

Fifty-fifth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1048

Introduced by

Legislative Council

(Criminal Justice Committee)

(Representatives Brown, Bernstein, Kliniske, Mahoney)  
(Senators W. Stenehjem, Nalewaja)

1 A BILL for an Act to create and enact a new subsection to section 50-06-05.1 of the North  
2 Dakota Century Code, relating to the powers and duties of the department of human services;  
3 and to amend and reenact section 12.1-32-15 of the North Dakota Century Code, relating to  
4 registration of sexually violent predators.

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

6 **SECTION 1. AMENDMENT.** Section 12.1-32-15 of the 1995 Supplement to the North  
7 Dakota Century Code is 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 in which the victim is a minor or is otherwise of the age  
13 required for the act to be a crime or an attempt to commit these offenses.
- 14 b. "Department" means the department of corrections and rehabilitation.
- 15 c. "Mental abnormality" means a congenital or acquired condition of an  
16 individual that affects the emotional or volitional capacity of the individual in a  
17 manner that predisposes that individual to the commission of criminal sexual  
18 acts to a degree that makes the individual a menace to the health and safety  
19 of other individuals.
- 20 d. "Predatory" means an act directed at a stranger, or at an individual with whom  
21 a relationship has been established or promoted for the primary purpose of  
22 victimization.

e. "Qualified board" means two or more experts in the field of behavior and treatment of sexual offenders as determined by the department of human services.

f. "Sexual offender" means a person who has pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, chapter 12.1-27.2, or an attempt to commit these offenses.

g. "Sexually violent predator" means a sexual offender who suffers from a mental abnormality or personality disorder that makes that offender likely to engage in predatory sexually violent offenses.

2. After a person has pled guilty or been found guilty as a sexual offender, the court shall determine upon the motion of the state's attorney and after receiving a report from the qualified board if that person is a sexually violent predator. The court may order the defendant to undergo an evaluation to enable the qualified board to make an appropriate determination.

3. After a person has pled guilty to or been found guilty of a crime against a child or an attempted crime against a child, or after a person has pled guilty or been found guilty as a sexual offender, the court shall impose, in addition to any penalty provided by law, a requirement that the person register, within ten days of coming into a county in which the person resides or is temporarily domiciled, with the chief of police of the city or the sheriff of the county if the person resides in an area other than a city. The court shall require a person to register by stating this requirement on the court records. A person must also register if that person:

a. Is incarcerated or is on probation or parole on August 1, 1995, for a crime against a child or as a sexual offender;

b. Has pled guilty or nolo contendere to, or been found guilty of, an offense in a court of another state or the federal government equivalent to those offenses set forth in subdivisions a and c of subsection 1; or

c. Has pled guilty to or been found guilty of a crime against a child or as a sexual offender within ten years prior to August 1, 1995.

- 1       ~~3.~~ 4. When a person is required to register under this section, the official in charge of a  
2                   facility or institution where the person required to register is confined, or the  
3                   department, shall, before the discharge, parole, or release of that person, inform  
4                   the person of the duty to register pursuant to this section. The official or the  
5                   department shall require the person to read and sign a form as required by the  
6                   attorney general, stating that the duty of the person to register has been explained  
7                   to that person. The official in charge of the place of confinement, or the  
8                   department, shall obtain the address where the person expects to reside upon  
9                   discharge, parole, or release and shall report the address to the attorney general.  
10                  The official in charge of the place of confinement, or the department, shall give one  
11                  copy of the form to the person and shall send four copies to the attorney general  
12                  no later than forty-five days before the scheduled release of that person. The  
13                  attorney general shall forward one copy to the law enforcement agency having  
14                  jurisdiction where the person expects to reside upon discharge, parole, or release,  
15                  one copy to the prosecutor who prosecuted the person, and one copy to the court  
16                  in which the person was prosecuted. All forms must be transmitted and received  
17                  by the law enforcement agency, prosecutor, and court thirty days before the  
18                  discharge, parole, or release of the person.
- 19       ~~4.~~ 5. A person who is required to register pursuant to this section who is released on  
20                   probation or discharged upon payment of a fine must, before the release or  
21                   discharge, be informed of that person's duty to register under this section by the  
22                   court in which that person is convicted. The court shall require the person to read  
23                   and sign a form as required by the attorney general, stating that the duty of the  
24                   person to register under this section has been explained to that person. The court  
25                   shall obtain the address where the person expects to reside upon release or  
26                   discharge and shall report the address to the attorney general within three days.  
27                   The court shall give one copy of the form to the person and shall send two copies  
28                   to the attorney general. The attorney general shall forward one copy to the  
29                   appropriate law enforcement agency having jurisdiction where the person expects  
30                   to reside upon discharge, parole, or release.

- 1       ~~5-~~ 6. Registration consists of a written statement signed by the person, giving the  
2 information required by the attorney general, and the fingerprints and photograph  
3 of the person. Within three days after registration, the registering law enforcement  
4 agency shall forward the statement, fingerprints, and photograph to the attorney  
5 general. If a person required to register pursuant to this section has a change in  
6 name or address, that person shall inform in writing, within ten days, the law  
7 enforcement agency with whom that person last registered of the person's new  
8 name or address. The law enforcement agency, within three days after receipt of  
9 the information, shall forward it to the attorney general. The attorney general shall  
10 forward the appropriate registration data to the law enforcement agency having  
11 local jurisdiction of the new place of residence. Upon a change of address, the  
12 person required to register shall also register within ten days at the law  
13 enforcement agency having local jurisdiction of the new place of residence. A law  
14 enforcement agency that has previously registered an offender may omit the  
15 fingerprint portion of the registration if that agency has a set of fingerprints on file  
16 for that individual and is personally familiar with and can visually identify the  
17 offender. These provisions also apply in any other state that requires registration.
- 18       ~~6-~~ 7. A person required to register under this section shall comply with the registration  
19 requirement for ~~a~~ the longer of the following periods:
- 20           a. A period of ten years after the date of sentence or order deferring or  
21           suspending sentence upon a plea or finding of guilt or after release from  
22           incarceration, whichever is later; or
- 23           b. Until a court determination is made that the person no longer is a sexually  
24           violent predator. The sexually violent predator may petition no more than  
25           once a year for a court determination on the status of being a sexually violent  
26           predator. The court must receive a report from the qualified board before  
27           making the determination.
- 28       ~~7-~~ 8. A person required to register under this section who violates this section is guilty of  
29 a class A misdemeanor. A court may not relieve a person who willfully violates this  
30 section from serving a term of at least ninety days in jail and completing probation

of one year. A person who violates this section who previously has pled guilty or been found guilty of violating this section is guilty of a class C felony.

~~8-~~ 9. When a person is released on parole or probation and is required to register pursuant to this section, but fails to do so within the time prescribed, the court shall order the probation, or the parole board shall order the parole, of the person revoked. The statements, photographs, and fingerprints required by this section are open to inspection by the public.

~~9-~~ 10. If a person required to register pursuant to this section is temporarily sent outside the facility or institution where that person is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that person is being sent must be notified within a reasonable time period before that person is released from the facility or institution. This subsection does not apply to any person temporarily released under guard from the facility or institution in which that person is confined.

~~40-~~ 11. Relevant and necessary registration information ~~may~~ shall be disclosed to the public by a law enforcement agency if the agency determines that the individual registered under this section is a public risk and disclosure of the registration information is necessary for public protection. The department, in a timely manner, shall provide law enforcement agencies any information the department determines is relevant concerning individuals required to be registered under this section who are about to be released or placed into the community. A law enforcement agency, its officials, and its employees are not subject to civil or criminal liability for disclosing or for failing to disclose information as permitted by this section. Nonregistration information concerning an offender required to register under this section consisting of the name of the offender, the last known address of the offender, the offense or offenses as defined in subsection 1 to which the offender pled guilty or of which the offender was found guilty, the date of the judgment or order imposing a sentence or probation and the court entering the judgment or order, the sentence or probation imposed upon the offender, and any disposition, if known, of a sentence or probation may be disclosed to the public. The attorney general shall compile nonregistration information concerning

1 offenders required to register under this section from criminal history record  
2 information maintained pursuant to chapter 12-60 or from an agency or department  
3 of another state or the federal government and shall provide the information upon  
4 request at no cost.

5 **SECTION 2.** A new subsection to section 50-06-05.1 of the 1995 Supplement to the  
6 North Dakota Century Code is created and enacted as follows:

7 To provide for the qualifications for and the membership of a qualified board as  
8 required by section 12.1-32-15.