

Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1396

Introduced by

Representatives Schauer, Adams, Hoverson, K. Koppelman, Mitskog, Pyle, Satrom

Senator Hogan

1 A BILL for an Act to create and enact a new subsection to section 12-67-02 of the North Dakota
2 Century Code, relating to electronic monitoring; to amend and reenact sections 12.1-32-15 and
3 14-09-22 of the North Dakota Century Code, relating to registration requirements for a crime
4 against a child, mandatory sentencing for abuse of a child, and electronic monitoring; and to
5 provide a penalty.

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

7 **SECTION 1.** A new subsection to section 12-67-02 of the North Dakota Century Code is
8 created and enacted as follows:

9 Notwithstanding any other provision of law, an offender who has pled guilty or nolo
10 contendere to, or has been found guilty of a felony under section 14-09-22, is not
11 eligible for electronic home detention or global position system monitoring.

12 **SECTION 2. AMENDMENT.** Section 12.1-32-15 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **12.1-32-15. Offenders against children and sexual offenders - Sexually violent**
15 **predators - Registration requirement - Penalty. (Contingent effective date - [See note](#))**

16 1. As used in this section:

17 a. "A crime against a child" means a violation of chapter 12.1-16, section
18 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04,
19 subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01,
20 12.1-18-02, 12.1-18-05, chapter 12.1-29, or section 14-09-22, subsection 3 of
21 section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense
22 from another court in the United States, a tribal court, or court of another country,
23 in which the victim is a minor or is otherwise of the age required for the act to be
24 a crime or an attempt or conspiracy to commit these offenses.

- 1 b. "Department" means the department of corrections and rehabilitation.
- 2 c. "Homeless" means an individual who is physically present in this state, but is
- 3 living in a park, under a bridge, on the streets, in a vehicle or camper, or is
- 4 otherwise without a traditional dwelling, and also one who resides in this state but
- 5 does not maintain a permanent address. The term does not include individuals
- 6 who are temporarily domiciled or individuals residing in public or private shelters
- 7 that provide temporary living accommodations.
- 8 d. "Mental abnormality" means a congenital or acquired condition of an individual
- 9 that affects the emotional or volitional capacity of the individual in a manner that
- 10 predisposes that individual to the commission of criminal sexual acts to a degree
- 11 that makes the individual a menace to the health and safety of other individuals.
- 12 e. "Predatory" means an act directed at a stranger or at an individual with whom a
- 13 relationship has been established or promoted for the primary purpose of
- 14 victimization.
- 15 f. "Sexual offender" means a person who has pled guilty to or been found guilty,
- 16 including juvenile delinquent adjudications, of a violation of section 12.1-20-03,
- 17 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1,
- 18 12.1-20-07 except for subdivision a, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2,
- 19 chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, subdivision b of
- 20 subsection 1 of section 12.1-41-02, section 12.1-41-04, 12.1-41-05, or
- 21 12.1-41-06, or an equivalent offense from another court in the United States, a
- 22 tribal court, or court of another country, or an attempt or conspiracy to commit
- 23 these offenses.
- 24 g. "Sexually dangerous individual" means an individual who meets the definition
- 25 specified in section 25-03.3-01.
- 26 h. "Temporarily domiciled" means staying or being physically present in this state for
- 27 more than thirty days in a calendar year or at a location for longer than ten
- 28 consecutive days, attending school for longer than ten days, or maintaining
- 29 employment in the jurisdiction for longer than ten days, regardless of the state of
- 30 the residence.

- 1 2. The court shall impose, in addition to any penalty provided by law, a requirement that
2 the individual register, within three days of coming into a county in which the individual
3 resides, is homeless, or within the period identified in this section that the individual
4 becomes temporarily domiciled. The individual must register with the chief of police of
5 the city or the sheriff of the county if the individual resides, attends school, or is
6 employed in an area other than a city. A homeless individual shall register every three
7 days with the sheriff or chief of police of the jurisdiction in which the individual is
8 physically present. The court shall require an individual to register by stating this
9 requirement on the court records, if that individual:
- 10 a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual
11 offender or an attempted felonious sexual offender, including juvenile delinquent
12 adjudications of equivalent offenses unless the offense is listed in subdivision c.
- 13 b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender
14 for, a misdemeanor or attempted misdemeanor. The court may deviate from
15 requiring an individual to register if the court first finds the individual is no more
16 than three years older than the victim if the victim is a minor, the individual has
17 not previously been convicted as a sexual offender or of a crime against a child,
18 and the individual did not exhibit mental abnormality or predatory conduct in the
19 commission of the offense.
- 20 c. Is a juvenile found delinquent under subdivision d of subsection 1 of section
21 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual
22 offender for a misdemeanor. The court may deviate from requiring the juvenile to
23 register if the court first finds the juvenile has not previously been convicted as a
24 sexual offender or for a crime against a child, and the juvenile did not exhibit
25 mental abnormality or predatory conduct in the commission of the offense.
- 26 d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a
27 child or an attempted crime against a child, including juvenile delinquent
28 adjudications of equivalent offenses. Except if the offense is described in section
29 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent
30 of the victim, the court may deviate from requiring an individual to register if the
31 court first finds the individual has not previously been convicted as a sexual

offender or for a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.

- e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated delinquent of any crime against another individual which is not otherwise specified in this section if the court determines that registration is warranted by the nature of the crime and therefore orders registration for the individual. If the court orders an individual to register as an offender under this section, the individual shall comply with all of the registration requirements in this chapter.

3. If a court has not ordered an individual to register in this state, an individual who resides, is homeless, or is temporarily domiciled in this state shall register if the individual:

- a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime against a child described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 if the individual was not the parent of the victim, or as a sexual offender;
- b. Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of, an offense in a court of this state for which registration is mandatory under this section or an offense from another court in the United States, a tribal court, or court of another country equivalent to those offenses set forth in this section; or
- c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against a child or as a sexual offender for which registration is mandatory under this section if the conviction occurred after July 31, 1985.

4. In its consideration of mental abnormality or predatory conduct, the court shall 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. Except as provided under subdivision e of subsection 2, the court shall state on the record in open court its affirmative finding for not requiring an offender to register.

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

1 7. Registration consists of a written statement signed by the individual, giving the
2 information required by the attorney general, and the biometric data and photograph of
3 the individual. An individual who is not required to provide a sample of blood and other
4 body fluids under section 31-13-03 or by the individual's state or court of conviction or
5 adjudication shall submit a sample of blood and other body fluids for inclusion in a
6 centralized database of DNA identification records under section 31-13-05. The
7 collection, submission, testing and analysis of, and records produced from, samples of
8 blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile
9 comparison is admissible in accordance with section 31-13-02. A report of the DNA
10 analysis certified by the state crime laboratory is admissible in accordance with section
11 31-13-05. A district court shall order an individual who refuses to submit a sample of
12 blood or other body fluids for registration purposes to show cause at a specified time
13 and place why the individual should not be required to submit the sample required
14 under this subsection. Within three days after registration, the registering law
15 enforcement agency shall forward the statement, biometric data, and photograph to
16 the attorney general and shall submit the sample of the individual's blood and body
17 fluids to the state crime laboratory. If an individual required to register under this
18 section has a change in vehicle or computer online identity, the individual shall
19 register, within three days after the change, with the law enforcement agency with
20 which that individual last registered of the individual's new vehicle or computer online
21 identity. If an individual required to register pursuant to this section has a change in
22 name, school, or residence or employment address, that individual shall register, at
23 least ten days before the change, with the law enforcement agency with which that
24 individual last registered of the individual's new name, school, residence address, or
25 employment address. A change in school or employment address includes the
26 termination of school or employment for which an individual required to register under
27 this section, the individual shall register within three days of the termination with the
28 law enforcement agency with which the individual last registered. The law enforcement
29 agency, within three days after receipt of the information, shall forward it to the
30 attorney general. The attorney general shall forward the appropriate registration data
31 to the law enforcement agency having local jurisdiction of the new place of residence,

1 school, or employment. Upon a change of address, the individual required to register
2 shall also register within three days at the law enforcement agency having local
3 jurisdiction of the new place of residence, school, or employment. The individual
4 registering under this section shall periodically confirm the information required under
5 this subsection in a manner and at an interval determined by the attorney general. A
6 law enforcement agency that has previously registered an offender may omit the
7 biometric data portion of the registration if that agency has a set of biometric data on
8 file for that individual and is personally familiar with and can visually identify the
9 offender. These provisions also apply in any other state that requires registration.

10 8. An individual required to register under this section shall comply with the registration
11 requirement for the longer of the following periods:

- 12 a. A period of fifteen years after the date of sentence or order deferring or
13 suspending sentence upon a plea or finding of guilt or after release from
14 incarceration, whichever is later;
- 15 b. A period of twenty-five years after the date of sentence or order deferring or
16 suspending sentence upon a plea or finding of guilt or after release from
17 incarceration, whichever is later, if the offender is assigned a moderate risk by the
18 attorney general as provided in subsection 12; or
- 19 c. For the life of the individual, if that individual:
- 20 (1) On two or more occasions has pled guilty or nolo contendere to, or been
21 found guilty of a crime against a child or as a sexual offender. If all qualifying
22 offenses are misdemeanors, this lifetime provision does not apply unless a
23 qualifying offense was committed after August 1, 1999;
- 24 (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense
25 committed after August 1, 1999, which is described in subdivision a of
26 subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of
27 subsection 1 of section 12.1-20-03 if the person is an adult and the victim is
28 under age twelve, or section 12.1-18-01 if that individual is an adult other
29 than a parent of the victim, or an equivalent offense from another court in
30 the United States, a tribal court, or court of another country; or
- 31 (3) Is assigned a high risk by the attorney general as provided in subsection 12.

- 1 9. An individual required to register under this section who violates this section is guilty of
2 a class C felony. The failure of a homeless individual to register as required in
3 subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of
4 court shall forward all warrants issued for a violation of this section to the county
5 sheriff, who shall enter all such warrants into the national crime information center
6 wanted person file. A court may not relieve an individual, other than a juvenile, who
7 violates this section from serving a term of at least ninety days in jail and completing
8 probation of one year.
- 9 10. When an individual is released on parole or probation and is required to register
10 pursuant to this section, but fails to do so within the time prescribed, the court shall
11 order the probation, or the parole board shall order the parole, of the individual
12 revoked.
- 13 11. If an individual required to register pursuant to this section is temporarily sent outside
14 the facility or institution where that individual is confined under conviction or sentence,
15 the local law enforcement agency having jurisdiction over the place where that
16 individual is being sent must be notified within a reasonable time period before that
17 individual is released from the facility or institution. This subsection does not apply to
18 any individual temporarily released under guard from the facility or institution in which
19 that individual is confined.
- 20 12. The attorney general, with the assistance of the department and the juvenile courts,
21 shall develop guidelines for the risk assessment of sexual offenders who are required
22 to register, with a low-risk, moderate-risk, or high-risk level being assigned to each
23 offender as follows:
 - 24 a. The department shall conduct a risk assessment of sexual offenders who are
25 incarcerated in institutions under the control of the department and sexual
26 offenders who are on supervised probation. The department, in a timely manner,
27 shall provide the attorney general any information, including the offender's level
28 of risk and supporting documentation, concerning individuals required to be
29 registered under this section who are about to be released or placed into the
30 community.

- 1 b. The attorney general shall conduct a risk assessment of sexual offenders who
2 are not under the custody or supervision of the department. The attorney general
3 may adopt a law enforcement agency's previous assignment of risk level for an
4 individual if the assessment was conducted in a manner substantially similar to
5 the guidelines developed under this subsection.
- 6 c. The juvenile courts or the agency having legal custody of a juvenile shall conduct
7 a risk assessment of juvenile sexual offenders who are required to register under
8 this section. The juvenile courts or the agency having legal custody of a juvenile
9 shall provide the attorney general any information, including the offender's level
10 of risk and supporting documentation, concerning juveniles required to register
11 and who are about to be released or placed into the community.
- 12 d. The attorney general shall notify the offender of the risk level assigned to that
13 offender. An offender may request a review of that determination with the attorney
14 general's sexual offender risk assessment committee and may present any
15 information that the offender believes may lower the assigned risk level.
- 16 13. a. Relevant and necessary conviction and registration information must be
17 disclosed to the public by a law enforcement agency if the individual is ~~a~~;
18 (1) A moderate or high risk and the agency determines that disclosure of the
19 conviction and registration information is necessary for public protection; or
20 (2) Incarcerated or is on probation or parole, has pled guilty or nolo contendere
21 to, or has been found guilty of a crime against a child, and is ordered by the
22 court to register under this section.
- 23 b. The attorney general shall develop guidelines for public disclosure of offender
24 registration information. Public disclosure may include internet access if the
25 offender:
- 26 ~~a.~~ (1) Is required to register for a lifetime under subsection 8;
27 ~~b.~~ (2) Has been determined to be a high risk to the public by the department, the
28 attorney general, or the courts, according to guidelines developed by those
29 agencies; ~~or~~
- 30 ~~e.~~ (3) Has been determined to be a high risk to the public by an agency of another
31 state or the federal government; or

1 (4) Is incarcerated or is on probation or parole, has pled guilty or nolo
2 contendere to, or has been found guilty of a crime against a child, and is
3 ordered by the court to register under this section.

4 c. If the offender has been determined to be a moderate risk, public disclosure must
5 include, at a minimum, notification of the offense to the victim registered under
6 chapter 12.1-34 and to any agency, civic organization, or group of persons who
7 have characteristics similar to those of a victim of the offender. Upon request, law
8 enforcement agencies may release conviction and registration information
9 regarding low-risk, moderate-risk, or high-risk offenders.

10 14. A state officer, law enforcement agency, or public school district or governing body of a
11 nonpublic school or any appointee, officer, or employee of those entities is not subject
12 to civil or criminal liability for making risk determinations, allowing a sexual offender to
13 attend a school function under section 12.1-20-25, or for disclosing or for failing to
14 disclose information as permitted by this section.

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

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

- 1 17. A sexual offender who is currently assigned a moderate or high-risk level by the
2 attorney general may not use a state park of this state as a residence or residential
3 address to comply with the registration requirements of this section. Before arriving at
4 a state park for overnight lodging or camping, a sexual offender who is assigned a
5 moderate or high-risk level by the attorney general shall notify a parks and recreation
6 department law enforcement officer at the state park where the sexual offender will be
7 staying.

8 **Offenders against children and sexual offenders - Sexually violent predators -**

9 **Registration requirement - Penalty. (Contingent effective date - [See note](#))**

- 10 1. As used in this section:
- 11 a. "A crime against a child" means a violation of chapter 12.1-16, section
12 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04,
13 subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01,
14 12.1-18-02, 12.1-18-05, chapter 12.1-29, or section 14-09-22, subsection 3 of
15 section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense
16 from another court in the United States, a tribal court, or court of another country,
17 in which the victim is a minor or is otherwise of the age required for the act to be
18 a crime or an attempt or conspiracy to commit these offenses.
- 19 b. "Department" means the department of corrections and rehabilitation.
- 20 c. "Homeless" means an individual who is physically present in this state, but is
21 living in a park, under a bridge, on the streets, in a vehicle or camper, or is
22 otherwise without a traditional dwelling, and also one who resides in this state but
23 does not maintain a permanent address. The term does not include individuals
24 who are temporarily domiciled or individuals residing in public or private shelters
25 that provide temporary living accommodations.
- 26 d. "Mental abnormality" means a congenital or acquired condition of an individual
27 that affects the emotional or volitional capacity of the individual in a manner that
28 predisposes that individual to the commission of criminal sexual acts to a degree
29 that makes the individual a menace to the health and safety of other individuals.

- 1 e. "Predatory" means an act directed at a stranger or at an individual with whom a
2 relationship has been established or promoted for the primary purpose of
3 victimization.
- 4 f. "Reside" means to live permanently or be situated for a considerable time in a
5 home or a particular place.
- 6 g. "Sexual offender" means a person who has pled guilty to or been found guilty,
7 including juvenile delinquent adjudications, of a violation of section 12.1-20-03,
8 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1,
9 12.1-20-07 except for subdivision a, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2,
10 chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, subdivision b of
11 subsection 1 of section 12.1-41-02, section 12.1-41-04, 12.1-41-05, or
12 12.1-41-06, or an equivalent offense from another court in the United States, a
13 tribal court, or court of another country, or an attempt or conspiracy to commit
14 these offenses.
- 15 h. "Sexually dangerous individual" means an individual who meets the definition
16 specified in section 25-03.3-01.
- 17 i. "Temporarily domiciled" means staying or being physically present in this state for
18 more than thirty days in a calendar year or at a location for longer than ten
19 consecutive days, attending school for longer than ten days, or maintaining
20 employment in the jurisdiction for longer than ten days, regardless of the state of
21 the residence.
- 22 2. The court shall impose, in addition to any penalty provided by law, a requirement that
23 the individual register, within three days of coming into a county in which the individual
24 resides, is homeless, or within the period identified in this section that the individual
25 becomes temporarily domiciled. The individual must register with the chief of police of
26 the city of the individual's place of residence, or the sheriff of the county if the
27 individual resides in an area other than a city. A homeless individual shall register
28 every three days with the sheriff or chief of police of the jurisdiction in which the
29 individual is physically present. The court shall require an individual to register by
30 stating this requirement on the court records, if that individual:

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

- 1 3. If a court has not ordered an individual to register in this state, an individual who
2 resides, is homeless, or is temporarily domiciled in this state shall register if the
3 individual:
- 4 a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime
5 against a child described in section 12.1-29-02, or section 12.1-18-01 or
6 12.1-18-02 if the individual was not the parent of the victim, or as a sexual
7 offender;
- 8 b. Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of,
9 an offense in a court of this state for which registration is mandatory under this
10 section or an offense from another court in the United States, a tribal court, or
11 court of another country equivalent to those offenses set forth in this section; or
- 12 c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against
13 a child or as a sexual offender for which registration is mandatory under this
14 section if the conviction occurred after July 31, 1985.
- 15 4. In its consideration of mental abnormality or predatory conduct, the court shall
16 consider the age of the offender, the age of the victim, the difference in ages of the
17 victim and offender, the circumstances and motive of the crime, the relationship of the
18 victim and offender, and the mental state of the offender. The court may order an
19 offender to be evaluated by a qualified counselor, psychologist, or physician before
20 sentencing. Except as provided under subdivision e of subsection 2, the court shall
21 state on the record in open court its affirmative finding for not requiring an offender to
22 register.
- 23 5. When an individual is required to register under this section, the official in charge of a
24 facility or institution where the individual required to register is confined, or the
25 department, shall, before the discharge, parole, or release of that individual, inform the
26 individual of the duty to register pursuant to this section. The official or the department
27 shall require the individual to read and sign a form as required by the attorney general,
28 stating that the duty of the individual to register has been explained to that individual.
29 The official in charge of the place of confinement, or the department, shall obtain the
30 address where the individual expects to reside, attend school, or work upon discharge,
31 parole, or release and shall report the address to the attorney general. The official in

1 charge of the place of confinement, or the department, shall give three copies of the
2 form to the individual and shall send three copies to the attorney general no later than
3 forty-five days before the scheduled release of that individual. The attorney general
4 shall forward one copy to the law enforcement agency having jurisdiction where the
5 individual expects to reside, attend school, or work upon discharge, parole, or release,
6 one copy to the prosecutor who prosecuted the individual, and one copy to the court in
7 which the individual was prosecuted. All forms must be transmitted and received by
8 the law enforcement agency, prosecutor, and court thirty days before the discharge,
9 parole, or release of the individual.

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

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

1 accordance with section 31-13-05. A district court shall order an individual who refuses
2 to submit a sample of blood or other body fluids for registration purposes to show
3 cause at a specified time and place why the individual should not be required to
4 submit the sample required under this subsection. Within three days after registration,
5 the registering law enforcement agency shall forward the statement, biometric data,
6 and photograph to the attorney general and shall submit the sample of the individual's
7 blood and body fluids to the state crime laboratory. If an individual required to register
8 under this section has a change in vehicle or computer online identity, the individual
9 shall register, within three days after the change, with the law enforcement agency
10 having local jurisdiction of the individual's place of residence of the individual's new
11 vehicle or computer online identity. If an individual required to register pursuant to this
12 section has a change in name, school, or residence or employment address, that
13 individual shall register, at least ten days before the change, with the law enforcement
14 agency having local jurisdiction of the individual's place of residence of the individual's
15 new name, school, residence address, or employment address. A change in school or
16 employment address includes the termination of school or employment for which an
17 individual required to register under this section, the individual shall register within
18 three days of the termination with the law enforcement agency having local jurisdiction
19 of the individual's place of residence. The law enforcement agency, within three days
20 after receipt of the information, shall forward it to the attorney general. The attorney
21 general shall forward the appropriate registration data to the law enforcement agency
22 having local jurisdiction of the new place of residence, school, or employment. Upon a
23 change of address, the individual required to register also shall register within three
24 days at the law enforcement agency having local jurisdiction of the new place of
25 residence. If an individual required to register in North Dakota, including in a tribal
26 registry, resides in another state or on tribal lands, that individual shall register
27 employment and school addresses and any changes in required registration
28 information with the law enforcement agency having local jurisdiction over the school
29 or employment address. The individual registering under this section shall periodically
30 confirm the information required under this subsection in a manner and at an interval
31 determined by the attorney general. A law enforcement agency that has previously

1 registered an offender may omit the biometric data portion of the registration if that
2 agency has a set of biometric data on file for that individual and is personally familiar
3 with and can visually identify the offender. These provisions also apply in any other
4 state that requires registration.

5 8. An individual required to register under this section shall comply with the registration
6 requirement for the longer of the following periods:

- 7 a. A period of fifteen years after the date of sentence or order deferring or
8 suspending sentence upon a plea or finding of guilt or after release from
9 incarceration, whichever is later;
- 10 b. A period of twenty-five years after the date of sentence or order deferring or
11 suspending sentence upon a plea or finding of guilt or after release from
12 incarceration, whichever is later, if the offender is assigned a moderate risk by the
13 attorney general as provided in subsection 12; or
- 14 c. For the life of the individual, if that individual:

15 (1) On two or more occasions has pled guilty or nolo contendere to, or been
16 found guilty of a crime against a child or as a sexual offender. If all qualifying
17 offenses are misdemeanors, this lifetime provision does not apply unless a
18 qualifying offense was committed after August 1, 1999;

19 (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense
20 committed after August 1, 1999, which is described in subdivision a of
21 subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of
22 subsection 1 of section 12.1-20-03 if the person is an adult and the victim is
23 under age twelve, or section 12.1-18-01 if that individual is an adult other
24 than a parent of the victim, or an equivalent offense from another court in
25 the United States, a tribal court, or court of another country; or

26 (3) Is assigned a high risk by the attorney general as provided in subsection 12.

27 9. An individual required to register under this section who violates this section is guilty of
28 a class C felony. The failure of a homeless individual to register as required in
29 subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of
30 court shall forward all warrants issued for a violation of this section to the county
31 sheriff, who shall enter all such warrants into the national crime information center

1 wanted person file. A court may not relieve an individual, other than a juvenile, who
2 violates this section from serving a term of at least ninety days in jail and completing
3 probation of one year.

4 10. When an individual is released on parole or probation and is required to register
5 pursuant to this section, but fails to do so within the time prescribed, the court shall
6 order the probation, or the parole board shall order the parole, of the individual
7 revoked.

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

15 12. The attorney general, with the assistance of the department and the juvenile courts,
16 shall develop guidelines for the risk assessment of sexual offenders who are required
17 to register, with a low-risk, moderate-risk, or high-risk level being assigned to each
18 offender as follows:

19 a. The department shall conduct a risk assessment of sexual offenders who are
20 incarcerated in institutions under the control of the department and sexual
21 offenders who are on supervised probation. The department, in a timely manner,
22 shall provide the attorney general any information, including the offender's level
23 of risk and supporting documentation, concerning individuals required to be
24 registered under this section who are about to be released or placed into the
25 community.

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

1 c. The juvenile courts or the agency having legal custody of a juvenile shall conduct
2 a risk assessment of juvenile sexual offenders who are required to register under
3 this section. The juvenile courts or the agency having legal custody of a juvenile
4 shall provide the attorney general any information, including the offender's level
5 of risk and supporting documentation, concerning juveniles required to register
6 and who are about to be released or placed into the community.

7 d. The attorney general shall notify the offender of the risk level assigned to that
8 offender. An offender may request a review of that determination with the attorney
9 general's sexual offender risk assessment committee and may present any
10 information that the offender believes may lower the assigned risk level.

11 13. An individual assessed as a high-risk sexual offender in accordance with
12 subsection 12, may not reside within five hundred feet [152.4 meters] of a public or
13 nonpublic preschool or elementary, middle, or high school.

14 14. a. Relevant and necessary conviction and registration information must be
15 disclosed to the public by a law enforcement agency if the individual is a:

- 16 (1) A moderate or high risk and the agency determines that disclosure of the
17 conviction and registration information is necessary for public protection; or
18 (2) Incarcerated or is on probation or parole, has pled guilty or nolo contendere
19 to, or has been found guilty of a crime against a child, and is ordered by the
20 court to register under this section.

21 b. The attorney general shall develop guidelines for public disclosure of offender
22 registration information. Public disclosure may include internet access if the
23 offender:

24 a- (1) Is required to register for a lifetime under subsection 8;

25 b- (2) Has been determined to be a high risk to the public by the department, the
26 attorney general, or the courts, according to guidelines developed by those
27 agencies; ~~or~~

28 e- (3) Has been determined to be a high risk to the public by an agency of another
29 state or the federal government; ~~;~~ or

1 (4) Is incarcerated or is on probation or parole, has pled guilty or nolo
2 contendere to, or has been found guilty of a crime against a child, and is
3 ordered by the court to register under this section.

4 c. If the offender has been determined to be a moderate risk, public disclosure must
5 include, at a minimum, notification of the offense to the victim registered under
6 chapter 12.1-34 and to any agency, civic organization, or group of persons who
7 have characteristics similar to those of a victim of the offender. Upon request, law
8 enforcement agencies may release conviction and registration information
9 regarding low-risk, moderate-risk, or high-risk offenders.

10 15. A state officer, law enforcement agency, or public school district or governing body of a
11 nonpublic school or any appointee, officer, or employee of those entities is not subject
12 to civil or criminal liability for making risk determinations, allowing a sexual offender to
13 attend a school function under section 12.1-20-25, or for disclosing or for failing to
14 disclose information as permitted by this section.

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

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

- 1 18. A sexual offender who is currently assigned a moderate or high-risk level by the
2 attorney general may not use a state park of this state as a residence or residential
3 address to comply with the registration requirements of this section. Before arriving at
4 a state park for overnight lodging or camping, a sexual offender who is assigned a
5 moderate or high-risk level by the attorney general shall notify a parks and recreation
6 department law enforcement officer at the state park where the sexual offender will be
7 staying.

8 **SECTION 3. AMENDMENT.** Section 14-09-22 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **14-09-22. Abuse of child - Mandatory sentence - Penalty.**

- 11 1. Except as provided in subsection 2 or 3, a parent, adult family or household member,
12 guardian, or other custodian of any child, who willfully inflicts or allows to be inflicted
13 upon the child mental injury or bodily injury, substantial bodily injury, or serious bodily
14 injury as defined by section 12.1-01-04 is guilty of a class C felony except if the victim
15 of an offense under this section is under the age of six years in which case the offense
16 is a class B felony. Any person who has pled guilty or nolo contendere to, or has been
17 found guilty of an offense under this subsection, and the victim of the offense is under
18 the age of two years, must be sentenced to a minimum of two years imprisonment.
- 19 2. A person who provides care, supervision, education, or guidance for a child
20 unaccompanied by the child's parent, adult family or household member, guardian, or
21 custodian in exchange for money, goods, or other services and who while providing
22 such services commits an offense under this section is guilty of a class B felony. Any
23 such person ~~that~~who commits, allows to be committed, or conspires to commit,
24 against the child, a sex offense as defined in chapter 12.1-20 is subject to the
25 penalties provided in that chapter. Any person who has pled guilty or nolo contendere
26 to, or has been found guilty of an offense under this subsection, and the victim of the
27 offense is under the age of two years, must be sentenced to a minimum of two years
28 imprisonment.
- 29 3. A person ~~that~~who commits an offense under this section is guilty of a class B felony if
30 the victim suffers permanent loss or impairment of the function of a bodily member or
31 organ, except if the victim of the offense is under the age of six years in which case

- 1 the offense is a class A felony. Any person who has pled guilty or nolo contendere to,
2 or has been found guilty of an offense under this subsection, and the victim of the
3 offense is under the age of two years, must be sentenced to a minimum of five years
4 imprisonment.
- 5 4. Any person who has pled guilty or nolo contendere to, or has been found guilty of an
6 offense under this section, is not eligible for electronic home detention or global
7 position system monitoring under chapter 12-67.