed at a stranger or at an individual with whom
2 a relationship has been established or promoted for the primary purpose of
3 victimization.
- 4 e. "Sexual offender" means a person who has pled guilty to or been found guilty
5 of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05,
6 12.1-20-05.1, 12.1-20-06, 12.1-20-07 except for subdivision a, 12.1-20-11,
7 12.1-20-12.1, or 12.1-20-12.2, chapter 12.1-27.2, or subsection 2 of section
8 12.1-22-03.1, or an equivalent ordinance, or an attempt to commit these
9 offenses.
- 10 f. "Sexually dangerous individual" means an individual who meets the definition
11 specified in section 25-03.3-01.
- 12 g. "Temporarily domiciled" means staying or being physically present in this
13 state for more than thirty days in a calendar year or at a location for longer
14 than ten consecutive days, attending school for longer than ten days, or
15 maintaining employment in the jurisdiction for longer than ten days, regardless
16 of the state of the residence.
- 17 2. The court shall impose, in addition to any penalty provided by law, a requirement
18 that the individual register, within ten days of coming into a county in which the
19 individual resides or is temporarily domiciled. The individual must register with the
20 chief of police of the city or the sheriff of the county if the individual resides, attends
21 school, or is employed in an area other than a city. The court shall require an
22 individual to register by stating this requirement on the court records, if that
23 individual:
- 24 a. Has pled guilty or nolo contendere to, or been found guilty as a felonious
25 sexual offender or an attempted felonious sexual offender, including juvenile
26 delinquent adjudications of equivalent offenses unless the offense is listed in
27 subdivision c.
- 28 b. Has pled guilty or nolo contendere to, or been found guilty as a sexual
29 offender for, a misdemeanor or attempted misdemeanor. The court may
30 deviate from requiring an individual to register if the court first finds the
31 individual is no more than three years older than the victim if the victim is a

- 1 minor, the individual has not previously been convicted as a sexual offender
2 or of a crime against a child, and the individual did not exhibit mental
3 abnormality or predatory conduct in the commission of the offense.
- 4 c. Is a juvenile found delinquent under subdivision d of subsection 1 of section
5 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a
6 sexual offender for a misdemeanor. The court may deviate from requiring the
7 juvenile to register if the court first finds the juvenile has not previously been
8 convicted as a sexual offender or for a crime against a child, and the juvenile
9 did not exhibit mental abnormality or predatory conduct in the commission of
10 the offense.
- 11 d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against
12 a child or an attempted crime against a child, including juvenile delinquent
13 adjudications of equivalent offenses. Except if the offense is described in
14 section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not
15 the parent of the victim, the court may deviate from requiring an individual to
16 register if the court first finds the individual has not previously been convicted
17 as a sexual offender or for a crime against a child, and the individual did not
18 exhibit mental abnormality or predatory conduct in the commission of the
19 offense.
- 20 e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated
21 delinquent of any crime against another individual which is not otherwise
22 specified in this section if the court finds the individual demonstrated mental
23 abnormality or sexual predatory conduct in the commission of the offense and
24 therefore orders registration for the individual. If the court orders an individual
25 to register as an offender under this section, the individual shall comply with
26 all of the registration requirements in this chapter.
- 27 3. If a court has not ordered an individual to register in this state, an individual who
28 resides or is temporarily domiciled in this state shall register if the individual:
29 a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime
30 against a child described in section 12.1-29-02, or section 12.1-18-01 or

- 1 12.1-18-02 if the individual was not the parent of the victim, or as a sexual
2 offender;
- 3 b. Has pled guilty or nolo contendere to, or been found guilty of, an offense in a
4 court of this state for which registration is mandatory under this section or
5 another state or the federal government equivalent to those offenses set forth
6 in this section; or
- 7 c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime
8 against a child or as a sexual offender for which registration is mandatory
9 under this section if the conviction occurred after July 31, 1985.
- 10 4. In its consideration of mental abnormality or predatory conduct, the court shall
11 consider the age of the offender, the age of the victim, the difference in ages of the
12 victim and offender, the circumstances and motive of the crime, the relationship of
13 the victim and offender, and the mental state of the offender. The court may order
14 an offender to be evaluated by a qualified counselor, psychologist, or physician
15 before sentencing. Except as provided under subdivision e of subsection 2, the
16 court shall state on the record in open court its affirmative finding for not requiring
17 an offender to register.
- 18 5. When an individual is required to register under this section, the official in charge of
19 a facility or institution where the individual required to register is confined, or the
20 department, shall, before the discharge, parole, or release of that individual, inform
21 the individual of the duty to register pursuant to this section. The official or the
22 department shall require the individual to read and sign a form as required by the
23 attorney general, stating that the duty of the individual to register has been
24 explained to that individual. The official in charge of the place of confinement, or
25 the department, shall obtain the address where the individual expects to reside,
26 attend school, or work upon discharge, parole, or release and shall report the
27 address to the attorney general. The official in charge of the place of confinement,
28 or the department, shall give three copies of the form to the individual and shall
29 send three copies to the attorney general no later than forty-five days before the
30 scheduled release of that individual. The attorney general shall forward one copy
31 to the law enforcement agency having jurisdiction where the individual expects to

1 reside, attend school, or work upon discharge, parole, or release, one copy to the
2 prosecutor who prosecuted the individual, and one copy to the court in which the
3 individual was prosecuted. All forms must be transmitted and received by the law
4 enforcement agency, prosecutor, and court thirty days before the discharge,
5 parole, or release of the individual.

6 6. An individual who is required to register pursuant to this section who is released on
7 probation or discharged upon payment of a fine must, before the release or
8 discharge, be informed of the duty to register under this section by the court in
9 which that individual is convicted. The court shall require the individual to read and
10 sign a form as required by the attorney general, stating that the duty of the
11 individual to register under this section has been explained to that individual. The
12 court shall obtain the address where the individual expects to reside, attend school,
13 or work upon release or discharge and shall report the address to the attorney
14 general within three days. The court shall give one copy of the form to the
15 individual and shall send two copies to the attorney general. The attorney general
16 shall forward one copy to the appropriate law enforcement agency having
17 jurisdiction where the individual expects to reside, attend school, or work upon
18 discharge, parole, or release.

19 7. Registration consists of a written statement signed by the individual, giving the
20 information required by the attorney general, and the fingerprints and photograph
21 of the individual. An individual who is not required to provide a sample of blood
22 and other body fluids under section 31-13-03 or by the individual's state or court of
23 conviction or adjudication shall submit a sample of blood and other body fluids for
24 inclusion in a centralized data base of DNA identification records under section
25 31-13-05. The collection, submission, testing and analysis of, and records
26 produced from, samples of blood and other body fluids, are subject to chapter
27 31-13. Evidence of the DNA profile comparison is admissible in accordance with
28 section 31-13-02. A report of the DNA analysis certified by the state crime
29 laboratory is admissible in accordance with section 31-13-05. A district court shall
30 order an individual who refuses to submit a sample of blood or other body fluids for
31 registration purposes to show cause at a specified time and place why the

1 individual should not be required to submit the sample required under this
2 subsection. Within three days after registration, the registering law enforcement
3 agency shall forward the statement, fingerprints, and photograph to the attorney
4 general and shall submit the sample of the individual's blood and body fluids to the
5 state crime laboratory.

6 8. If an individual required to register pursuant to this section has a change in name,
7 school, or address, that individual shall inform in writing, at least ten days before
8 the change, the law enforcement agency with whom that individual last registered
9 of the individual's new name, school, residence address, or employment address.
10 The law enforcement agency, within three days after receipt of the information,
11 shall forward it to the attorney general. The attorney general shall forward the
12 appropriate registration data to the law enforcement agency having local
13 jurisdiction of the new place of residence, school, or employment. Upon a change
14 of address, the individual required to register shall also register within ten days at
15 the law enforcement agency having local jurisdiction of the new place of residence,
16 school, or employment. The individual registering under this section shall
17 periodically confirm the registration information ~~required under this subsection~~ in a
18 manner and at an interval determined by the attorney general. The attorney
19 general shall contract for and administer computerized sexual offender registration
20 kiosks at which an individual registering under this section may confirm registration
21 information. A law enforcement agency that has previously registered an offender
22 may omit the fingerprint portion of the registration if that agency has a set of
23 fingerprints on file for that individual and is personally familiar with and can visually
24 identify the offender. These provisions also apply in any other state that requires
25 registration.

26 ~~8.~~ 9. An individual required to register under this section shall comply with the
27 registration requirement for the longer of the following periods:
28 a. A period of ten years after the date of sentence or order deferring or
29 suspending sentence upon a plea or finding of guilt or after release from
30 incarceration, whichever is later; or
31 b. For the life of the individual, if that individual:

1 (1) On two or more occasions has pled guilty or nolo contendere to, or
2 been found guilty of a crime against a child or as a sexual offender, or
3 an equivalent offense of another state or the federal government. If all
4 qualifying offenses are misdemeanors, this lifetime provision does not
5 apply unless a qualifying offense was committed after August 1, 1999;

6 (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense
7 committed after August 1, 1999, which is described in subdivision a of
8 subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or
9 subdivision d of subsection 1 of section 12.1-20-03 if the person is an
10 adult and the victim is under age twelve, or section 12.1-18-01 if that
11 individual is an adult other than a parent of the victim, or an equivalent
12 offense of another state or the federal government; or

13 (3) Has been civilly committed as a sexually dangerous individual under
14 chapter 25-03.3, under the laws of another state, or by the federal
15 government.

16 9- 10. An individual required to register under this section who violates this section is
17 guilty of a class A misdemeanor. A court may not relieve an individual, other than
18 a juvenile, who violates this section from serving a term of at least ninety days in
19 jail and completing probation of one year. An individual who violates this section
20 who previously has pled guilty or been found guilty of violating this section is guilty
21 of a class C felony.

22 40- 11. When an individual is released on parole or probation and is required to register
23 pursuant to this section, but fails to do so within the time prescribed, the court shall
24 order the probation, or the parole board shall order the parole, of the individual
25 revoked.

26 44- 12. If an individual required to register pursuant to this section is temporarily sent
27 outside the facility or institution where that individual is confined under conviction or
28 sentence, the local law enforcement agency having jurisdiction over the place
29 where that individual is being sent must be notified within a reasonable time period
30 before that individual is released from the facility or institution. This subsection

1 does not apply to any individual temporarily released under guard from the facility
2 or institution in which that individual is confined.

3 ~~42.~~ 13. The attorney general, with the assistance of the department and the juvenile
4 courts, shall develop guidelines for the risk assessment of sexual offenders who
5 are required to register, with a low-risk, moderate-risk, or high-risk level being
6 assigned to each offender as follows:

7 a. The department shall conduct a risk assessment of sexual offenders who are
8 incarcerated in institutions under the control of the department and sexual
9 offenders who are on supervised probation. The department, in a timely
10 manner, shall provide the attorney general any information, including the
11 offender's level of risk and supporting documentation, concerning individuals
12 required to be registered under this section who are about to be released or
13 placed into the community.

14 b. The attorney general shall conduct a risk assessment of sexual offenders who
15 are not under the custody or supervision of the department. The attorney
16 general may adopt a law enforcement agency's previous assignment of risk
17 level for an individual if the assessment was conducted in a manner
18 substantially similar to the guidelines developed under this subsection.

19 c. The juvenile courts or the agency having legal custody of a juvenile shall
20 conduct a risk assessment of juvenile sex offenders who are required to
21 register under this section. The juvenile courts or the agency having legal
22 custody of a juvenile shall provide the attorney general any information,
23 including the offender's level of risk and supporting documentation,
24 concerning juveniles required to register and who are about to be released or
25 placed into the community.

26 d. The agency responsible for conducting the risk assessment shall notify the
27 offender as to the level of risk assigned. An offender may request a review of
28 that determination with the appropriate agency and may present any
29 information that the offender believes may lower the assigned risk level.

30 ~~43.~~ 14. Relevant and necessary conviction and registration information must be disclosed
31 to the public by a law enforcement agency if the individual is a moderate or high

1 risk and the agency determines that disclosure of the conviction and registration
2 information is necessary for public protection. The attorney general shall develop
3 guidelines for public disclosure of offender registration information. Public
4 disclosure may include internet access if the offender:

- 5 a. Is required to register for a lifetime under subsection ~~8~~ 9;
- 6 b. Has been determined to be a high risk to the public by the department, the
7 attorney general, or the courts, according to guidelines developed by those
8 agencies; or
- 9 c. Has been determined to be a high risk to the public by an agency of another
10 state or the federal government.

11 If the offender has been determined to be a moderate risk, public disclosure must
12 include, at a minimum, notification to the victim of the offense and to any agency,
13 civic organization, or group of persons who have characteristics similar to those of
14 a victim of the offender. Upon request, law enforcement agencies may release
15 conviction and registration information regarding low-risk, moderate-risk, or
16 high-risk offenders.

17 ~~44.~~ 15. A state officer, law enforcement agency, or school district or any appointee, officer,
18 or employee of those entities is not subject to civil or criminal liability for making
19 risk determinations or for disclosing or for failing to disclose information as
20 permitted by this section.

21 ~~45.~~ 16. If a juvenile is adjudicated delinquent and required or ordered to register as a
22 sexual offender or as an offender against a child under this section, the juvenile
23 shall comply with the registration requirements in this section. Notwithstanding any
24 other provision of law, a law enforcement agency shall register a juvenile offender
25 in the same manner as adult offenders and may release any relevant and
26 necessary information on file to other law enforcement agencies, the department of
27 human services, the superintendent or principal of the school the juvenile attends,
28 or the public if disclosure is necessary to protect public health or safety. The
29 school administration may notify others in similar positions if the juvenile transfers
30 to another learning institution in or outside the state.

1 ~~16.~~ 17. If an individual has been required to register as a sexual offender or an offender
2 against a child under section 12.1-32-15 or 27-20-52.1 before August 1, 1999, the
3 individual may petition the court to be removed from the offender list if registration
4 is no longer mandatory for that individual. In considering the petition, the court
5 shall comply with the requirements of this section.

6 **SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the
7 general fund in the state treasury, not otherwise appropriated, the sum of \$1,046,080, or so
8 much of the sum as may be necessary, to the attorney general for ten computerized sexual
9 offender registration sites, for the biennium beginning July 1, 2007, and ending June 30, 2009.