

**SECOND ENGROSSMENT
with House Amendments**

Fifty-sixth
Legislative Assembly
of North Dakota

REENGROSSED SENATE BILL NO. 2299

Introduced by

Senators W. Stenehjem, Cook, Tomac

Representatives R. Kelsch, Porter

1 A BILL for an Act to amend and reenact section 12.1-32-15 of the North Dakota Century Code,
2 relating to the registration of offenders against children and sexual offenders; and to repeal
3 section 27-20-52.1 of the North Dakota Century Code, relating to the law enforcement data
4 base.

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

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

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

10 1. As used in this section:

11 a. "A crime against a child" means a violation of chapter 12.1-16, 12.1-17,
12 12.1-18, or 12.1-29, or an equivalent ordinance, in which the victim is a minor
13 or is otherwise of the age required for the act to be a crime or an attempt to
14 commit these offenses.

15 b. "Department" means the department of corrections and rehabilitation.

16 c. "Mental abnormality" means a congenital or acquired condition of an
17 individual that affects the emotional or volitional capacity of the individual in a
18 manner that predisposes that individual to the commission of criminal sexual
19 acts to a degree that makes the individual a menace to the health and safety
20 of other individuals.

21 d. "Predatory" means an act directed at a stranger, or at an individual with whom
22 a relationship has been established or promoted for the primary purpose of
23 victimization.

- 1 e. ~~"Qualified board" means two or more experts in the field of behavior and~~
2 ~~treatment of sexual offenders as determined by the department of human~~
3 ~~services.~~
- 4 f. "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 12.1-20-06, 12.1-20-07, 12.1-20-11, chapter 12.1-27.2, or subsection 2 of
7 section 12.1-22-03.1, or an equivalent ordinance, or an attempt to commit
8 these offenses.
- 9 f. "Sexually dangerous individual" means an individual who meets the definition
10 specified in section 25-03.3-01.
- 11 g. ~~"Sexually violent predator" means a sexual offender who suffers from a~~
12 ~~mental abnormality or personality disorder that makes that offender likely to~~
13 ~~engage in predatory sexually violent offenses~~ "Temporarily domiciled" means
14 staying or being physically present at a location for longer than ten days,
15 attending school for longer than ten days, or maintaining employment in the
16 jurisdiction for longer than ten days, regardless of the state of the residence.
- 17 2. ~~After a person has pled guilty or been found guilty as a sexual offender, the court~~
18 ~~shall determine upon the motion of the state's attorney and after receiving a report~~
19 ~~from the qualified board if that person is a sexually violent predator. The court may~~
20 ~~order the defendant to undergo an evaluation to enable the qualified board to~~
21 ~~make an appropriate determination.~~
- 22 3. ~~After a person has pled guilty to or been found guilty of a crime against a child or~~
23 ~~an attempted crime against a child, or after a person has pled guilty or been found~~
24 ~~guilty as a sexual offender, the~~ The court shall impose, in addition to any penalty
25 provided by law, a requirement that the ~~person~~ individual register, within ten days
26 of coming into a county in which the ~~person~~ individual resides or is temporarily
27 domiciled. The individual must register with the chief of police of the city or the
28 sheriff of the county if the ~~person~~ individual resides, attends school, or is employed
29 in an area other than a city. The court shall require a ~~person~~ an individual to
30 register by stating this requirement on the court records. ~~A person must also~~
31 register, if that ~~person~~ individual:

- 1 a. Has pled guilty or nolo contendere to, or been found guilty as a felonious
2 sexual offender or an attempted felonious sexual offender, including juvenile
3 delinquent adjudications of equivalent offenses unless the offense is listed in
4 subdivision c.
- 5 b. Has pled guilty or nolo contendere to, or been found guilty as a sexual
6 offender for a misdemeanor or attempted misdemeanor. The court may
7 deviate from requiring an individual to register if the court first finds the
8 individual is no more than three years older than the victim if the victim is a
9 minor, the individual has not previously been convicted as a sexual offender
10 or of a felony crime against a child, and the individual did not exhibit mental
11 abnormality or predatory conduct in the commission of the offense.
- 12 c. Is a juvenile found delinquent under subdivision d of subsection 1 of section
13 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a
14 sexual offender for a misdemeanor. The court may deviate from requiring the
15 juvenile to register if the court first finds the juvenile has not previously been
16 convicted as a sexual offender or for a felony crime against a child, and the
17 juvenile did not exhibit mental abnormality or predatory conduct in the
18 commission of the offense.
- 19 d. Has pled guilty or nolo contendere to, or been found guilty of, a felony crime
20 against a child or an attempted felony crime against a child, including juvenile
21 delinquent adjudications of equivalent offenses. Except if the offense is
22 described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the
23 person is not the parent of the victim, the court may deviate from requiring an
24 individual to register if the court first finds the individual has not previously
25 been convicted as a sexual offender or for a felony crime against a child, and
26 the individual did not exhibit mental abnormality or predatory conduct in the
27 commission of the offense.
- 28 e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated
29 delinquent of any crime against another individual which is not otherwise
30 specified in this section if the court finds the individual demonstrated mental
31 abnormality or sexual predatory conduct in the commission of the offense and

1 therefore orders registration for the individual. If the court orders an individual
2 to register as an offender under this section, the individual shall comply with
3 all of the registration requirements in this chapter.

4 3. If a court has not ordered an individual to register in this state, the individual shall
5 register if the individual:

6 a. Is incarcerated or is on probation or parole on August 1, 1995, for a crime
7 against a child described in section 12.1-29-02, or section 12.1-18-01 or
8 12.1-18-02 if the individual was not the parent of the victim, or as a sexual
9 offender;

10 b. Has pled guilty or nolo contendere to, or been found guilty of, an offense in a
11 court of this state for which registration is mandatory under this section or
12 another state or the federal government equivalent to those offenses set forth
13 in subdivisions a and c of subsection 4 this section if the individual was
14 ordered by a court or required to register as a sexual offender, or for a crime
15 against a child in another state or by the federal government; or

16 c. Has pled guilty or nolo contendere to, or has been found guilty of, a felonious
17 crime against a child or as a sexual offender for which registration is
18 mandatory under this section if the conviction occurred within ten years prior
19 to August 1, 1995.

20 4. In its consideration of mental abnormality or predatory conduct, the court shall
21 consider the age of the offender, the age of the victim, the difference in ages of the
22 victim and offender, the circumstances and motive of the crime, the relationship of
23 the victim and offender, and the mental state of the offender. The court may order
24 an offender to be evaluated by a qualified counselor, psychologist, or physician
25 before sentencing. Except as provided under subdivision e of subsection 2, the
26 court shall state on the record in open court its affirmative finding for not requiring
27 an offender to register.

28 5. When a ~~person~~ an individual is required to register under this section, the official in
29 charge of a facility or institution where the ~~person~~ individual required to register is
30 confined, or the department, shall, before the discharge, parole, or release of that
31 ~~person~~ individual, inform the ~~person~~ individual of the duty to register pursuant to

1 this section. The official or the department shall require the ~~person~~ individual to
2 read and sign a form as required by the attorney general, stating that the duty of
3 the ~~person~~ individual to register has been explained to that ~~person~~ individual. The
4 official in charge of the place of confinement, or the department, shall obtain the
5 address where the ~~person~~ individual expects to reside, attend school, or work
6 upon discharge, parole, or release and shall report the address to the attorney
7 general. The official in charge of the place of confinement, or the department,
8 shall give ~~one copy~~ three copies of the form to the ~~person~~ individual and shall
9 send ~~four~~ three copies to the attorney general no later than forty-five days before
10 the scheduled release of that ~~person~~ individual. The attorney general shall forward
11 one copy to the law enforcement agency having jurisdiction where the ~~person~~
12 individual expects to reside, attend school, or work upon discharge, parole, or
13 release, one copy to the prosecutor who prosecuted the ~~person~~ individual, and one
14 copy to the court in which the ~~person~~ individual was prosecuted. All forms must be
15 transmitted and received by the law enforcement agency, prosecutor, and court
16 thirty days before the discharge, parole, or release of the ~~person~~ individual.

17 5- 6. ~~A person~~ An individual who is required to register pursuant to this section who is
18 released on probation or discharged upon payment of a fine must, before the
19 release or discharge, be informed of ~~that person's~~ the duty to register under this
20 section by the court in which that ~~person~~ individual is convicted. The court shall
21 require the ~~person~~ individual to read and sign a form as required by the attorney
22 general, stating that the duty of the ~~person~~ individual to register under this section
23 has been explained to that ~~person~~ individual. The court shall obtain the address
24 where the ~~person~~ individual expects to reside, attend school, or work upon release
25 or discharge and shall report the address to the attorney general within three days.
26 The court shall give one copy of the form to the ~~person~~ individual and shall send
27 two copies to the attorney general. The attorney general shall forward one copy to
28 the appropriate law enforcement agency having jurisdiction where the ~~person~~
29 individual expects to reside, attend school, or work upon discharge, parole, or
30 release.

- 1 ~~6-~~ 7. Registration consists of a written statement signed by the ~~person~~ individual, giving
2 the information required by the attorney general, and the fingerprints and
3 photograph of the ~~person~~ individual. Within three days after registration, the
4 registering law enforcement agency shall forward the statement, fingerprints, and
5 photograph to the attorney general. If ~~a person~~ an individual required to register
6 pursuant to this section has a change in name, school, or address, that ~~person~~
7 individual shall inform in writing, within ten days, the law enforcement agency with
8 whom that ~~person~~ individual last registered of the ~~person's~~ individual's new name,
9 school, or address, or employment address if the individual is working in this state
10 but not residing in this state. The law enforcement agency, within three days after
11 receipt of the information, shall forward it to the attorney general. The attorney
12 general shall forward the appropriate registration data to the law enforcement
13 agency having local jurisdiction of the new place of residence, school, or
14 employment. Upon a change of address, the ~~person~~ individual required to register
15 shall also register within ten days at the law enforcement agency having local
16 jurisdiction of the new place of residence, school, or employment. A law
17 enforcement agency that has previously registered an offender may omit the
18 fingerprint portion of the registration if that agency has a set of fingerprints on file
19 for that individual and is personally familiar with and can visually identify the
20 offender. These provisions also apply in any other state that requires registration.
- 21 ~~7-~~ 8. ~~A person~~ An individual required to register under this section shall comply with the
22 registration requirement for the longer of the following periods:
- 23 a. A period of ten years after the date of sentence or order deferring or
24 suspending sentence upon a plea or finding of guilt or after release from
25 incarceration, whichever is later; or
- 26 b. ~~Until a court determination is made that the person no longer is a sexually~~
27 ~~violent predator. The sexually violent predator may petition no more than~~
28 ~~once a year for a court determination on the status of being a sexually violent~~
29 ~~predator. The court must receive a report from the qualified board before~~
30 ~~making the determination~~ 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, an offense in which that individual was ordered by
3 a court or otherwise required to register as a felonious sexual offender
4 or felonious offender against a child under this section;
- 5 (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense
6 committed after the effective date of this Act which is described in
7 subdivision a of subsection 1 of section 12.1-20-03, subdivision d of
8 subsection 1 of section 12.1-20-03 if the person is an adult and the
9 victim is under age twelve, or section 12.1-18-01 if that individual is an
10 adult other than a parent of the victim; or
- 11 (3) Has been civilly committed as a sexually dangerous individual under
12 chapter 25-03.3, under the laws of another state, or by the federal
13 government.

14 8- 9. ~~A person~~ An individual required to register under this section who violates this
15 section is guilty of a class A misdemeanor. A court may not relieve ~~a person~~ an
16 individual, other than a juvenile, who willfully violates this section from serving a
17 term of at least ninety days in jail and completing probation of one year. ~~A person~~
18 An individual who violates this section who previously has pled guilty or been
19 found guilty of violating this section is guilty of a class C felony.

20 9- 10. When ~~a person~~ an individual is released on parole or probation and is required to
21 register pursuant to this section, but fails to do so within the time prescribed, the
22 court shall order the probation, or the parole board shall order the parole, of the
23 ~~person~~ individual revoked. The statements, photographs, and fingerprints required
24 by this section are open to inspection by the public.

25 10- 11. If ~~a person~~ an individual required to register pursuant to this section is temporarily
26 sent outside the facility or institution where that ~~person~~ individual is confined under
27 conviction or sentence, the local law enforcement agency having jurisdiction over
28 the place where that ~~person~~ individual is being sent must be notified within a
29 reasonable time period before that ~~person~~ individual is released from the facility or
30 institution. This subsection does not apply to any ~~person~~ individual temporarily

1 released under guard from the facility or institution in which that ~~person~~ individual
2 is confined.

3 ~~44.~~ 12. Relevant and necessary registration information ~~shall~~ must be disclosed to the
4 public by a law enforcement agency if the agency determines that the individual
5 registered under this section is a public risk and disclosure of the registration
6 information is necessary for public protection. The department, in a timely manner,
7 shall provide law enforcement agencies any information the department
8 determines is relevant concerning individuals required to be registered under this
9 section who are about to be released or placed into the community. A state officer,
10 law enforcement agency, or school district, its officials, and its employees and an
11 appointee, officer, or employee of those entities are not subject to civil or criminal
12 liability for making risk determinations or for disclosing or for failing to disclose
13 information as permitted by this section. Nonregistration information concerning
14 an offender required to register under this section consisting of the name of the
15 offender, the last known address of the offender, the offense or offenses as
16 defined in subsection 1 to which the offender pled guilty or of which the offender
17 was found guilty, the date of the judgment or order imposing a sentence or
18 probation and the court entering the judgment or order, the sentence or probation
19 imposed upon the offender, and any disposition, if known, of a sentence or
20 probation may be disclosed to the public. The attorney general shall compile
21 nonregistration information concerning offenders required to register under this
22 section from criminal history record information maintained pursuant to chapter
23 12-60 or from an agency or department of another state or the federal government
24 and shall provide the information upon request at no cost.

25 13. If a juvenile is adjudicated delinquent and required or ordered to register as a
26 sexual offender or as an offender against a child under this section. the juvenile
27 shall comply with the registration requirements in this section. Notwithstanding
28 any other provision of law, a law enforcement agency shall register a juvenile
29 offender in the same manner as adult offenders and may release any relevant and
30 necessary information on file to other law enforcement agencies, the department of
31 human services, the superintendent or principal of the school the juvenile attends,

1 or the public if disclosure is necessary to protect public health or safety. The
2 school administration may notify others in similar positions if the juvenile transfers
3 to another learning institution in or outside the state.

4 14. If an individual has been required to register as a sexual offender or an offender
5 against a child under section 12.1-32-15 or 27-20-52.1 before the effective date of
6 this Act, the individual may petition the court to be removed from the offender list if
7 registration is no longer mandatory for that individual. In considering the petition,
8 the court shall comply with the requirements of this section.

9 **SECTION 2. REPEAL.** Section 27-20-52.1 of the 1997 Supplement to the North
10 Dakota Century Code is repealed.