

Sixty-ninth
Legislative Assembly
of North Dakota

BILL NO.

Introduced by

Senator Larson

A BILL for an Act to create and enact three new sections to chapter 27-20.4 of the North Dakota Century Code, relating to juvenile court petitions, fitness to proceed in juvenile court proceedings, and collateral consequences the juvenile court may order; to amend and reenact sections 12.1-04-01, 12.1-04-08, 12.1-04.1-01, 12.1-04.1-20, and 12.1-17-01.2, subsection 2 of section 12.1-17-07.2, section 12.1-20-01, subsections 2 and 6 of section 12.1-31-03, sections 12.1-32-15 and 15.1-09-33.4, subsection 3 of section 27-20.2-09, subsection 5 of section 27-20.4-11, section 27-20.4-15, subsection 1 of section 27-20.4-18, subsection 1 of section 27-20.4-20, and section 62.1-02-01 of the North Dakota Century Code, relating to juveniles, court proceeding suspensions and dismissals, lack of criminal responsibility, court jurisdiction, distribution of intimate images without consent, domestic violence, criminality of a child regarding sex offenses, sale and use of tobacco by an individual under the age of twenty-one, child registration requirements, restitution, probation of a delinquent child, extracurricular activities for students, and persons not allowed to possess a firearm; to repeal sections 27-20.4-12, 27-20.4-13, and 27-20.4-19 of the North Dakota Century Code, relating to delinquency; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-04-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04-01. Juveniles.

1. An individual under the age of ten years is deemed incapable of commission of an offense defined by the constitution or statutes of this state. The prosecution of an individual as an adult is barred if the offense was committed while the individual was less than fourteen years of age.

2. An individual ten years of age or older may be assessed for mental fitness or capacity under this chapter.

SECTION 2. AMENDMENT. Section 12.1-04-08 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04-08. Suspension or dismissal of proceedings - Referral for services.

1. ~~If in an adult case, if~~ the court determines based upon a preponderance of the evidence that the defendant ~~currently~~ lacks fitness to proceed and the defendant is charged with a class B misdemeanor, except a class B misdemeanor under chapter 12.1-17, the proceedings must be dismissed.
2. If the court determines based upon a preponderance of the evidence that ~~the defendant currently~~ an adult lacks fitness to proceed, the defendant is charged with a felony or a class A misdemeanor, and the report as required under section 12.1-04-07 indicates a likelihood the defendant will attain fitness within a specified ~~period of~~ time from the date of the finding upon completion of a course of therapeutically appropriate treatment, the proceedings against the defendant must be suspended for ~~a period of~~ up to one hundred eighty days. The court may extend the suspension for an additional three hundred sixty-five days if there is medical evidence to believe the defendant's fitness to proceed will be restored during the extended period. For a defendant charged with a class B misdemeanor under chapter 12.1-17, the proceedings must be suspended for a period no longer than the maximum term of imprisonment for the most serious offense charged. When the court determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding must be resumed. If prosecution of the defendant has not resumed or it is determined by the court, after a hearing if a hearing is requested, that the defendant will not regain fitness to proceed within the allotted time, the charges against the defendant must be dismissed.
3. If the court determines based upon a preponderance of the evidence a child lacks fitness to proceed, for any offense, in a juvenile proceeding and the report required under section 12.1-04-07 indicates a likelihood the child will attain fitness within a specified time from the date of the finding upon completion of a course of

therapeutically appropriate treatment, the court shall suspend the proceeding against the child for up to one hundred eighty days.

- a. If there is medical evidence indicating the child's fitness to proceed will be restored during the extended period, the court may extend the suspension for an additional three hundred sixty-five days.
- b. If the court determines the child has regained fitness to proceed after a hearing, if a hearing is requested, the proceeding must be resumed.
- c. If prosecution of the child has not resumed or the court determines the child will not regain fitness to proceed within the allotted time after a hearing, if a hearing is requested, the court shall dismiss the charges against the child.

4. If the court determines based upon a preponderance of the evidence that the defendant currently lacks fitness to proceed and that the defendant will not attain fitness to proceed, the proceedings must be dismissed. The court may at any time make a referral for other appropriate services. Other appropriate services include:

- a. Determination of incapacity, by a district court with appropriate jurisdiction following petition by the state's attorney, for the appointment of a guardian or conservator pursuant to chapter 30.1-28 or 30.1-29;
- b. Civil commitment of the person pursuant to chapter 25-03.1; or
- c. Initiation of child in need of protection proceedings by court order in a juvenile proceeding; or
- d. Any other services the court deems appropriate.

4.5. If the court determines the defendant currently lacks fitness to proceed and the defendant may attain fitness to proceed under subsection 1, the court may enter an order for a course of treatment considering the least restrictive form of treatment therapeutically appropriate.

- a. Unless excused by the court, in a proceeding to determine therapy in an attempt to attain fitness, the defendant ~~shall~~must be represented by trial counsel.
- b. If the court finds the individual is not able to retain the services of a tier 1a mental health professional and that those services are not otherwise available, the court shall authorize reasonable expenditures from public funds to examine the individual.

1 c. In a motion hearing to resume prosecution, the state or prosecuting authority
2 must show by a preponderance of the evidence the defendant has attained
3 fitness to proceed.

4 ~~5-6.~~ If the court orders the defendant committed to a treatment facility in an attempt to
5 attain fitness to proceed under subsection ~~4~~2, the court shall provide the special
6 custody and commitment terms in the order. The special terms of commitment must
7 include an order for the defendant to accept all nonexperimental, generally accepted
8 medical, psychiatric, or psychological treatment recommended by the treatment
9 facility, including the use of involuntary treatment with prescribed medication without
10 the need for a separate commitment under chapter 25-03.1.

11 a. If the order does not indicate the terms of commitment, the director or
12 superintendent of the treatment facility may determine the nature of the
13 constraints necessary within the treatment facility to carry out the order of the
14 court.

15 b. If the court orders an individual committed for therapeutic treatment to attain
16 fitness to proceed, the court shall set a date consistent with the timeline
17 established in this section for a review of the defendant's fitness to proceed. At
18 least sixty days before the date specified for review, the director or director's
19 designee or the superintendent of the treatment facility shall inquire as to whether
20 the individual is represented by counsel and file a written report of the facts
21 ascertained with the court.

22 ~~6-7.~~ If the parties to the action have reason to modify the special terms of the commitment
23 order under this section, the parties shall make a motion to the court and the court
24 shall determine by a preponderance of the evidence if the modification of the special
25 terms is necessary and the least restrictive therapeutic alternative therapy in an
26 attempt to attain fitness to proceed.

27 ~~7-8.~~ The custodian, guardian, or other person charged with the control of the defendant
28 may take an appeal from the court's order in the manner provided by law.

29 **SECTION 3. AMENDMENT.** Section 12.1-04.1-01 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **12.1-04.1-01. Standard for lack of criminal responsibility.**

2 1. An individual is not criminally responsible for criminal conduct if, as a result of mental
3 disease or defect existing at the time the conduct occurs:

4 a. The individual lacks substantial capacity to comprehend the harmful nature or
5 consequences of the conduct, or the conduct is the result of a loss or serious
6 distortion of the individual's capacity to recognize reality; and

7 b. It is an essential element of the crime charged that the individual act willfully.

8 2. For purposes of this chapter, repeated criminal or similar antisocial conduct, or
9 impairment of mental condition caused primarily by voluntary use of alcoholic
10 beverages or controlled substances immediately before or contemporaneously with
11 the alleged offense, does not constitute in itself mental illness or defect at the time of
12 the alleged offense. Evidence of the conduct or impairment may be probative in
13 conjunction with other evidence to establish mental illness or defect.

14 3. An individual ten years of age or older may be assessed for criminal responsibility
15 under this chapter.

16 **SECTION 4. AMENDMENT.** Section 12.1-04.1-20 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **12.1-04.1-20. Jurisdiction of court.**

19 1. Unless earlier discharged by order of the court pursuant to section 12.1-04.1-22,
20 12.1-04.1-24, or 12.1-04.1-25, an individual found not guilty by reason of lack of
21 criminal responsibility is subject to the jurisdiction of the court for a period equal to the
22 maximum term of imprisonment that could have been imposed for the most serious
23 crime of which the individual was charged but found not guilty by reason of lack of
24 criminal responsibility. In a juvenile proceeding, a child not adjudicated by reason of
25 lack of criminal responsibility is subject to the jurisdiction of the court for one year.

26 2. Upon expiration of its jurisdiction under this chapter or earlier discharge by its order,
27 the court may order that a proceeding for involuntary commitment be initiated pursuant
28 to chapter 25-03.1. In a juvenile proceeding, the court may order an investigation into
29 whether a child in need of protection proceedings should be initiated.

30 **SECTION 5. AMENDMENT.** Section 12.1-17-01.2 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **12.1-17-01.2. Domestic violence.**

2 1. For purposes of this section "family or household member" means family or household
3 member as defined in section 14-07.1-01.

4 2. A person is guilty of an offense if that person willfully causes:

- 5 a. Bodily injury to the actor's family or household member;
6 b. Substantial bodily injury to the actor's family or household member; or
7 c. Serious bodily injury to the actor's family or household member.

8 3. The offense is:

9 a. A class B misdemeanor for the first offense under subdivision a of subsection 2
10 and a class A misdemeanor for a second or subsequent offense under this
11 section or sections 12.1-17-01, 12.1-17-01.1, or 12.1-17-02 involving the
12 commission of domestic violence, as defined in section 14-07.1-01. For purposes
13 of this subdivision, a prior conviction includes a conviction of any assault offense
14 in which a finding of domestic violence was made under a law or ordinance of
15 another state which is equivalent to this section.

16 b. A class A misdemeanor for an offense under subdivision b of subsection 2 and a
17 class C felony for an offense under subdivision c of subsection 2.

18 c. A class B felony for an offense under subdivision b or c of subsection 2 if the
19 victim is under twelve years of age.

20 4. A person charged with an offense under this section must be prosecuted in district
21 court.

22 5. This section does not apply to an individual under the age of eighteen unless the
23 victim is or was in a dating relationship with the individual.

24 **SECTION 6. AMENDMENT.** Subsection 2 of section 12.1-17-07.2 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 2. A person commits the offense of distribution of intimate images if the person knowingly
27 or intentionally distributes to any third party any intimate image of an individual
28 ~~eighteen years of age or older~~, if:

29 a. The person knows that the depicted individual has not given consent to the
30 person to distribute the intimate image;

- 1 b. The intimate image was created by or provided to the person under
- 2 circumstances in which the individual has a reasonable expectation of privacy;
- 3 and
- 4 c. Actual emotional distress or harm is caused to the individual as a result of the
- 5 distribution under this section.

6 **SECTION 7. AMENDMENT.** Section 12.1-20-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **12.1-20-01. General provisions.**

9 In sections 12.1-20-03 through 12.1-20-08:

- 10 1. When the criminality of conduct depends on a child's child being below the age of
- 11 fifteen, it is no defense that the actor did not know the child's age, or reasonably
- 12 believed the child to be older than fourteen.
- 13 2. When criminality depends on the victim being a minor, it is an affirmative defense that
- 14 the actor reasonably believed the victim to be an adult.
- 15 3. When criminality depends on the victim being a minor fifteen years of age or older, the
- 16 actor is guilty of an offense only if the actor is at least three years older than the minor.
- 17 4. When criminality depends on the victim being below the age of fifteen, and the actor is
- 18 a minor, the actor is guilty of an offense only if the actor is at least three years older
- 19 than the victim.

20 **SECTION 8. AMENDMENT.** Subsection 2 of section 12.1-31-03 of the North Dakota
21 Century Code is amended and reenacted as follows:

- 22 2. It is a noncriminal offense for an individual ~~under twenty-one~~ eighteen to twenty years
- 23 of age, and an infraction for an individual fourteen to seventeen years of age, to
- 24 purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, tobacco
- 25 in any other form in which it may be utilized for smoking or chewing, electronic
- 26 smoking devices, or alternative nicotine products. However, an individual under
- 27 twenty-one years of age may purchase and possess tobacco, electronic smoking
- 28 devices, or alternative nicotine products as part of a compliance survey program when
- 29 acting with the permission of the individual's parent or guardian and while acting under
- 30 the supervision of any law enforcement authority. A state agency, city, county, board of
- 31 health, tobacco, electronic smoking devices, or alternative nicotine products retailer, or

association of tobacco, electronic smoking devices, or alternative nicotine products
retailers may also conduct compliance surveys, after coordination with the appropriate
local law enforcement authority.

SECTION 9. AMENDMENT. Subsection 6 of section 12.1-31-03 of the North Dakota
Century Code is amended and reenacted as follows:

6. An individual fourteen years of age or older but under eighteen years of age found to
have violated subsection 2 or 4 ~~must pay a fee of twenty-five dollars~~ has committed an
infraction and must be sent to juvenile court. An individual eighteen years of age or
older found to have violated subsection 2 or 4 must pay a fee of twenty-five dollars.

a. Any individual who has been cited for a violation of subsection 2 or 4 may appear
before a court of competent jurisdiction and pay the fee by the time scheduled for
a hearing, or if bond has been posted, may forfeit the bond by not appearing at
the scheduled time. An individual appearing at the time scheduled in the citation
may make a statement in explanation of that individual's action and the judge
may waive, reduce, or suspend the fee or bond, or both. If the individual cited
follows the procedures of this subdivision, that individual has admitted the
violation and has waived the right to a hearing on the issue of commission of the
violation. The bond required to secure appearance before the court must be
identical to the fee. This subdivision does not allow a citing officer to receive the
fee or bond.

b. If an individual cited for a violation of subsection 2 or 4 does not choose to follow
the procedures provided under subdivision a, that individual may request a
hearing on the issue of the commission of the violation cited. The hearing must
be held at the time scheduled in the citation or at some future time, not to exceed
ninety days later, set at that first appearance. At the time of a request for a
hearing on the issue on commission of the violation, the individual cited shall
deposit with the court an appearance bond equal to the fee for the violation cited.

c. The failure to post bond or to pay an assessed fee is punishable as a contempt of
court, except an individual may not be imprisoned for the contempt.

SECTION 10. AMENDMENT. Section 12.1-32-15 of the North Dakota Century Code is
amended and reenacted as follows:

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

1. As used in this section:

- a. "A crime against a child" means a violation of chapter 12.1-16, section 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04, subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01, 12.1-18-02, 12.1-18-05, chapter 12.1-29, or section 14-09-22, subsection 3 of section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense from another court in the United States, a tribal court, or court of another country, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt or conspiracy to commit these offenses.
- b. "Department" means the department of corrections and rehabilitation.
- c. "Homeless" means an individual who is physically present in this state, but is living in a park, under a bridge, on the streets, in a vehicle or camper, or is otherwise without a traditional dwelling, and also one who resides in this state but does not maintain a permanent address. The term does not include individuals who are temporarily domiciled or individuals residing in public or private shelters that provide temporary living accommodations.
- d. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.
- e. "Predatory" means an act directed at a stranger or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.
- f. "Reside" means to live permanently or be situated for a considerable time in a home or a particular place.
- g. "Sexual offender" means a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, of a violation of section 12.1-20-03, 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, 12.1-20-07 except for subdivision a of subsection 1, 12.1-20-11, 12.1-20-12.1,

12.1-20-12.2, 12.1-20-12.3 except for subdivision a of subsection 1 and subdivision b of subsection 1 if the offense involves only a demand for money, chapter 12.1-27.2, ~~subsection 2 of section 12.1-22-03.1~~, subdivision b of subsection 1 of section 12.1-41-02, section 12.1-41-04, 12.1-41-05, or 12.1-41-06, 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.

h. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.

i. "Temporarily domiciled" means staying or being physically present in this state for more than thirty days in a calendar year or at a location for longer than ten consecutive days, attending school for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence.

2. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within three days of coming into a county in which the individual resides, is homeless, or within the period identified in this section that the individual becomes temporarily domiciled. The individual must register with the chief of police of the city of the individual's place of residence, or the sheriff of the county if the individual resides in an area other than a city. A homeless individual shall register every three days with the sheriff or chief of police of the jurisdiction in which the individual is physically present. The court shall require an individual to register by stating this requirement on the court records, if that individual:

a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender, ~~including juvenile delinquent adjudications of equivalent offenses unless the offense is listed in subdivision e.~~

b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender for, a misdemeanor or attempted misdemeanor. The court may deviate from requiring an individual to register if the court first finds the individual is no more than three years older than the victim if the victim is a minor, the individual has not previously been convicted as a sexual offender or of a crime against a child,

1 and the individual did not exhibit mental abnormality or predatory conduct in the
2 commission of the offense.

3 c. ~~Is a juvenile found delinquent under subdivision d of subsection 1 of section~~
4 ~~12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual~~
5 ~~offender for a misdemeanor. The court may deviate from requiring the juvenile to~~
6 ~~register if the court first finds the juvenile has not previously been convicted as a~~
7 ~~sexual offender or for a crime against a child, and the juvenile did not exhibit~~
8 ~~mental abnormality or predatory conduct in the commission of the offense.~~

9 d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a
10 child or an attempted crime against a child, ~~including juvenile delinquent~~
11 ~~adjudications of equivalent offenses.~~ Except if the offense is described in section
12 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent
13 of the victim, the court may deviate from requiring an individual to register if the
14 court first finds the individual has not previously been convicted as a sexual
15 offender or for a crime against a child, and the individual did not exhibit mental
16 abnormality or predatory conduct in the commission of the offense.

17 e.d. Has pled guilty or nolo contendere, or been found guilty, ~~or been adjudicated~~
18 ~~delinquent~~ of any crime against another individual which is not otherwise
19 specified in this section if the court determines that registration is warranted by
20 the nature of the crime and therefore orders registration for the individual. If the
21 court orders an individual to register as an offender under this section, the
22 individual shall comply with all of the registration requirements in this chapter.
23 e. Is a child who has been adjudicated delinquent of an offense which would classify
24 the child as a sexual offender, the prosecutor requested the court to consider
25 sexual offender registration, and the court determines the child exhibited a mental
26 abnormality or predatory conduct in the commission of the offense.

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

30 a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime
31 against a child described in section 12.1-29-02, or section 12.1-18-01 or

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

one copy to the prosecutor who prosecuted the individual, and one copy to the court in which the individual was prosecuted. All forms must be transmitted and received by the law enforcement agency, prosecutor, and court thirty days before the discharge, parole, or release of the individual.

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

7. Registration consists of a written or electronic statement signed by the individual, giving the information required by the attorney general, and the biometric data and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized database of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, biometric data,

1 and photograph to the attorney general and shall submit the sample of the individual's
2 blood and body fluids to the state crime laboratory. If an individual required to register
3 under this section has a change in vehicle or computer online identity, the individual
4 shall register, within three days after the change, with the law enforcement agency
5 having local jurisdiction of the individual's place of residence of the individual's new
6 vehicle or computer online identity. If an individual required to register pursuant to this
7 section has a change in name, school, or residence or employment address, that
8 individual shall register, at least ten days before the change, with the law enforcement
9 agency having local jurisdiction of the individual's place of residence of the individual's
10 new name, school, residence address, or employment address. A change in school or
11 employment address includes the termination of school or employment for which an
12 individual required to register under this section, the individual shall register within
13 three days of the termination with the law enforcement agency having local jurisdiction
14 of the individual's place of residence. The law enforcement agency, within three days
15 after receipt of the information, shall forward it to the attorney general. The attorney
16 general shall forward the appropriate registration data to the law enforcement agency
17 having local jurisdiction of the new place of residence, school, or employment. Upon a
18 change of address, the individual required to register also shall register within three
19 days at the law enforcement agency having local jurisdiction of the new place of
20 residence. If an individual required to register in North Dakota, including in a tribal
21 registry, resides in another state or on tribal lands, that individual shall register
22 employment and school addresses and any changes in required registration
23 information with the law enforcement agency having local jurisdiction over the school
24 or employment address. The individual registering under this section shall periodically
25 confirm the information required under this subsection in a manner and at an interval
26 determined by the attorney general. A law enforcement agency that has previously
27 registered an offender may omit the biometric data portion of the registration if that
28 agency has a set of biometric data on file for that individual and is personally familiar
29 with and can visually identify the offender. These provisions also apply in any other
30 state that requires registration.

- 1 8. An individual required to register under this section shall comply with the registration
2 requirement for the longer of the following periods:
- 3 a. A period of fifteen years after the date of sentence or order deferring or
4 suspending sentence upon a plea or finding of guilt or after release from
5 incarceration, whichever is later;
- 6 b. A period of twenty-five years after the date of sentence or order deferring or
7 suspending sentence upon a plea or finding of guilt or after release from
8 incarceration, whichever is later, if the offender is assigned a moderate risk by the
9 attorney general as provided in subsection 12; or
- 10 c. For the life of the individual, if that individual:
- 11 (1) On two or more occasions has pled guilty or nolo contendere to, or been
12 found guilty of a crime against a child or as a sexual offender. If all qualifying
13 offenses are misdemeanors, this lifetime provision does not apply unless a
14 qualifying offense was committed after August 1, 1999;
- 15 (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense
16 committed after August 1, 1999, which is described in subdivision a of
17 subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of
18 subsection 1 of section 12.1-20-03 if the person is an adult and the victim is
19 under age twelve, or section 12.1-18-01 if that individual is an adult other
20 than a parent of the victim, or an equivalent offense from another court in
21 the United States, a tribal court, or court of another country; or
- 22 (3) Is assigned a high risk by the attorney general as provided in subsection 12.
- 23 9. An individual required to register under this section who violates this section is guilty of
24 a class C felony. The failure of a homeless individual to register as required in
25 subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of
26 court shall forward all warrants issued for a violation of this section to the county
27 sheriff, who shall enter all such warrants into the national crime information center
28 wanted person file. A court may not relieve an individual, other than a juvenile, who
29 violates this section from serving a term of at least ninety days in jail and completing
30 probation of one year.

- 1 10. When an individual is released on parole or probation and is required to register
2 pursuant to this section, but fails to do so within the time prescribed, the court shall
3 order the probation, or the parole board shall order the parole, of the individual
4 revoked.
- 5 11. If an individual required to register pursuant to this section is temporarily sent outside
6 the facility or institution where that individual is confined under conviction or sentence,
7 the local law enforcement agency having jurisdiction over the place where that
8 individual is being sent must be notified within a reasonable time period before that
9 individual is released from the facility or institution. This subsection does not apply to
10 any individual temporarily released under guard from the facility or institution in which
11 that individual is confined.
- 12 12. The attorney general, with the assistance of the department and the juvenile courts,
13 shall develop guidelines for the risk assessment of sexual offenders who are required
14 to register, with a low-risk, moderate-risk, or high-risk level being assigned to each
15 offender as follows:
 - 16 a. The department shall conduct a risk assessment of sexual offenders who are
17 incarcerated in institutions under the control of the department and sexual
18 offenders who are on supervised probation. The department, in a timely manner,
19 shall provide the attorney general any information, including the offender's level
20 of risk and supporting documentation, concerning individuals required to be
21 registered under this section who are about to be released or placed into the
22 community.
 - 23 b. The attorney general shall conduct a risk assessment of sexual offenders who
24 are not under the custody or supervision of the department. The attorney general
25 may adopt a law enforcement agency's previous assignment of risk level for an
26 individual if the assessment was conducted in a manner substantially similar to
27 the guidelines developed under this subsection.
 - 28 c. The juvenile courts or the agency having legal custody of a juvenile shall conduct
29 a risk assessment of juvenile sexual offenders who are required to register under
30 this section. The juvenile courts or the agency having legal custody of a juvenile
31 shall provide the attorney general any information, including the offender's level

- 1 of risk and supporting documentation, concerning juveniles required to register
2 and who are about to be released or placed into the community.
- 3 d. The attorney general shall notify the offender of the risk level assigned to that
4 offender. An offender may request a review of that determination with the attorney
5 general's sexual offender risk assessment committee and may present any
6 information that the offender believes may lower the assigned risk level.
- 7 13. An individual assessed as a high-risk sexual offender in accordance with
8 subsection 12, may not reside within five hundred feet [152.4 meters] of a public or
9 nonpublic preschool or elementary, middle, or high school.
- 10 14. Relevant and necessary conviction and registration information must be disclosed to
11 the public by a law enforcement agency if the individual is a moderate or high risk and
12 the agency determines that disclosure of the conviction and registration information is
13 necessary for public protection. The attorney general shall develop guidelines for
14 public disclosure of offender registration information. Public disclosure may include
15 internet access if the offender:
- 16 a. Is required to register for a lifetime under subsection 8;
17 b. Has been determined to be a high risk to the public by the department, the
18 attorney general, or the courts, according to guidelines developed by those
19 agencies; or
20 c. Has been determined to be a high risk to the public by an agency of another state
21 or the federal government.
- 22 If the offender has been determined to be a moderate risk, public disclosure must
23 include, at a minimum, notification of the offense to the victim registered under chapter
24 12.1-34 and to any agency, civic organization, or group of persons who have
25 characteristics similar to those of a victim of the offender. Upon request, law
26 enforcement agencies may release conviction and registration information regarding
27 low-risk, moderate-risk, or high-risk offenders.
- 28 15. A state officer, law enforcement agency, or public school district or governing body of a
29 nonpublic school or any appointee, officer, or employee of those entities is not subject
30 to civil or criminal liability for making risk determinations, allowing a sexual offender to

1 attend a school function under section 12.1-20-25, or for disclosing or for failing to
2 disclose information as permitted by this section.

3 16. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual
4 offender or as an offender against a child under this section, the juvenile shall comply
5 with the registration requirements in this section. Notwithstanding any other provision
6 of law, a law enforcement agency shall register a juvenile offender in the same manner
7 as adult offenders and may release any relevant and necessary information on file to
8 other law enforcement agencies, the department of health and human services, or the
9 public if disclosure is necessary to protect public health or safety. The law enforcement
10 agency shall release any relevant and necessary information on file to the
11 superintendent or principal of the school the juvenile attends. The school
12 administration shall notify others in similar positions if the juvenile transfers to another
13 learning institution in or outside the state.

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

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

26 19. When an individual who is required to register pursuant to this section plans to travel
27 outside of the United States, at least twenty-one days before the intended travel, the
28 individual shall inform the agency with which the individual last registered the
29 individual's residence address the details of the intended travel. Upon receipt of the
30 information from the registering law enforcement agency, the attorney general shall
31 report the travel to the United States marshal service.

1 **SECTION 11. AMENDMENT.** Section 15.1-09-33.4 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **15.1-09-33.4. Student misconduct - Prohibition against participation in extracurricular**
4 **activities.**

- 5 1. The board of a school district ~~shall~~may prohibit a student from participating in any
6 extracurricular activity if:
- 7 a. The student has pled guilty to or been convicted of a criminal offense and
8 sentenced under section 12.1-32-02.1 or pled guilty or been convicted of an
9 offense specified in subsection 1 of section 12.1-32-09.1;
- 10 b. The student has:
- 11 (1) An order prohibiting contact issued against the student at the request of
12 another student or employee of the school under section 12.1-31.2-02;
- 13 (2) A disorderly conduct restraining order issued against the student at the
14 request of another student or employee of the school under section
15 12.1-31.2-01, except a temporary restraining order under subsection 4 of
16 section 12.1-31.2-01; ~~or~~
- 17 (3) A protection order issued against the student at the request of another
18 student or employee of the school, except a temporary protection order
19 under section 14-07.1-03; or
- 20 (4) Any other order issued against the student prohibiting contact with a student
21 or employee of the school which is signed by a district judge or a judicial
22 referee within a delinquency or criminal case;
- 23 c. The principal of the school receives information pertaining to an offense or order
24 included under this section as provided in section 27-20.2-21; or
- 25 d. The victim of the offense or the subject of the order notifies the principal of the
26 offense or order.
- 27 2. For purposes of this section, a representative of the juvenile court system may notify
28 the principal of a school regarding the existence of files or records of the juvenile court
29 pertaining to a student of the school which are open to inspection by the principal
30 under section 27-20.2-21.

1 **SECTION 12. AMENDMENT.** Subsection 3 of section 27-20.2-09 of the North Dakota
2 Century Code is amended and reenacted as follows:

- 3 3. The giving of information and advice and any conditions imposed for the conduct and
4 control of the child may not extend beyond six months from the day commenced
5 unless extended by the court for an additional period not to exceed six months and
6 does not authorize the detention of the child if not otherwise permitted by this chapter.
7 For a driving-related offense, the conditions may include a restriction on the child's
8 driving privileges as authorized under section ~~27-20.4-19~~19 of this Act.

9 **SECTION 13.** A new section to chapter 27-20.4 of the North Dakota Century Code is
10 created and enacted as follows:

11 **Petition.**

- 12 1. A petition alleging delinquency under this chapter must be reviewed by the director,
13 the court, or other person designated by the director and authorized by the court to
14 determine whether the filing of the petition is in the best interest of the public and the
15 child.
- 16 2. The state's attorney shall prepare, file, and serve a petition alleging delinquent
17 conduct on the parties. The juvenile court shall conduct an inquiry into and provide the
18 last known address of the parents or legal guardian of the child in the referral to the
19 state's attorney.
- 20 3. A petition alleging delinquent conduct may not include the adult class level of the
21 offense unless the offense level is a necessary element of the delinquent conduct.

22 **SECTION 14.** A new section to chapter 27-20.4 of the North Dakota Century Code is
23 created and enacted as follows:

24 **Fitness to proceed - Lack of criminal responsibility.**

25 In any juvenile court proceeding, the court shall determine whether a child is fit to proceed
26 and whether the child lacked criminal responsibility for the commission of an offense in
27 accordance with chapters 12.1-04 and 12.1-04.1.

28 **SECTION 15. AMENDMENT.** Subsection 5 of section 27-20.4-11 of the North Dakota
29 Century Code is amended and reenacted as follows:

- 30 5. An informal agreement may not extend beyond six months from the day the
31 agreement was agreed upon. An extension may be granted by the court for an

1 additional period not to exceed six months. An extension may not authorize the
2 detention of the child if not otherwise permitted by this chapter. For a driving-related
3 offense, the agreement may include a restriction on the child's driving privileges as
4 allowed under section ~~27-20.4-19~~19 of this Act.

5 **SECTION 16. AMENDMENT.** Section 27-20.4-15 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **27-20.4-15. Predispositional assessment.**

- 8 1. Before the disposition hearing, the court shall direct the director or designee, to
9 conduct a predisposition assessment and to prepare a written report for the court,
10 unless waived by the court.
- 11 2. The predisposition assessment must consist of a risk and needs assessment together
12 with any other appropriate screenings.
- 13 3. During the pendency of any proceeding the court may order:
 - 14 a. The child to be examined at a suitable place by a physician, psychologist, or
15 certified addiction counselor;
 - 16 b. The child to be tested by appropriate forensic methods to determine whether the
17 child has been exposed to a controlled substance or other substance considered
18 injurious to the child's health;
 - 19 c. Medical or surgical treatment of a child who is suffering from a serious physical
20 condition or illness, or alcohol or drug abuse, which in the opinion of a licensed
21 physician requires prompt treatment, even if the parent, guardian, or other
22 custodian has not been given notice of a hearing, is not available, or without
23 good cause informs the court of that person's refusal to consent to the treatment;
24 or
 - 25 d. An evidence-based risk and needs assessment, mental health screening, or
26 trauma screening; ~~or~~
 - 27 ~~e. The child to be examined to determine the child's competence or criminal~~
28 ~~responsibility. If the child is found to lack competency or criminal responsibility the~~
29 ~~court may:~~

- (1) ~~Dismiss the delinquency proceedings against the child and order the release of the child to the child's parent, guardian, or legal custodian upon conditions considered appropriate by the court;~~
- (2) ~~Suspend the delinquency proceedings against the child for a period of up to one year and order services be provided to the child as an outpatient or inpatient, by commitment to an institution for persons with intellectual disabilities or mental illness; or~~
- (3) ~~Dismiss the delinquency proceedings and direct that child in need of protection proceedings be initiated.~~

SECTION 17. AMENDMENT. Subsection 1 of section 27-20.4-18 of the North Dakota Century Code is amended and reenacted as follows:

1. A probation order entered by the court must place the child under the supervision of the director, unless the child is over eighteen years of age and the child's risk and needs require supervision by the department of corrections and rehabilitation under subsection ~~43~~ of section ~~27-20.4-15~~27-20.4-17.

SECTION 18. AMENDMENT. Subsection 1 of section 27-20.4-20 of the North Dakota Century Code is amended and reenacted as follows:

1. In addition to a child being ordered to make restitution under section ~~27-20.4-16~~27-20.4-17, a parent of a child adjudged delinquent may be ordered to make restitution on the child's behalf in an amount not exceeding five thousand dollars.

SECTION 19. A new section to chapter 27-20.4 of the North Dakota Century Code is created and enacted as follows:

Collateral consequences - Registration - Firearms - Driving privileges.

1. A child may be ordered to register as a sexual offender under section 12.1-32-15.
2. A child may be prohibited from possessing a firearm in accordance with section 62.1-02-01.
3. If a child is adjudicated delinquent of an offense that would be a class A misdemeanor or a felony if the offense were committed by an adult, the juvenile court may suspend the child's driving privileges for a period of up to six months for the first offense, and up to one year for a second or subsequent offense. The juvenile court may order the

1 successful completion of an appropriate driver's examination as a condition for
2 reinstating the child's driving privileges.

3 a. If the juvenile court suspends a child's driving privileges, the court immediately
4 shall take possession of the child's driver's license or permit and send a copy of
5 the court's order to the director of the department of transportation who shall
6 make notation of the child's suspended driving privileges.

7 b. The record of the child's suspension of driving privileges under this section:

8 (1) Must be kept confidential;

9 (2) May not be released except to law enforcement personnel in connection
10 with law enforcement activities; and

11 (3) May not be disclosed to or shared with the licensing officials of any other
12 state or jurisdiction.

13 c. At the end of the six-month or one-year suspension period, the director shall
14 remove and destroy all records of the child's suspension of driving privileges
15 under this section.

16 4. A child may be prohibited from participating in extracurricular activities in accordance
17 with section 15.1-09-33.4.

18 **SECTION 20. AMENDMENT.** Section 62.1-02-01 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **62.1-02-01. Persons who are not to possess firearms - Penalty.**

- 21 1. a. A person who has been convicted anywhere of a felony offense involving
22 violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an
23 equivalent felony offense of another state or the federal government is prohibited
24 from owning a firearm or having one in possession from the date of conviction
25 and continuing for ten years after the date of conviction or the date of release
26 from incarceration, parole, or probation, whichever is latest.
- 27 b. A person who has been convicted anywhere of a felony offense of this or another
28 state or the federal government not provided for in subdivision a or who has been
29 convicted of a class A misdemeanor offense involving violence or intimidation in
30 violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another
31 state or the federal government and the offense was committed while using or

possessing a firearm, a dangerous weapon, or, as defined in section 12.1-01-04, a destructive device or an explosive, is prohibited from owning a firearm or having one in possession from the date of conviction and continuing for five years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.

c. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in this state or elsewhere by a court of competent jurisdiction, other than a person who has had the petition that provided the basis for the diagnosis, confinement, or commitment dismissed under section 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or as a mentally deficient individual, is prohibited from purchasing a firearm or having one in possession. This limitation does not apply to a person who has not suffered from the disability for the previous three years or who has successfully petitioned for relief under section 62.1-02-01.2.

d. A person under the age of eighteen years may not possess a handgun except that such a person, while under the direct supervision of an adult, may possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

e. A child who has been adjudicated delinquent of a felony offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent felony offense of another state or the federal government is prohibited from owning a firearm or having one in possession from the date of adjudication and continuing for ten years after the date of adjudication.

f. A child who has been adjudicated of a class A misdemeanor offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another state or the federal government, and the offense was committed while using or possessing a firearm, a dangerous weapon, a destructive device, or an explosive is prohibited from owning a firearm or having one in possession from the date of adjudication and continuing for five years after the date of adjudication.

A person who violates subdivision a or b is guilty of a class C felony, and a person who violates subdivision c or d is guilty of a class A misdemeanor.

2. For the purposes of this section, "conviction" means a determination that the person committed one of the above-mentioned crimes upon a verdict of guilt, a plea of guilty, or a plea of nolo contendere even though:

- a. The court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02;
- b. The court deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02;
- c. The court placed the person on probation;
- d. The person's conviction has been reduced in accordance with subsection 9 of section 12.1-32-02 or section 12.1-32-07.1;
- e. Sentence dispositions, sentence reductions, or offense determinations equivalent to this section were imposed or granted by a court, board, agency, or law of another state or the federal government; or
- f. The person committed an offense equivalent to an offense described in subdivision ~~a or b~~ or e or f of subsection 1 when that person was subject to juvenile adjudication or proceedings and a determination of a court under chapter 27-20.4 or of a court of another state or the federal government was made that the person committed the delinquent act or offense.

3. A felon who is not sentenced under section 12.1-32-09.1 may possess a rifle that has a barrel sixteen inches [40.72 centimeters] or longer or a shotgun that has a barrel eighteen inches [45.72 centimeters] or longer and which is one of the following:

- a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured before 1899.
- b. A replica of any firearm described in subdivision a, if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

- 1 c. A muzzleloading rifle or muzzleloading shotgun designed to use black powder or
2 a black powder substitute and which cannot use fixed ammunition.

3 **SECTION 21. REPEAL.** Sections 27-20.4-12, 27-20.4-13, and 27-20.4-19 of the North
4 Dakota Century Code are repealed.