

## **OFFENDERS AGAINST CHILDREN AND SEX OFFENDER REGISTRATION - BACKGROUND MEMORANDUM**

House Concurrent Resolution No. 3012 (2015) directs the Legislative Management to study the registration requirements for offenders against children and sex offenders under North Dakota Century Code Section 12.1-32-15.

### **OFFENDERS AGAINST CHILDREN AND SEX OFFENDERS REGISTRATION REQUIREMENTS UNDER SECTION 12.1-32-15**

Section 12.1-32-15 specifically addresses the registration requirements for offenders against children and sex offenders. Section 12.1-32-15, which became law in 1991, has been amended numerous times since being enacted. Section 12.1-32-15 is the longest criminal statute in North Dakota. Prior to the 64<sup>th</sup> Legislative Assembly, state prosecutors recommended suggestions to amend the law to address inconsistencies such as the time frame different offenders have to register as well as the issue created by addressing both sex offenders and child offenders in the same statute. House Concurrent Resolution No. 3012 (2015) directs a study of the entire section in order to address the inconsistencies and provide recommendations to the 65<sup>th</sup> Legislative Assembly.

Subsection 1 defines terms used in the section. A "sexual offender" is defined as a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, under at least one of the following sections:

- Section 12.1-20-03. Gross sexual imposition. 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 that person compels the victim to submit by force or threat of death; that person has substantially impaired the victim's power by administering a controlled substance or intoxicant; that person has reasonable cause to believe the victim is unaware a sexual act is being committed upon him or her; the victim is less than fifteen years old; or that person knows or has reasonable cause to believe that the victim suffers from a mental disease rendering him or her incapable of understanding the nature of his or her conduct;
- Section 12.1-20-03.1. Continuous sexual abuse of a child. An individual in adult court is guilty of an offense if the individual engages in any combination of three or more sexual acts or sexual contacts with a minor under the age of fifteen years during a period of three or more months;
- Section 12.1-20-04. Sexual imposition. A person who engages in a sexual act or sexual contact with another, or who causes another to engage in a sexual act or sexual contact is guilty if the actor compels the other person by threat or coercion or engages in the act or contact as part of an induction, initiation, hazing, ceremony, pledge, or qualification to become a member of a criminal gang;
- Section 12.1-20-05. Corruption or solicitation of minors. A person is guilty under this section if the adult person engages in, solicits with intent to engage in, or causes another to engage in sexual contact with a minor fifteen years of age or older, a minor under fifteen years of age, or when the adult is at least twenty-two years of age and the victim is a minor fifteen years of age or older;
- Section 12.1-20-05.1. Luring minors by computer or other electronic means. An adult is guilty of luring minors by computer or other electronic means when the adult knows the character and content of the communication implicitly or explicitly discusses or depicts actual or simulated nudity, sexual acts, sexual contact, sadomasochistic abuse, or other sexual performances;
- Section 12.1-20-06. Sexual abuse of wards. A person who engages in a sexual act with another person is guilty if the other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over the victim;
- Section 12.1-20-06.1. Sexual exploitation by therapist. A person is guilty under this section if the person is or holds oneself out to be a therapist and who intentionally has sexual contact with a patient or client during any treatment, consultation, interview, or examination;
- Section 12.1-20-07. Sexual assault. 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 that person knows or has reason to believe the other person suffers from a mental disease rendering the person incapable of understanding the nature of the conduct, that person has substantially impaired the victim's power to control the victim's conduct, the person is in official custody and the actor has supervisory authority, the other person is a minor, fifteen years of age or older and the actor is an adult, or the person is a minor and the actor is the other person's parent or guardian;

- Section 12.1-20-11. Incest. A person is guilty under this section if the person intermarries, cohabits, or engages in a sexual act with another person related to him within a degree of consanguinity;
- Section 12.1-20-12.1. Indecent exposure. A person, with intent to arouse, appeal to, or gratify that person's lust, passions, or sexual desires, is guilty of an offense if that person masturbates in a public place or in the presence of a minor or exposes one's penis, vulva, or anus in a public place or to a minor in a public or private place;
- Section 12.1-20-12.2. Surreptitious intrusion. An individual, with the intent to arouse, appeal to, or gratify that individual's lust, passions, or sexual desires, is guilty if that individual enters upon another's property and surreptitiously gazes, stares, or peeps into another person's house or place where a reasonable individual would have an expectation of privacy or installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from another person's house or place where a reasonable person would have an expectation of privacy;
- Chapter 12.1-27.2 includes sexual performances by children;
- Section 12.1-41-02(1)(b). Trafficking an individual. A person is guilty of this offense if a person recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of sexual servitude;
- Section 12.1-41-04. Sexual servitude. A person is guilty under this section if the person knowingly maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity or uses coercion or deception to compel an adult to engage in commercial sexual assault;
- Section 12.1-41-05. Patronizing a victim of sexual servitude. A person is guilty under this section if the person knowingly gives, agrees to give, or offers to give anything of value so that an individual may engage in commercial sexual activity with another individual and the person knows the other individual is a victim of sexual servitude;
- Section 12.1-41-06. Patronizing a minor for commercial sexual activity. A person is guilty under this section if the person commits the offense of patronizing a minor for commercial sexual activity if the person gives, agrees to give, or offers to give anything of value to a minor or another person so that the individual may engage in commercial sexual activity with a minor; or
- An equivalent offense from another court in the United States, a tribal court, or court of another country, or an attempt or conspiracy to commit these offenses.

Under subsection 2, an individual must register with the chief of police of the city or the sheriff of the county if the individual resides, attends school, or is employed in an area other than a city after a court imposes a requirement that the individual register within three days of coming into a county or becoming temporarily domiciled if:

1. The individual has pled guilty or nolo contendere, or been found guilty as a felonious sex offender or an attempted felonious sex offender, a misdemeanor or attempted misdemeanor, is a juvenile found delinquent under Section 12.1-20-03(1)(d), Section 12.1-20-03(2)(a), or as a sex offender for a misdemeanor; or
2. The individual has pled guilty or nolo contendere, been found guilty of a crime against a child or an attempted crime against a child, including juvenile delinquent adjudications of equivalent offenses, or has been adjudicated delinquent of any crime against another individual which is not otherwise specified in Section 12.1-32-15, if the court determines that registration is warranted by the nature of the crime and therefore orders registration for the individual.

Under subsection 3, an individual who has not been ordered to register by a court in this state but who resides, is homeless, or is temporarily domiciled in this state is required to register if the individual is incarcerated or is on probation or parole after July 31, 1995, for a crime against a child, has pled guilty or nolo contendere, or been adjudicated for or found guilty of an offense which requires registration under North Dakota law, federal law, tribal law, or court of another country equivalent to the offenses in Section 12.1-32-15, or has pled guilty or nolo contendere, or has been found guilty of a crime against a child or as a sex offender requiring mandatory registration under this section if the conviction occurred after July 31, 1985.

Subsection 4 provides that in determining whether an individual has a mental abnormality or has engaged in predatory conduct, a court is required to consider the age of the offender, the age of the victim, the difference in ages of the victim and offender, the circumstances and motive of the crime, the relationship of the victim and

offender, and the mental state of the offender. The court may order an offender to be evaluated by a qualified counselor, psychologist, or physician before sentencing.

Subsection 5 requires the official in charge of a facility or institution where an individual who is required to register under Section 12.1-32-15 is confined to inform the individual of the duty to register before the discharge, parole, or release of the individual. The official or department must require the individual to read and sign a form stating that the duty of the individual to register has been explained to that individual. The official or department in charge must provide three copies to the individual and three copies to the Attorney General 45 days prior to the scheduled release of that individual. The Attorney General must forward the copies to the local law enforcement agency having jurisdiction where the individual expects to reside, the prosecutor who prosecuted the individual, and the court in which the individual was prosecuted 30 days prior to the release of the individual.

Subsection 6 requires an individual who is released on parole or probation upon payment of a fine to be informed of the duty to register under Section 12.1-35-15 by the court in which that individual was convicted. The court must require the individual to read and sign a form stating that the duty of the individual to register has been explained to that individual. The court must obtain the address where the individual expects to reside, attend school, or work upon release and report the address to the Attorney General within three days. The Attorney General is required to forward one copy to the appropriate law enforcement agency.

Subsection 7 provides that registration consists of a written statement signed by the individual, giving the information required by the Attorney General, and the biometric data and photograph of the individual. In addition, the individual is required to submit a sample of blood and other bodily fluids for inclusion in a centralized database of DNA identification records if the individual is not already required to do so under Section 31-13-03. Section 31-13-03 requires an individual 18 years of age or older who is arrested or summoned to appear for the commission of a felony shall provide, at the time of arrest or appearance upon booking into a correctional facility, a sample of blood or other body fluids for DNA law enforcement identification purposes. Within three days of registration, the registering law enforcement agency must forward the statement, biometric data, and photograph to the Attorney General and submit the blood and fluid sample to the State Crime Laboratory. If an individual who is required to register has a change in vehicle or computer online identity, the individual must inform, in writing, the law enforcement agency that the individual is registered with, within three days after the change. If an individual who is required to register has a change in name, school, or residence or employment address, the individual must inform the law enforcement agency, in writing, that the individual is registered with at least 10 days before the change. Upon a change in address, the individual required to register also must register within three days of the change at the law enforcement agency with jurisdiction of the new place of residence, school, or employment.

Subsection 8 requires an individual who is required to register to comply with the registration requirements for the longer of the following periods:

- Fifteen years after the date of sentence upon a plea or finding of guilt or after release from incarceration, whichever is later;
- A period of 25 years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later, if the offender is assigned a moderate risk by the Attorney General; or
- For the life of the individual if the individual:
  - On two or more occasions has plead guilty or nolo contendere to, or been found guilty of a crime against a child or as a sex offender, unless a qualifying offense was committed after August 1, 1999;
  - Pleads guilty or nolo contendere of an offense committed after August 1, 1999, if the individual is an adult and the victim is under age 12; or
  - If the individual is assigned as high risk by the Attorney General.

Subsection 9 provides that an individual required to register who violates the registration requirements is guilty of a Class C felony.

Subsection 10 provides that when an individual is released on parole or probation and is required to register but fails to do so within the time prescribed, the parole or probation must be revoked.

Subsection 11 requires the local law enforcement agency having jurisdiction over the place where an individual required to register is being temporarily sent outside of the facility or institution where that individual is

confined under conviction or sentence be notified within a reasonable time period before that individual is released from the facility or institution.

Subsection 12 requires the Attorney General, with the assistance of the Department of Corrections and Rehabilitation and the juvenile courts, to develop guidelines for the risk assessment of sex offenders who are required to register. The Department of Corrections and Rehabilitation is required to conduct a risk assessment of sex offenders who are incarcerated in institutions under the control of the department and sex offenders who are on supervised probation. The Attorney General is required to conduct risk assessments of sex offenders who are not under the custody or supervision of the Department of Corrections and Rehabilitation. The juvenile court or the agency having legal custody of a juvenile is required to conduct a risk assessment of juvenile sex offenders who are required to register. The Attorney General is required to notify the offender of the risk level assigned to that offender and the offender may request a review of that determination at which time the offender may present any information that the offender believes may lower the assigned risk level.

Subsection 13 requires that relevant information be disclosed to the public by a law enforcement agency if an individual is a moderate or high-risk offender and the agency determines that disclosure of the conviction and registration information is necessary for public protection. If the offender has been determined to be a moderate risk, public disclosure must at least include notification of the offense to the victim registered under Chapter 12.1-34 and to any agency, civic organization, or group of persons who have characteristics similar to those of a victim of the offender.

Subsection 14 releases a state officer, law enforcement agency, or public school district, or any appointee, employee, or officer of those entities from civil or criminal liability for making risk determinations or for disclosing or failing to disclose information as permitted by Section 12.1-32-15.

Subsection 15 requires a juvenile sex offender to comply with the registration requirements of Section 12.1-32-15 and local law enforcement agencies to register and release any information in the same manner as adult offenders.

Subsection 16 provides that if an individual has been required to register as a sex offender or an offender against a child under Section 12.1-32-15 or 27-20-52.1 before August 1, 1999, the individual may petition the court to be removed from the offender list if the registration is no longer mandatory for that individual.

Subsection 17 prevents moderate or high-risk level offenders from using state parks as a residence or residential address to comply with the registration requirements of Section 12.1-32-15.

### **SUGGESTED STUDY APPROACH**

The committee may consider including a wide variety of stakeholders including judges, local officials, prosecutors and defense attorneys, victims' advocates, corrections staff, and law enforcement agencies in the discussion relating to the registration requirements for offenders against children and sex offenders. The committee also may consider working closely with the Attorney General to analyze the current law to determine whether changes to the registration requirements are advisable.