

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1334

Introduced by

Representatives Meier, Delmore, Karls, Klemin, Porter, Steiner

Senators Myrdal, Oehlke, Schaible

1 A BILL ~~for an Act to create and enact a new section to chapter 12.1-20 of the North Dakota~~
2 ~~Century Code, relating to prohibiting high-risk sexual offenders from residing near schools; and~~
3 ~~to provide a penalty.~~ for an Act to amend and reenact section 12.1-32-15 of the North Dakota
4 Century Code, relating to registration requirements for sexual offenders; and to provide a
5 penalty.

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

7 ~~SECTION 1. A new section to chapter 12.1-20 of the North Dakota Century Code is created~~
8 ~~and enacted as follows:~~

9 ~~High-risk sexual offender residence near schools prohibited.~~

10 ~~1. An individual assessed as a high-risk sexual offender in accordance with~~
11 ~~subsection 12 of section 12.1-32-15, may not reside within five hundred feet [152.4~~
12 ~~meters] of a public or nonpublic preschool or elementary, middle, or high school.~~

13 ~~2. As used in this section "reside" means to live permanently or be situated for a~~
14 ~~considerable time in a home or a particular place.~~

15 ~~3. A violation of this section is a class A misdemeanor.~~

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

18 **12.1-32-15. Offenders against children and sexual offenders - Sexually violent**
19 **predators - Registration requirement - Penalty.**

20 1. As used in this section:

- 21 a. "A crime against a child" means a violation of chapter 12.1-16, section
22 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04,
23 subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01,
24 12.1-18-02, 12.1-18-05, chapter 12.1-29, or section 14-09-22, subsection 3 of

1 section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense
2 from another court in the United States, a tribal court, or court of another country,
3 in which the victim is a minor or is otherwise of the age required for the act to be
4 a crime or an attempt or conspiracy to commit these offenses.

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

6 c. "Homeless" means an individual who is physically present in this state, but is
7 living in a park, under a bridge, on the streets, in a vehicle or camper, or is
8 otherwise without a traditional dwelling, and also one who resides in this state but
9 does not maintain a permanent address. The term does not include individuals
10 who are temporarily domiciled or individuals residing in public or private shelters
11 that provide temporary living accommodations.

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

16 e. "Predatory" means an act directed at a stranger or at an individual with whom a
17 relationship has been established or promoted for the primary purpose of
18 victimization.

19 f. "Reside" means to live permanently or be situated for a considerable time in a
20 home or a particular place.

21 g. "Sexual offender" means a person who has pled guilty to or been found guilty,
22 including juvenile delinquent adjudications, of a violation of section 12.1-20-03,
23 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,
24 12.1-20-07 except for subdivision a, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2,
25 chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, subdivision b of
26 subsection 1 of section 12.1-41-02, section 12.1-41-04, 12.1-41-05, or
27 12.1-41-06, or an equivalent offense from another court in the United States, a
28 tribal court, or court of another country, or an attempt or conspiracy to commit
29 these offenses.

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

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

6 | 2. The court shall impose, in addition to any penalty provided by law, a requirement that
7 | the individual register, within three days of coming into a county in which the individual
8 | resides, is homeless, or within the period identified in this section that the individual
9 | becomes temporarily domiciled. The individual must register with the chief of police of
10 | the city or the sheriff of the county if the individual resides, attends school, or is
11 | employed in an area other than a city. A homeless individual shall register every three
12 | days with the sheriff or chief of police of the jurisdiction in which the individual is
13 | physically present. The court shall require an individual to register by stating this
14 | requirement on the court records, if that individual:

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

18 | b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender
19 | for, a misdemeanor or attempted misdemeanor. The court may deviate from
20 | requiring an individual to register if the court first finds the individual is no more
21 | than three years older than the victim if the victim is a minor, the individual has
22 | not previously been convicted as a sexual offender or of a crime against a child,
23 | and the individual did not exhibit mental abnormality or predatory conduct in the
24 | commission of the offense.

25 | c. Is a juvenile found delinquent under subdivision d of subsection 1 of section
26 | 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual
27 | offender for a misdemeanor. The court may deviate from requiring the juvenile to
28 | register if the court first finds the juvenile has not previously been convicted as a
29 | sexual offender or for a crime against a child, and the juvenile did not exhibit
30 | mental abnormality or predatory conduct in the commission of the offense.

- d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a child or an attempted crime against a child, including juvenile delinquent adjudications of equivalent offenses. Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim, the court may deviate from requiring an individual to register if the 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

1 victim and offender, and the mental state of the offender. The court may order an
2 offender to be evaluated by a qualified counselor, psychologist, or physician before
3 sentencing. Except as provided under subdivision e of subsection 2, the court shall
4 state on the record in open court its affirmative finding for not requiring an offender to
5 register.

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

24 6. An individual who is required to register pursuant to this section who is released on
25 probation or discharged upon payment of a fine must, before the release or discharge,
26 be informed of the duty to register under this section by the court in which that
27 individual is convicted. The court shall require the individual to read and sign a form as
28 required by the attorney general, stating that the duty of the individual to register under
29 this section has been explained to that individual. The court shall obtain the address
30 where the individual expects to reside, attend school, or work upon release or
31 discharge and shall report the address to the attorney general within three days. The

1 court shall give one copy of the form to the individual and shall send two copies to the
2 attorney general. The attorney general shall forward one copy to the appropriate law
3 enforcement agency having jurisdiction where the individual expects to reside, attend
4 school, or work upon discharge, parole, or release.

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

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

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

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

1 under age twelve, or section 12.1-18-01 if that individual is an adult other
2 than a parent of the victim, or an equivalent offense from another court in
3 the United States, a tribal court, or court of another country; or

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

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

- 1 of risk and supporting documentation, concerning individuals required to be
2 registered under this section who are about to be released or placed into the
3 community.
- 4 b. The attorney general shall conduct a risk assessment of sexual offenders who
5 are not under the custody or supervision of the department. The attorney general
6 may adopt a law enforcement agency's previous assignment of risk level for an
7 individual if the assessment was conducted in a manner substantially similar to
8 the guidelines developed under this subsection.
- 9 c. The juvenile courts or the agency having legal custody of a juvenile shall conduct
10 a risk assessment of juvenile sexual offenders who are required to register under
11 this section. The juvenile courts or the agency having legal custody of a juvenile
12 shall provide the attorney general any information, including the offender's level
13 of risk and supporting documentation, concerning juveniles required to register
14 and who are about to be released or placed into the community.
- 15 d. The attorney general shall notify the offender of the risk level assigned to that
16 offender. An offender may request a review of that determination with the attorney
17 general's sexual offender risk assessment committee and may present any
18 information that the offender believes may lower the assigned risk level.
- 19 13. An individual assessed as a high-risk sexual offender in accordance with
20 subsection 12, may not reside within five hundred feet [152.4 meters] of a public or
21 nonpublic preschool or elementary, middle, or high school.
- 22 14. Relevant and necessary conviction and registration information must be disclosed to
23 the public by a law enforcement agency if the individual is a moderate or high risk and
24 the agency determines that disclosure of the conviction and registration information is
25 necessary for public protection. The attorney general shall develop guidelines for
26 public disclosure of offender registration information. Public disclosure may include
27 internet access if the offender:
- 28 a. Is required to register for a lifetime under subsection 8;
- 29 b. Has been determined to be a high risk to the public by the department, the
30 attorney general, or the courts, according to guidelines developed by those
31 agencies; or

1 c. Has been determined to be a high risk to the public by an agency of another state
2 or the federal government.

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

9 ~~14.15.~~ A state officer, law enforcement agency, or public school district or governing body of a
10 nonpublic school or any appointee, officer, or employee of those entities is not subject
11 to civil or criminal liability for making risk determinations, allowing a sexual offender to
12 attend a school function under section 12.1-20-25, or for disclosing or for failing to
13 disclose information as permitted by this section.

14 ~~15.16.~~ If a juvenile is adjudicated delinquent and required or ordered to register as a sexual
15 offender or as an offender against a child under this section, the juvenile shall comply
16 with the registration requirements in this section. Notwithstanding any other provision
17 of law, a law enforcement agency shall register a juvenile offender in the same manner
18 as adult offenders and may release any relevant and necessary information on file to
19 other law enforcement agencies, the department of human services, or the public if
20 disclosure is necessary to protect public health or safety. The law enforcement agency
21 shall release any relevant and necessary information on file to the superintendent or
22 principal of the school the juvenile attends. The school administration shall notify
23 others in similar positions if the juvenile transfers to another learning institution in or
24 outside the state.

25 ~~16.17.~~ If an individual has been required to register as a sexual offender or an offender
26 against a child under section 12.1-32-15 or 27-20-52.1 before August 1, 1999, the
27 individual may petition the court to be removed from the offender list if registration is
28 no longer mandatory for that individual. In considering the petition, the court shall
29 comply with the requirements of this section.

30 ~~17.18.~~ A sexual offender who is currently assigned a moderate or high-risk level by the
31 attorney general may not use a state park of this state as a residence or residential

1 address to comply with the registration requirements of this section. Before arriving at
2 a state park for overnight lodging or camping, a sexual offender who is assigned a
3 moderate or high-risk level by the attorney general shall notify a parks and recreation
4 department law enforcement officer at the state park where the sexual offender will be
5 staying.