# CHAPTER 12.1-32
# PENALTIES AND SENTENCING

### 12.1-32-01. Classification of offenses - Penalties.

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.
2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of twenty thousand dollars, or both, may be imposed.
3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of twenty thousand dollars, or both, may be imposed.
4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
5. Class A misdemeanor, for which a maximum penalty of imprisonment for three hundred sixty days, a fine of three thousand dollars, or both, may be imposed.
6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand five hundred dollars, or both, may be imposed.
7. Infraction, for which a maximum fine of one thousand dollars may be imposed. Any person convicted of an infraction who, within one year before commission of the infraction of which the person was convicted, has been convicted previously at least twice of the same offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint must specify the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

### 12.1-32-01.1. Organizational fines.

Any organization, as defined in section 12.1-03-04, shall, upon conviction, be subject to a maximum fine in accordance with the following classification:

1. For a class A felony, a maximum fine of one hundred thousand dollars.
2. For a class B felony, a maximum fine of seventy thousand dollars.
3. For a class C felony, a maximum fine of fifty thousand dollars.
4. For a class A misdemeanor, a maximum fine of thirty thousand dollars.
5. For a class B misdemeanor, a maximum fine of twenty thousand dollars.

Nothing in this section shall be construed as preventing the imposition of the sanction provided for in section 12.1-32-03, nor as preventing the prosecution of agents of the organization under section 12.1-03-03.

### 12.1-32-02. Sentencing alternatives - Credit for time in custody - Diagnostic testing.

1. a. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
   (1) Payment of the reasonable costs of the person's prosecution.
   (2) Probation.
   (3) A term of imprisonment, including intermittent imprisonment:

(a) In a state correctional facility in accordance with section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a class A misdemeanor.
(b) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
(c) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based or faith-based programs.
(d) In the case of persons convicted of an offense who are under eighteen years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the department of corrections and rehabilitation.

(4) A fine.
(5) Restitution for damages resulting from the commission of the offense.
(6) A no contact order prohibiting contact with a victim of the offense.
(7) Restoration of damaged property or other appropriate work detail.
(8) Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.
(9) Commitment to a sexual offender treatment program.
(10) Treatment court program. A treatment court is a district court supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and substance use disorder treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for treatment court programs.
(11) Veterans treatment docket. A veterans treatment docket is a district court supervised docket approved by the supreme court which combines judicial supervision with licensed treatment programs to treat substance use disorders, mental health conditions, behavioral health conditions, traumatic brain injuries, military sexual trauma, and co-occurring disorders. The supreme court may adopt rules, including rules of procedure, for veterans treatment dockets.
(12) Completion of a restorative justice program. For purposes of this section, "restorative justice program" means a system of justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large.
(13) Mental health court program. A mental health court is a district court supervised treatment program approved by the supreme court which combines judicial supervision with mental health services and treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for mental health court programs.
(14) An order prohibiting contact.

b. Except as provided in section 12.1-32-06.1, sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection does not permit the unconditional discharge of an offender following conviction. A sentence under paragraph 5 or 7 of subdivision a must be imposed in the manner provided in section 12.1-32-08. For purposes of this subsection, "victim" means victim as defined in section 12.1-34-01.

2. Credit against any sentence to a term of imprisonment must be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed or as a result of the conduct on which such charge was based. "Time spent in custody" includes time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal. The total amount of credit the defendant is entitled to for

time spent in custody and any credit for sentence reduction under section 12-44.1-32 or 12-54.1-01 the defendant is entitled to must be stated in the criminal judgment.

3. A court may suspend the execution of all or a part of the sentence imposed. The court shall place the defendant on probation during the term of suspension.
4. A court, upon application or its own motion, may defer imposition of sentence. The court must place the defendant on probation during the period of deferment. An order deferring imposition of sentence is reviewable upon appeal from a verdict or judgment. In any subsequent prosecution, for any other offense, the prior conviction for which imposition of sentence is deferred may be pleaded and proved, and has the same effect as if probation had not been granted or the information or indictment dismissed under section 12.1-32-07.1.
5. A court may, prior to imposition of sentence, order the convicted offender committed to an appropriate licensed public or private institution for diagnostic testing for such period of time as may be necessary, but not to exceed thirty days. The court may, by subsequent order, extend the period of commitment for not to exceed thirty additional days. The court may also order such diagnostic testing without ordering commitment to an institution. Validity of a sentence must not be challenged on the ground that diagnostic testing was not performed pursuant to this subsection.
6. All sentences imposed must be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement must become part of the record of the case.
7. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of the defendant, the court orders the term to commence at some other time.
8. Unless otherwise specifically authorized in the statute defining the offense, a court may not include a minimum term of imprisonment as part of its sentence.
9. A person who is convicted of a felony and sentenced to imprisonment for not more than three hundred sixty days is deemed to have been convicted of a misdemeanor. However, if an order is entered revoking a term of probation that was imposed as part of a sentence, the person is deemed to have been convicted of a felony.
10. A court shall order a defendant to pay fifty dollars to the department of corrections and rehabilitation at the time a presentence investigation is initiated to partially defray the costs incurred by the department for the preparation of the presentence report. The court may also order that any additional costs incurred by the department relating to the presentence investigation and report be paid by the defendant at a rate of payment up to the full costs of conducting the investigation and preparing the report as established by the department.
11. Before sentencing a defendant on a felony charge under section 12.1-20-03, 12.1-20-03.1, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report. A presentence investigation for a charge under section 12.1-20-03 must include a risk assessment. A court may order the inclusion of a risk assessment in any presentence investigation. In all felony or class A misdemeanor offenses, in which force, as defined in section 12.1-01-04, or threat of force is an element of the offense or in violation of section 12.1-22-02, or an attempt to commit the offenses, a court, unless a presentence investigation has been ordered, must receive a criminal record report before the sentencing of the defendant. Unless otherwise ordered by the court, the criminal record report must be conducted by the department of corrections and rehabilitation after consulting with the prosecuting attorney regarding the defendant's criminal record. The criminal record report must be in writing, filed with the court before sentencing, and made a part of the court's record of the sentencing proceeding.

**12.1-32-02.1. Mandatory prison terms for armed offenders.**

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:

a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm; or
b. An offender prohibited from possessing a firearm under section 62.1-02-01 possesses a firearm while in the course of committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.

2. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:
a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

3. This section applies even when being armed is an element of the offense for which the offender is convicted.
4. This section applies even if the offender is prosecuted for a violation of section 62.1-02-01 for the same conduct.
5. An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence.

**12.1-32-02.2. Repayment of rewards paid by crimestoppers programs - Duties of attorney general - Qualified local programs - Disbursement of moneys collected.**

1. After a defendant has been convicted of a felony, the court may order the defendant to repay all or part of any reward paid by a qualified local program. In determining whether the defendant must repay the reward or part of the reward, the court shall consider:
a. The ability of the defendant to make the payments, including any financial hardship that payment may cause to the defendant's dependents.
b. Whether the information that was reported to the qualified local program substantially contributed to the defendant being charged with the offense. To the extent allowed by law, the court shall respect the confidentiality of the records of the qualified local program.

2. "A qualified local program" means a program approved by the attorney general to receive repayment of rewards. The attorney general shall consider the organization, continuity, leadership, community support, and general conduct of the program to determine whether the repayments will be spent to further crime prevention purposes of the program. The attorney general also shall determine that the qualified local program provides rewards to persons who report information concerning criminal activity and whether that information substantially leads to defendants being charged with felonies.
3. If the court determines that a defendant is capable of repaying all or any part of a reward paid by a qualified local program, the judgment must include a statement of the amount owed, the identity of the qualified local program, and a schedule, if any, of payments to be made by the defendant. The clerk of court may establish an account within which to deposit repayments of rewards and at least quarterly shall pay over to each qualified local program the sums that have been collected for the benefit of that program.
4. A judgment that includes a repayment of reward, either alone or in conjunction with section 29-26-22, may be docketed and thereafter constitutes a lien upon the real estate of the defendant in the same manner as a judgment for money rendered in a civil action.

**12.1-32-02.3. Mandatory sentences - Exceptions.**

1. In addition to any other provision of law, when sentencing an individual convicted of a violation in chapter 19-03.1 for which there is a mandatory minimum sentence, the

court may depart from the applicable mandatory minimum sentence if the court, in giving due regard to the nature of the crime, history and character of the defendant, and the defendant's chances of successful rehabilitation, finds a compelling reason on the record that imposition of the mandatory minimum sentence would result in manifest injustice to the defendant and that the mandatory minimum sentence is not necessary for the protection of the public.

2. Subsection 1 does not apply if the individual is sentenced under section 12.1-32-02.1.
3. Upon departing from a mandatory minimum sentence, a judge shall report to the state court administrator who shall make available in electronic form and on the world wide web an annual report by July 1 of each year on the total number of departures from mandatory minimum sentences.

**12.1-32-03. Special sanction for organizations.**

When an organization is convicted of an offense, the court may, in addition to any other sentence which may be imposed, require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense, by mail or by advertising in designated areas or by designated media or otherwise.

**12.1-32-03.1. Procedure for trial of infraction - Incidents.**

1. Except as provided in this subsection, all procedural provisions relating to the trial of criminal cases as provided in the statutes or rules relating to criminal procedure shall apply to the trial of a person charged with an infraction. A person charged with an infraction is not entitled to be furnished counsel at public expense nor to have a trial by jury unless the person may be subject to a sentence of imprisonment under subsection 7 of section 12.1-32-01.
2. Except as provided in this title, all provisions of law and rules of criminal procedure relating to misdemeanors shall apply to infractions, including, but not limited to, the powers of law enforcement officers, the jurisdiction of courts, the periods for commencing action and bringing a case to trial, and the burden of proof.
3. Following conviction of an infraction, the offender may be sentenced in accordance with subsection 1 of section 12.1-32-02, except that a term of imprisonment may not be imposed except in accordance with subsection 3 of section 12.1-32-05, or subsection 7 of section 12.1-32-01.
4. If a statute provides that conduct is an infraction without specifically including a requirement of culpability, no culpability is required.

**12.1-32-04. Factors to be considered in sentencing decision.**

The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations regarding the desirability of sentencing an offender to imprisonment:

1. The defendant's criminal conduct neither caused nor threatened serious harm to another person or his property.
2. The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property.
3. The defendant acted under strong provocation.
4. There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct.
5. The victim of the defendant's conduct induced or facilitated its commission.
6. The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which was sustained.
7. The defendant has no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period of time before the commission of the present offense.
8. The defendant's conduct was the result of circumstances unlikely to recur.

9. The character, history, and attitudes of the defendant indicate that he is unlikely to commit another crime.
10. The defendant is particularly likely to respond affirmatively to probationary treatment.
11. The imprisonment of the defendant would entail undue hardship to himself or his dependents.
12. The defendant is elderly or in poor health.
13. The defendant did not abuse a public position of responsibility or trust.
14. The defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise cooperated.

Nothing herein shall be deemed to require explicit reference to these factors in a presentence report or by the court at sentencing.

**12.1-32-04.1. Gross sexual imposition - Deferred imposition of sentence.**

A person who violates subdivision d of subsection 1 or subdivision a of subsection 2 of section 12.1-20-03 may not receive a deferred imposition of sentence unless that person proves at sentencing by clear and convincing evidence that that person reasonably believed the victim to be fifteen years of age or older.

**12.1-32-05. Imposition of fine - Response to nonpayment.**

1. The court, in making a determination of the propriety of imposing a sentence to pay a fine, shall consider the following factors:
   a. The ability of the defendant to pay without undue hardship.
   b. Whether the defendant, other than a defendant organization, gained money or property as a result of commission.
   c. Whether the sentence to pay a fine will interfere with the defendant's capacity to make restitution.
   d. Whether a sentence to pay a fine will serve a valid rehabilitative purpose.
2. The court may allow the defendant to pay any fine imposed in installments. When a defendant is sentenced to pay a fine, the court shall not impose at the same time an alternative sentence to be served in the event that the fine is not paid.
3. If the defendant does not pay the fine, or make any required partial payment, the court, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant should not be imprisoned for nonpayment. Unless the defendant shows that his default is excusable, the court may sentence him to the following periods of imprisonment for failure to pay a fine:
   a. If the defendant was convicted of a misdemeanor, to a period not to exceed thirty days.
   b. If the defendant was convicted of a felony, to a period not to exceed six months.

**12.1-32-06. Incidents of probations.**

Repealed by S.L. 1989, ch. 158, § 18.

**12.1-32-06.1. Length and termination of probation - Additional probation for violation of conditions - Penalty.**

1. Except as provided in this section, the length of unsupervised probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony and two years for a misdemeanor or infraction from the later of the date of:
   a. The order imposing probation;
   b. The defendant's release from incarceration; or
   c. Termination of the defendant's parole.
2. Except as provided in this section, the length of supervised probation imposed in conjunction with a sentence of probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which

involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, or a violation of section 14-09-22; three years for any other felony offense; two years for a class A misdemeanor; and three hundred sixty days for a class B misdemeanor offense from the later of the date of:

a. The order imposing probation;
b. The defendant's release from incarceration or an alternative to incarceration; or
c. Termination of the defendant's parole.

3. If the defendant has pled or been found guilty of an offense for which the court imposes a sentence of restitution or reparation for damages resulting from the commission of the offense, the court may, following a restitution hearing pursuant to section 12.1-32-08, impose additional periods of unsupervised probation not to exceed five years for each additional period imposed.
4. If the defendant has pled or been found guilty of a felony sexual offense in violation of chapter 12.1-20, the court shall impose at least five years but not more than ten years of supervised probation to be served after sentencing or incarceration. If the defendant has pled or been found guilty of a class AA felony sexual offense in violation of section 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime supervised probation on the defendant. If the defendant has pled or been found guilty of a misdemeanor sexual offense in violation of chapter 12.1-20, the court may impose additional periods of probation not to exceed two years for each additional period imposed. If the unserved portion of the defendant's maximum period of incarceration is less than one year, a violation of the probation imposed under this subsection is a class A misdemeanor.
5. If the defendant has pled or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility for support continues.
6. In felony and misdemeanor cases, in consequence of violation of probation conditions, the court may impose additional probation if the defendant has not served the maximum sentence of imprisonment available to the court at the time of initial sentencing or deferment or the total time on probation authorized under this section.
   a. For class B and greater felony offenses, an offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, or a violation of section 14-09-22, the total time on probation may not exceed ten years.
   b. For all other felony offenses, the total time on probation may not exceed five years.
   c. For misdemeanor cases, the total time on probation may not exceed three years.
   d. The court shall allow the defendant credit for a sentence of probation from the date the defendant began probation until the date a petition to revoke probation was filed with the court. If the defendant is on supervised probation, the defendant is not entitled to credit for a sentence of probation for any period the defendant has absconded from supervision. The total amount of credit a defendant is entitled to for time spent on probation must be stated in the criminal judgment or order of revocation of probation.
7. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
8. Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes.

**12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

1. When the court imposes probation upon conviction for a felony offense subject to section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section

12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. When the court imposes probation upon conviction or order of disposition in all other felony cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court.

2. The department of corrections and rehabilitation may administer a risk assessment for the evaluation of each defendant placed under the supervision and management of the department of corrections and rehabilitation. The results of the risk assessment may be used to set a level of supervision and management and develop an individualized case plan for the defendant. The case plan may include a list of responsivity factors and a plan to address any risk factors identified in the risk assessment.
3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:
   a. Community service;
   b. Day reporting;
   c. Curfew;
   d. Home confinement;
   e. House arrest;
   f. Electronic monitoring;
   g. Residential halfway house;
   h. Intensive supervision program;
   i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours;
   j. Participation in the twenty-four seven sobriety program; or
   k. One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.
4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate and may include any one or more of the following:

a. Work faithfully at a suitable employment or faithfully pursue a course of study or of career and technical education training that will equip the defendant for suitable employment.
b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
d. Support the defendant's dependents and meet other family responsibilities.
e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.
f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05.
g. Refrain from excessive use of alcohol or any use of narcotics or of another dangerous or abusable drug without a prescription.
h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.
i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
k. Report to a probation officer at reasonable times as directed by the court or the probation officer.
l. Submit to a medical examination or other reasonable testing for the purpose of determining the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
o. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted.
p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed or provided at public expense for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 4 of section 12.1-32-08.
q. Provide community service for the number of hours designated by the court.
r. Refrain from any subscription to, access to, or use of the internet.

5. When the court imposes a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the defendant must be given a certificate explicitly setting forth the conditions on which the defendant is being released.
6. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time before the expiration or termination of the period for which the probation remains conditional. If the defendant violates a condition of probation at any time before the expiration or termination of the period, the court may continue the defendant on the existing probation, with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment.
7. The court may continue or modify probation conditions or revoke probation for a violation of probation conditions occurring before the expiration or termination of the period of probation notwithstanding that the order of the court is imposed after the

expiration or termination has occurred. The petition for revocation must be issued within sixty days of the expiration or termination of probation.

8. Jurisdiction over a probationer may be transferred from the court that imposed the sentence to another court of this state with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection may exercise all powers permissible under this chapter over the defendant.
9. Notwithstanding any other provision of law, the court may authorize the defendant to assist law enforcement officers in an investigation of a criminal offense upon the terms and conditions as the court may require by written order. The court shall hold a hearing in camera before issuing an order under this subsection. The order must be sealed and is subject to inspection only upon order of the court.
10. The department of corrections and rehabilitation shall provide written notice to a defendant who is in the department's physical custody of any untried petition for revocation against the defendant of which the department has notice and of the defendant's right to make a request for final disposition of the petition.
    a. Upon notice of an untried petition for revocation of probation, the defendant may request final disposition of the petition. The defendant's request must be in writing and name the court in which the petition for revocation of probation is pending and the prosecuting official charged with the duty of prosecuting the petition.
    b. The defendant shall submit the request to the department. The department shall certify the term of commitment under which the defendant is being held, the time the defendant has served on the sentence, the time remaining to be served, sentence reduction credit the defendant has earned, the defendant's eligibility for parole, and whether the parole board has made a decision regarding the defendant's parole.
    c. The department shall send by registered mail, return receipt requested, one copy of the request and certificate to the court and one copy to the prosecuting official to whom the request and certificate is addressed.
    d. The petition for revocation of probation must be brought to the court for hearing within ninety days after the receipt of the request and certificate by the court and prosecuting official. If the petition is not brought to the court for hearing within the ninety days, the court shall dismiss the petition with prejudice.
    e. The parties may stipulate for a continuance or the court may grant a continuance upon a showing of good cause by either party for a petition under this subsection.
    f. If the defendant escapes from custody subsequent to the defendant's execution of a request for final disposition of a petition for revocation, the request is considered void.

**12.1-32-07.1. Release, discharge, or termination of probation.**

1. Whenever a person has been placed on probation and in the judgment of the court that person has satisfactorily met the conditions of probation, the court shall cause to be issued to the person a final discharge from further supervision.
2. Whenever a person has been placed on probation pursuant to subsection 4 of section 12.1-32-02, the court at any time, when the ends of justice will be served, and when reformation of the probationer warrants, may terminate the period of probation and discharge the person so held. A person convicted of gross sexual imposition under subdivision a of subsection 1 of section 12.1-20-03 is not entitled to early termination of probation pursuant to this section, unless the court finds after at least eight years of supervised probation that further supervision would impose a manifest injustice. Every defendant who has fulfilled the conditions of probation for the entire period, or who has been discharged from probation prior to termination of the probation period, may at any time be permitted in the discretion of the court to withdraw the defendant's plea of guilty. The court may in its discretion set aside the verdict of guilty. In either case, the court may dismiss the information or indictment against the defendant. The court may, upon its own motion or upon application by the defendant and before dismissing the

information or indictment, reduce to a misdemeanor a felony conviction for which the plea of guilty has been withdrawn or set aside. The defendant must then be released from all penalties and disabilities resulting from the offense or crime of which the defendant has been convicted except as provided by sections 12.1-32-15 and 62.1-02-01.

**12.1-32-07.2. Records and filing of papers.**

1. Whenever the court orders that a person convicted of a felony is to be placed on probation, the clerk of the court in which the order is entered immediately shall make full copies of the judgment or order of the court with the conditions of probation and shall certify the same to the director of parole and probation of the department of corrections and rehabilitation. Upon the disposition of any criminal case, the clerk of court shall transmit to the department of corrections and rehabilitation statistical data, in accordance with rules adopted by the department, regarding all defendants whether found guilty or discharged.
2. Whenever imposition of sentence is deferred and, pursuant to section 12.1-32-07.1, the plea of guilty is withdrawn by the defendant or the verdict of guilty is set aside by the court, the clerk of court shall file all papers, including the findings and final orders in proceedings under section 12.1-32-07.1, and shall note the date of filing on the papers. The records and papers are subject to examination by the clerk, a judge of the court, the juvenile commissioner, probation officers, the defendant or defendant's counsel, and the state's attorney. Others may examine the records and papers only upon the written order of a judge of the court.

**12.1-32-07.3. When probationer deemed escapee and fugitive from justice.**

A probationer is considered an escapee and a fugitive from justice if the probationer leaves the jurisdiction before the expiration of the probationary period without permission of the court or the department of corrections and rehabilitation.

**12.1-32-07.4. Presumptive probation.**

1. The sentencing court shall sentence an individual who has pled guilty to, or has been found guilty of, a class C felony offense or class A misdemeanor offense to a term of probation at the time of initial sentencing, except for an offense involving domestic violence; an offense subject to registration under section 12.1-32-15; an offense involving a firearm or dangerous weapon, explosive, or incendiary device; or if a mandatory term of incarceration is required by law.
2. The sentencing court may impose a sentence of imprisonment if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. Aggravating factors include:
   a. That the individual has plead guilty to, or has been found guilty of, a felony offense or class A misdemeanor offense prior to the date of the commission of the offense or offenses charged in the complaint, information, or indictment;
   b. The age and vulnerability of the victim, whether the individual was in a position of responsibility or trust over the victim, or whether the individual abused a public position of responsibility or trust; or
   c. If the individual used force, threats, or coercion in the commission of the offense.
3. This section does not preclude the sentencing court from deferring imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an individual to a term of incarceration with credit for time spent in custody if execution of the sentence is suspended.

**12.1-32-08. Hearing prior to ordering restitution or reparation - Conditions - Collection of restitution for insufficient funds checks - Continuing appropriation.**

1. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence the court may

impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property.

2. If the court has retained jurisdiction after the sentencing hearing for claims of restitution, to make a claim for restitution, the victim shall submit information by affidavit or declaration and, as applicable, documentary evidence within the time specified in the order. The information submitted must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and present facts and evidence sufficient to support a finding the restitution is directly related to the offense and the amount awarded. The prosecutor shall serve the defendant with a copy of the information submitted by the victim no later than sixty days following sentencing.
3. The defendant may challenge restitution but must do so by requesting a hearing within thirty days of being served with the written notification of the amount of restitution requested. The hearing request must be made in writing and filed with the court. If no hearing is requested, the court may enter a judgment ordering restitution. A defendant may not challenge restitution after the thirty-day time period has passed.
4. In determining the amount of restitution, the court shall take into account the reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually sustained as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2. The court shall fix the amount of restitution or reparation and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court may order the defendant to disclose income and assets on forms developed by the state court administrator to facilitate the setting of an appropriate payment plan. The court shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay to the victim under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the order must be deducted from damages awarded in a civil action arising from the same incident.
5. An order that a defendant make restitution or reparation as a sentence or condition of probation, unless the court directs otherwise, may be filed without filing fee, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced. Upon thirty days' written notice to the victim's last known address, the court may order the judgment imposing a duty to pay restitution or reparation be docketed in the same manner as a civil judgment under section 29-26-22.1.
6. When the restitution ordered by the court under subsection 1 is the result of a finding that the defendant issued a check or draft without sufficient funds or without an account, the court shall impose as costs the greater of the sum of twenty dollars or an amount equal to twenty-five percent of the amount of restitution ordered. The costs imposed under this subsection, however, may not exceed one thousand dollars. The state-employed clerks of district court shall remit the funds collected as costs under this subsection to the state treasurer for deposit in the restitution collection assistance fund. The funds deposited into the restitution collection assistance fund are appropriated to the judicial branch on a continuing basis for the purpose of defraying expenses incident to the collection of restitution, including operating expenses and the compensation of additional necessary personnel. The state's attorneys and

county-employed clerks of district court shall remit the funds collected as costs under this subsection to the county treasurer to be deposited in the county general fund.

7. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.
8. If the court finds that the defendant is unable to pay a fine or restitution or reparations, the court may order the defendant to perform reasonable assigned work in lieu of all or part of a fine or restitution or reparations. The defendant may not perform reasonable assigned work in lieu of restitution or reparations unless the person entitled to restitution or reparations has consented in writing or on the record.

**12.1-32-09. Dangerous special offenders - Habitual offenders - Extended sentences - Procedure.**

1. A court may sentence a convicted offender to an extended sentence as a dangerous special offender or a habitual offender in accordance with this section upon a finding of any one or more of the following:
   a. The convicted offender is a dangerous, mentally abnormal person whose conduct has been characterized by persistent aggressive behavior and the behavior makes the offender a serious danger to other persons.
   b. The convicted offender is a professional criminal who has substantial income or resources derived from criminal activity.
   c. The convicted offender is a habitual offender. The court may not make such a finding unless the offender is an adult and has previously been convicted in any state or states or by the United States of two felonies committed at different times when the offender was an adult. For the purposes of this subdivision, a felony conviction in another state or under the laws of the United States is considered a felony.
   d. The offender was convicted of an offense that seriously endangered the life of another person and the offender had previously been convicted of a similar offense.
   e. The offender is especially dangerous because the offender used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

   A conviction shown on direct or collateral review or at the hearing to be invalid or for which the offender has been pardoned on the ground of innocence must be disregarded for purposes of subdivision c. In support of findings under subdivision b, it may be shown that the offender has had control of income or property not explained as derived from a source other than criminal activity. For purposes of subdivision b, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the offender's declared adjusted gross income under chapter 57-38.
2. The extended sentence may be imposed in the following manner:
   a. If the offense for which the offender is convicted is a class A felony, the court may impose a sentence up to a maximum of life imprisonment.
   b. If the offense for which the offender is convicted is a class B felony, the court may impose a sentence up to a maximum of imprisonment for twenty years.
   c. If the offense for which the offender is convicted is a class C felony, the court may impose a sentence up to a maximum of imprisonment for ten years.
3. Whenever an attorney charged with the prosecution of a defendant in a court of this state for an alleged felony committed when the defendant was over the age of eighteen years has reason to believe that the defendant is a dangerous special

offender or a habitual offender, the attorney, at a reasonable time before trial or acceptance by the court of a plea of guilty, may sign and file with the court, and may amend, a notice specifying that the defendant is a dangerous special offender or a habitual offender who upon conviction for the felony is subject to the imposition of a sentence under subsection 2, and setting out with particularity the reasons why the attorney believes the defendant to be a dangerous special offender or a habitual offender. In no case may the fact that the prosecuting attorney is seeking sentencing of the defendant as a dangerous special offender or a habitual offender be disclosed to the jury before a verdict. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, the court may order the notice sealed and the notice is not subject to subpoena or public inspection during the pendency of the criminal matter, except on order of the court, but is subject to inspection by the defendant alleged to be a dangerous special offender or a habitual offender and the offender's counsel.

4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a hearing must be held, before sentence is imposed, in accordance with this subsection as follows:
   a. By a jury, or the court if a jury is waived by the defendant, if the notice alleges that the defendant is a dangerous special offender under subdivision a, b, d, or e of subsection 1. The jury, or the court if a jury is waived, must find that the defendant is a dangerous special offender under one or more of these subdivisions by proof beyond a reasonable doubt. However, in the case of a notice alleging only subdivision e of subsection 1, the trial jury, or the trial court if a jury is waived, may make a special finding of proof of this subdivision without an additional hearing subsequent to a verdict or finding of guilt.
   b. By the court if the notice alleges that the defendant is a habitual offender under subdivision c of subsection 1. The court must find that the defendant is a habitual offender by a preponderance of the evidence.
5. Except in the most extraordinary cases, the court shall obtain a presentence report and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02 before holding a hearing under this subsection. The court shall fix a time for the hearing and notice thereof must be given to the defendant and the prosecution at least five days prior thereto. The court shall permit the prosecution and counsel for the defendant, or the defendant if the defendant is not represented by counsel, to inspect the presentence report sufficiently before the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion that might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant is entitled to compulsory process and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment is prima facie evidence of such former judgment or commitment. If the jury or the court finds, after hearing, one or more of the grounds set forth in subsection 1, that the defendant is a dangerous special offender or a habitual offender, the court shall sentence the defendant to imprisonment for an appropriate term within the limits specified in subsection 2.

**12.1-32-09.1. Sentencing of violent offenders.**

1. Except as provided under section 12-48.1-02 and pursuant to rules adopted by the department of corrections and rehabilitation, an offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or

an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted.

2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.
3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.
4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.
5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation.

**12.1-32-10. Mandatory parole components.**

Repealed by S.L. 1989, ch. 51, § 5.

**12.1-32-11. Merger of sentences - Sentencing for multiple offenses.**

1. Unless the court otherwise orders, when a person serving a term of commitment imposed by a court of this state is committed for another offense or offenses, the shorter term or the shorter remaining term shall be merged in the other term. When a person on probation or parole for an offense committed in this state is sentenced for another offense or offenses, the period still to be served on probation or parole shall be merged in any new sentence of commitment or probation. A court merging sentences under this subsection shall forthwith furnish each of the other courts previously involved and the penal facility in which the defendant is confined under sentence with authenticated copies of its sentence, which shall cite the sentences being merged. A court which imposed a sentence which is merged pursuant to this subsection shall modify such sentence in accordance with the effect of the merger.
2. Repealed by S.L. 1977, ch. 129, § 1.
3. When sentenced only for misdemeanors, a defendant may not be consecutively sentenced to more than one year, except that a defendant being sentenced for two or more class A misdemeanors may be subject to an aggregate maximum not exceeding that authorized by section 12.1-32-01 for a class C felony if each class A misdemeanor was committed as part of a different course of conduct or each involved a substantially different criminal objective.

**12.1-32-12. Penalties, sentences, and parole for offenses unclassified and in other titles.**

Where an offense is defined by a statute or by the constitution without specification of its classification pursuant to section 12.1-32-01, the offense is punishable as provided in the statute or constitutional provision defining it, or:

1. If the offense is declared to be a felony, without further specification of punishment, it is punishable as if it were a class C felony.
2. If the offense is declared to be a misdemeanor, without further specification of punishment, it is punishable as if it were a class A misdemeanor.

The sentencing alternatives available under section 12.1-32-02 are available to a court sentencing an offender for commission of an offense defined by a statute outside this title.

**12.1-32-13. Minor convicted of felony - Sentencing.**

Whenever a minor is convicted of a felony, the sentencing court may commit the person to the North Dakota youth correctional center as provided in this title. Provided, however, that a minor over the age of sixteen who is convicted of a felony may be sentenced to a penal institution or detention facility.

**12.1-32-13.1. Juveniles - Sentencing - Reduction.**

1. Notwithstanding any other provision of law, a court may reduce a term of imprisonment imposed upon a defendant convicted as an adult for an offense committed and completed before the defendant was eighteen years of age if:
   a. The defendant has served at least twenty years in custody for the offense;
   b. The defendant filed a motion for reduction in sentence; and
   c. The court has considered the factors provided in this section and determined the defendant is not a danger to the safety of any other individual, and the interests of justice warrant a sentence modification.
2. A defendant whose sentence is reduced under this section must be ordered to serve a period of supervised release of at least five years upon release from imprisonment. The conditions of supervised release and any modification or revocation of the term of supervised release must be in accordance with this chapter.
3. When determining whether to reduce a term of imprisonment under this section, the court shall consider:
   a. The factors provided in section 12.1-32-04, including the nature of the offense;
   b. The age of the defendant at the time of the offense;
   c. A report and recommendation from the department of corrections and rehabilitation, including information relating to the defendant's ability to comply with the rules of the institution and whether the defendant completed any educational, vocational, or other prison programming;
   d. A report and recommendation from the state's attorney for any county in which the defendant was prosecuted;
   e. Whether the defendant has demonstrated maturity, rehabilitation, and a fitness to re-enter society sufficient to justify a sentence reduction;
   f. A statement by a victim or a family member of a victim who was impacted by the actions of the defendant;
   g. A report of a physical, mental, or psychiatric examination of the defendant conducted by a licensed health care professional;
   h. The defendant's family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system;
   i. The role of the defendant in the offense and whether an adult also was involved in the offense;
   j. The diminished culpability of juveniles compared to adults and the level of maturity and failure to appreciate the risks and consequences; and
   k. Any additional information the court determines relevant.
4. A defendant may make a second motion for a reduction in sentence under this section no earlier than five years after the initial motion for reduction.
5. A defendant may make a final motion for a reduction in sentence no earlier than five years after the order for a second motion was filed.

**12.1-32-14. Restoration of property or other work to be required of certain offenders.**

Other provisions of this chapter notwithstanding, whenever a person convicted of criminal mischief is placed on probation pursuant to section 12.1-32-02 or 12.1-32-07, the court shall include as a condition of that probation the requirement that the person perform restoration or other assigned work as specified in subdivision e of subsection 4 of section 12.1-32-07.

**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, 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.

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

c. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a child or an attempted crime against a child. 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.

d. Has pled guilty or nolo contendere or been found guilty 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.

e. Is a child who has been adjudicated delinquent of an offense which would classify the child as a sexual offender, the prosecutor requested the court to consider sexual offender registration, and the court determines the child:

(1) Exhibited a mental abnormality or predatory conduct in the commission of the offense; or

(2) Previously has been adjudicated as a sexual offender.

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 has been found guilty of, an offense in a court of this state for which registration is mandatory under this section or an offense from another court in the United States, a tribal court, or court of another country equivalent to those offenses set forth in this section; or

c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against a child or as a sexual offender for which registration is mandatory under this section if the conviction occurred after July 31, 1985.

4. In its consideration of mental abnormality or predatory conduct, the court shall consider the age of the offender, the age of the victim, the difference in ages of the victim and offender, the circumstances and motive of the crime, the relationship of the victim and offender, and the mental state of the offender. The court may order an offender to be evaluated by a qualified counselor, psychologist, or physician before sentencing. Except as provided under subdivision d of subsection 2, the court may state on the record in open court its affirmative finding for not requiring an offender to register.

5. When an individual is required to register under this section, the official in charge of a facility or institution where the individual required to register is confined, or the department, shall, before the discharge, parole, or release of that individual, inform the individual of the duty to register pursuant to this section. The official or the department 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 has been explained to that individual. The official in charge of the place of confinement, or the department, shall obtain the address where the individual expects to reside, attend school, or work upon discharge, parole, or release and shall report the address to the attorney general. The official in

charge of the place of confinement, or the department, shall give three copies of the form to the individual and shall send three copies to the attorney general no later than forty-five days before the scheduled release of that individual. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the 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, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register under this section has a change in vehicle or computer online identity, the individual shall register, within three days after the change, with the law enforcement agency having local jurisdiction of the individual's place of residence of the individual's new vehicle or computer online identity. If an individual required to register pursuant to this section has a change in name, school, or residence or employment address, that individual shall register, at least ten days before the change, with the law enforcement agency having local jurisdiction of the individual's place of residence of the individual's new name, school, residence address, or employment address. A change in school or employment address includes the termination of school or employment for which an individual required to register under this section, the individual shall register within three days of the termination with the law enforcement agency having local jurisdiction of the individual's place of residence. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. Upon a change of address, the individual required to register also shall register within three days at the law enforcement agency having local jurisdiction of the new place of residence. If an individual required to register in North Dakota, including in a tribal

registry, resides in another state or on tribal lands, that individual shall register employment and school addresses and any changes in required registration information with the law enforcement agency having local jurisdiction over the school or employment address. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval determined by the attorney general. A law enforcement agency that has previously registered an offender may omit the biometric data portion of the registration if that agency has a set of biometric data on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration.

8. An individual required to register under this section shall comply with the registration requirement for the longer of the following periods:
   a. A period of fifteen years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later;
   b. A period of twenty-five years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later, if the offender is assigned a moderate risk by the attorney general as provided in subsection 12; or
   c. For the life of the individual, if that individual:
      (1) On two or more occasions has pled guilty or nolo contendere to, or been found guilty of a crime against a child or as a sexual offender. If all qualifying offenses are misdemeanors, this lifetime provision does not apply unless a qualifying offense was committed after August 1, 1999;
      (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense committed after August 1, 1999, which is described in subdivision a of subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of subsection 1 of section 12.1-20-03 if the person is an adult and the victim is under age twelve, or section 12.1-18-01 if that individual is an adult other than a parent of the victim, or an equivalent offense from another court in the United States, a tribal court, or court of another country; or
      (3) Is assigned a high risk by the attorney general as provided in subsection 12.
9. An individual required to register under this section who violates this section is guilty of a class C felony. The failure of a homeless individual to register as required in subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of court shall forward all warrants issued for a violation of this section to the county sheriff, who shall enter all such warrants into the national crime information center wanted person file. A court may not relieve an individual, other than a juvenile, who violates this section from serving a term of at least ninety days in jail and completing probation of one year.
10. When an individual is released on parole or probation and is required to register pursuant to this section, but fails to do so within the time prescribed, the court shall order the probation, or the parole board shall order the parole, of the individual revoked.
11. If an individual required to register pursuant to this section is temporarily sent outside the facility or institution where that individual is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that individual is being sent must be notified within a reasonable time period before that individual is released from the facility or institution. This subsection does not apply to any individual temporarily released under guard from the facility or institution in which that individual is confined.
12. The attorney general, with the assistance of the department and the juvenile courts, shall develop guidelines for the risk assessment of sexual offenders who are required to register, with a low-risk, moderate-risk, or high-risk level being assigned to each offender as follows:

a. The department shall conduct a risk assessment of sexual offenders who are incarcerated in institutions under the control of the department and sexual offenders who are on supervised probation. The department, in a timely manner, shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning individuals required to be registered under this section who are about to be released or placed into the community.
b. The attorney general shall conduct a risk assessment of sexual offenders who are not under the custody or supervision of the department. The attorney general may adopt a law enforcement agency's previous assignment of risk level for an individual if the assessment was conducted in a manner substantially similar to the guidelines developed under this subsection.
c. The juvenile courts or the agency having legal custody of a juvenile shall conduct a risk assessment of juvenile sexual offenders who are required to register under this section. The juvenile courts or the agency having legal custody of a juvenile shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning juveniles required to register and who are about to be released or placed into the community.
d. The attorney general shall notify the offender of the risk level assigned to that offender. An offender may request a review of that determination with the attorney general's sexual offender risk assessment committee and may present any information that the offender believes may lower the assigned risk level.

13. An individual assessed as a high-risk sexual offender in accordance with subsection 12, may not reside within five hundred feet [152.4 meters] of a public or nonpublic preschool or elementary, middle, or high school.
14. Relevant and necessary conviction and registration information must be disclosed to the public by a law enforcement agency if the individual is a moderate or high risk and the agency determines that disclosure of the conviction and registration information is necessary for public protection. The attorney general shall develop guidelines for public disclosure of offender registration information. Public disclosure may include internet access if the offender:
    a. Is required to register for a lifetime under subsection 8;
    b. Has been determined to be a high risk to the public by the department, the attorney general, or the courts, according to guidelines developed by those agencies; or
    c. Has been determined to be a high risk to the public by an agency of another state or the federal government.

    If the offender has been determined to be a moderate risk, public disclosure must include, at a minimum, notification of the offense to the victim registered under chapter 12.1-34 and to any agency, civic organization, or group of persons who have characteristics similar to those of a victim of the offender. Upon request, law enforcement agencies may release conviction and registration information regarding low-risk, moderate-risk, or high-risk offenders.
15. A state officer, law enforcement agency, or public school district or governing body of a nonpublic school or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations, allowing a sexual offender to attend a school function under section 12.1-20-25, or for disclosing or for failing to disclose information as permitted by this section.
16. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual offender or as an offender against a child under this section, the juvenile shall comply with the registration requirements in this section. Notwithstanding any other provision of law, a law enforcement agency shall register a juvenile offender in the same manner as adult offenders and may release any relevant and necessary information on file to other law enforcement agencies, the department of health and human services, or the public if disclosure is necessary to protect public health or safety. The law enforcement agency shall release any relevant and necessary information on file to the

superintendent or principal of the school the juvenile attends. The school administration shall notify others in similar positions if the juvenile transfers to another learning institution in or outside the state.

17. If an individual has been required to register as a sexual offender or an offender against a child under section 12.1-32-15 or former section 27-20-52.1 before August 1, 1999, the individual may petition the court to be removed from the offender list if registration is no longer mandatory for that individual. In considering the petition, the court shall comply with the requirements of this section.
18. A sexual offender who is currently assigned a moderate or high-risk level by the attorney general may not use a state park of this state as a residence or residential address to comply with the registration requirements of this section. Before arriving at a state park for overnight lodging or camping, a sexual offender who is assigned a moderate or high-risk level by the attorney general shall notify a parks and recreation department law enforcement officer at the state park where the sexual offender will be staying.
19. When an individual who is required to register pursuant to this section plans to travel outside of the United States, at least twenty-one days before the intended travel, the individual shall inform the agency with which the individual last registered the individual's residence address the details of the intended travel. Upon receipt of the information from the registering law enforcement agency, the attorney general shall report the travel to the United States marshal service.

**12.1-32-16. Restitution to be required of certain offenders - Penalty.**

Notwithstanding any other provision in this chapter, whenever a person whose license has been suspended for nonpayment of child support under section 50-09-08.6 is convicted of engaging in activity for which the license was required, the court shall require as a condition of the sentence that the person pay restitution in the amount of two hundred fifty dollars, or a higher amount set by the court, as specified in subdivision e of subsection 4 of section 12.1-32-07. Any restitution ordered under this section must be paid to the state disbursement unit for distribution under section 14-09-25.