

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1048

Introduced by

Legislative Council

(Criminal Justice Committee)

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

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

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

6 **SECTION 1. AMENDMENT.** Section 12.1-32-15 of the 1995 Supplement to the North
7 Dakota Century Code is amended and reenacted as follows:

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

10 1. As used in this section:

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

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

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

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

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

4 f. "Sexual offender" means a person who has pled guilty to or been found guilty
5 of a violation of section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06,
6 12.1-20-07, 12.1-20-11, chapter 12.1-27.2, or an attempt to commit these
7 offenses.

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

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

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

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

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

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

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

19 ~~4.~~ 5. A person who is required to register pursuant to this section who is released on
20 probation or discharged upon payment of a fine must, before the release or
21 discharge, be informed of that person's duty to register under this section by the
22 court in which that person is convicted. The court shall require the person to read
23 and sign a form as required by the attorney general, stating that the duty of the
24 person to register under this section has been explained to that person. The court
25 shall obtain the address where the person expects to reside upon release or
26 discharge and shall report the address to the attorney general within three days.
27 The court shall give one copy of the form to the person and shall send two copies
28 to the attorney general. The attorney general shall forward one copy to the
29 appropriate law enforcement agency having jurisdiction where the person expects
30 to reside upon discharge, parole, or release.

1 ~~5.~~ 6. Registration consists of a written statement signed by the person, giving the
2 information required by the attorney general, and the fingerprints and photograph
3 of the person. Within three days after registration, the registering law enforcement
4 agency shall forward the statement, fingerprints, and photograph to the attorney
5 general. If a person required to register pursuant to this section has a change in
6 name or address, that person shall inform in writing, within ten days, the law
7 enforcement agency with whom that person last registered of the person's new
8 name or address. The law enforcement agency, within three days after receipt of
9 the information, shall forward it to the attorney general. The attorney general shall
10 forward the appropriate registration data to the law enforcement agency having
11 local jurisdiction of the new place of residence. Upon a change of address, the
12 person required to register shall also register within ten days at the law
13 enforcement agency having local jurisdiction of the new place of residence. These
14 provisions also apply in any other state that requires registration.

15 ~~6.~~ 7. A person required to register under this section shall comply with the registration
16 requirement for ~~a~~ the longer of the following periods:
17 a. A period of ten years after the date of sentence or order deferring or
18 suspending sentence upon a plea or finding of guilt or after release from
19 incarceration, whichever is later; or
20 b. Until a court determination is made that the person no longer is a sexually
21 violent predator. The sexually violent predator may petition no more than
22 once a year for a court determination on the status of being a sexually violent
23 predator. The court must receive a report from the qualified board before
24 making the determination.

25 ~~7.~~ 8. A person required to register under this section who violates this section is guilty of
26 a class A misdemeanor. A court may not relieve a person who willfully violates this
27 section from serving a term of at least ninety days in jail and completing probation
28 of one year. A person who violates this section who previously has pled guilty or
29 been found guilty of violating this section is guilty of a class C felony.

30 ~~8.~~ 9. When a person is released on parole or probation and is required to register
31 pursuant to this section, but fails to do so within the time prescribed, the court shall

1 order the probation, or the parole board shall order the parole, of the person
2 revoked. The statements, photographs, and fingerprints required by this section
3 are open to inspection by the public.

4 ~~9.~~ 10. If a person required to register pursuant to this section is temporarily sent outside
5 the facility or institution where that person is confined under conviction or sentence,
6 the local law enforcement agency having jurisdiction over the place where that
7 person is being sent must be notified within a reasonable time period before that
8 person is released from the facility or institution. This subsection does not apply to
9 any person temporarily released under guard from the facility or institution in which
10 that person is confined.

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

1 **SECTION 2.** A new subsection to section 50-06-05.1 of the 1995 Supplement to the
2 North Dakota Century Code is created and enacted as follows:
3 To provide for the qualifications for and the membership of a qualified board as
4 required by section 12.1-32-15.