

2019 SENATE JUDICIARY COMMITTEE

SB 2273

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2273
1/21/2019
#31087 (14:22)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 12.1-20 of the North Dakota Century Code, relating to sexual extortion; and to amend and reenact section 12.1-32-15 of the North Dakota Century Code, relating to offenders against children, sexual offenders, and sexually violent predators.

Minutes:

2 Attachments

Chair Larson opens the hearing on SB 2273.

Nicole Poolman, District 7 Senator, testifies in favor of the bill (see attachment #1).

(3) Britta Demello Rice, Assistant Attorney General, testifies in favor of the bill (see attachment #2).

(6:20) Chair Larson: We do currently have laws when it is a child, defined of someone under the age of 18. That statute should already cover these examples.

Rice: It would be a crime for a person to have those photos, this extends it one step further that when the suspect is using it to extort that child, then that's the extortion part of it. None of the crimes we currently have quite covers what sex extortion is.

Senator Myrdal: When it goes to court, how is it not a he said she said argument? Walk me through a trial where this would help and the evidence of it.

Rice: The text messages exchanged would be a huge evidence of the coercion and the threats. The victim's testimony and friends' and families' corroborating evidence is also good. In this type of crime, it would be electronic communications such as Facebook chats, Snapchat and others.

Vice Chairman Dwyer: Is the penalty under this extortion similar or the same as these other penalties? This would help with the prosecution?

Rice: Right. We don't want to make prosecutors be creative because then you have 12 members in a jury who are reading the jury instructions and trying to also be creative. We want a clear-cut law that a prosecutor can go to with the facts of his or her investigation and find the crime the fits. The offense levels- I think it depends on whether it's a child or an adult involved. The A felony reflects when a minor is involved then a C felony if you're an adult

victim. The first part of the proposed bill is the attempt and the second part is the victim complying and the extortion actually happening. The level of offense depends on if it was under the first or second section.

Senator Myrdal: Is there any chance in this legislation that we can find entrapment? Is there any way this can be construed or used for an entrapment of an ex that you want to have revenge over per say?

Rice: Legal entrapment has to do with the government being the person who is trying to entrap your suspect, it's not between two adults if you're talking about a victim and a suspect. Any statute that is a crime can be abused by anybody. For instance, there are a lot of criminal allegations thrown out during divorce cases regardless of legitimacy. That's when you have to trust our law enforcement, that they are trained to do an investigation and look for corroborating evidence and speak with everybody surrounding the situation to try to decide if it's a legitimate crime that has occurred.

(12:48) Aaron Birst, ND Association of Counties, testifies in favor of the bill

Birst: I handle most of the state's attorney's issues. We support this bill. We think it's our role not to influence you on what policies should be unless there's a gap in the system. We've identified a gap where these kind of factual situations we have to go on creative hunts to figure out what the right charge is. This would fill that gap. Penalty section will be up to you to decide, but it is consistent with production of child pornography and other such things. I don't anticipate this being used a lot because primarily it comes down to the intent. You have to show intent- this is not a strict liability offense. The scenarios where it's an ex-boyfriend, girlfriend, husband or wife, we would generally as prosecutors sniff that out and know that's not what we're going after.

Chair Larson closes the hearing on SB 2273.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2273

1/21/2019

#31096 (3:55)

☐ Subcommittee

☐ Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 12.1-20 of the North Dakota Century Code, relating to sexual extortion; and to amend and reenact section 12.1-32-15 of the North Dakota Century Code, relating to offenders against children, sexual offenders, and sexually violent predators.

Minutes:

No Attachments

Chair Larson calls the committee to order to discuss SB 2273.

Senator Bakke Moves a Do Pass.
Vice Chairman Dwyer Seconds.

Chair Larson: I won't take the vote until Senator Myrdal returns.

Senator Bakke: Basically what they're looking for here is the extortion piece in this crime.

Chair Larson: The words I circled under a were "with intent to coerce" then under b "knowingly causes". It is a standard it looks like in this specific section that they're going after a particular offender.

Senator Luick: I missed some of the testimony, but I get most of it and I'm ready to vote.

Chair Larson: Apparently there have been even some specific cases where there was definite extortion to cause someone to take more photos or have sexual contact when they were being blackmailed. There were some of these offenses that they were able to find something similar that would fall under some of this jurisdiction, but nothing that was specifically about extorting somebody for sexual reasons. The Attorney General's Office felt this would be legislation that would be helpful in clarifying those particular instances.

Senator Luick: Was there any testimony in opposition?

Chair Larson: None. There were only 2 testifiers in favor of the bill.

Chair Larson ends the discussion, pausing the vote, to wait for Senator Myrdal.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2273
1/21/2019
#31099 (00:53)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 12.1-20 of the North Dakota Century Code, relating to sexual extortion; and to amend and reenact section 12.1-32-15 of the North Dakota Century Code, relating to offenders against children, sexual offenders, and sexually violent predators.

Minutes:

No Attachments

Chair Larson calls the committee to order to take action on SB 2273.

Chair Larson: We have a motion for a Do Pass by Senator Bakke and a Second by Vice Chairman Dwyer with some discussion. Are you ready to vote on that?

Senator Myrdal: Yes.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent. Motion carries.

Senator Bakke will carry the bill.

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2273**

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Bakke Seconded By Vice Chairman Dwyer

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Bakke

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2273: Judiciary Committee (Sen. D. Larson, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2273 was placed on the
Eleventh order on the calendar.

2019 HOUSE JUDICIARY

SB 2273

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2273
3/13/2019
33630

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to offenders against children, sexual offenders, and sexually violent predators.

Minutes:

1,2,3

Chairman Koppelman: Opened the hearing on SB 2273.

Senator Poolman: (Attachment #1) Read testimony.

Britta Demello Rice, Ass't Attorney General: (Attachment #2) Went over testimony.

Chairman K. Koppelman: Just to be clear you are saying on line 18 of page 1 a demand for money should be within the paragraph under subsection a?

Britta Rice: Yes it should up to 13, page 1 it should say sexually explicit conduct or any intimate image of an individual, a demand for money communicated in person or electronic means or your demand is that is the amendment. That is in both.

Rep. Rick Becker: When you say there are existing laws that they can use if they are creative. I am not sure I am following that. They are just breaking the laws that exist in statute. So our current laws not already take care of that?

Britta Rice: There are crimes in that Bismarck case that were charged out and went in front of a jury and the jury believed our evidence. What it didn't capture was he was threatened her to get what he wanted. He was certainly in possession of child prone. Because he had this 14-year-old child's nude body photos so that is a crime. In the Minot case the only way the perpetrator got those photos was he was threatened to send out the one he had. Sexual extortion covers that aspect that he wouldn't have otherwise received them.

Chairman K. Koppelman: So the extortion piece is the procuring either of money or additional photos or whatever it might be under threat.

Rep. Rick Becker: He only got the pictures is that he was threatening her? Threatening her with what. According to your written testimony he is threatening her with the pictures? Which came first?

Britta Rice: Usually these cases start off where the relationship is good. Sometimes I have read cases where someone hacks your personal computer and gets your own personal photos and before they send them out they said you an email saying if you don't send me \$50,000 I Rep. McWilliams sending these photos out. I have seen where they send postcards of a nude photo to a woman to her boss and all her co-workers and that was because he hacked into her computer and got that photo. That is extreme, but generally there is a good relationship. Everyone is happy at one point and then that perpetrator mutilates that victim to get what they want.

Rep. Rick Becker: I am looking for an example that isn't covered by current statute.

Britta Rice: Current statute doesn't cover extortion? If you submit to sex because you are cohorts, then that is sexual imposition and that is covered. If you are in passion of child prone that is a law.

Rep. Rick Becker: What you are saying is you want to make threatening to disseminate them against the law?

Britta Rice: It is in exchange for something else so it is not just threatening. It is the second component saying unless you give me \$1000.

Rep. Rick Becker: That is always implied with a threat. So that is against the law.

Britta Rice: No it is not. If you want to meet after the hearing I can better explain it.

Rep. Rick Becker: The act that you are threatening to commit is against the law already. You are making the threat of committing the illegal act illegal. What circumstances is that necessary?

Britta Rice: I think it would have been necessary in both cases. Subsection a is more of what you are saying where we are just criminalizing the intent to get a victim to comply with their bribe. There is still no sex offense crime in our laws that criminalizes this extortion; the bribery part. There is nothing that would apply right now.

Chairman K. Koppelman: Would it currently be prosecutable under our extortion laws? Let's put it in a different context. Someone robs a bank, the act of robbing a bank is against the law. Someone is in possession of stolen goods if they have the money they rob from the bank, but if they went to a bank employee and said unless you give me some money out of the cash drawer I am going to kidnap your children. That is extortion. That is somewhat similar. The other acts are crimes now, but this threatening is pro-quo; unless you do x I am going to do y.

Rep. Paur: You said other states have an extortion laws? Do they all require them to register as sex offenders?

Britta Rice: I don't know.

Rep. Paur: It seems odd to me. If you do not give me \$1000 I will publish your picture. That is sex offender and an extortion crime. That seems a stretch to me.

Britta Rice: The offender registration that is proposed is only when they follow through with it.

Chairman K. Koppelman: What Rep. Paur is getting at the case you described there is some sexual gratification involved. That may be appropriate for a sex crime registry. What he is describing it just so happens that photo might be a tool to extort. Does that automatically go to the registry for sex crime? That is the distinction. That is something we might want to take a look at.

Britta Rice: Currently that would be right.

Rep. McWilliams: If they did distribute nude pictures of a minor that is already illegal and that is already a registerable offense.

Britta Rice: In that case they would probably charge them with distribution of intimate images or child exploitation. What we are seeing the victim usually complies. So then they are not distributing them. Because of the extortion aspect; because the kid is so worried that their classmates or upper classmates might see nude photos of them they comply and meet them for a sex act or send them more nudies so then that distribution doesn't occur. That is what this would account for.

Rep. McWilliams: In the cases you cited in your testimony; in light of this bill; how would the sentencing been different in the cases you cited in your testimony?

Britta Rice: I think what the purpose is we want prosecutors to have a specific tool in their tool box to charge out when evidence indicates it is something like this. The offense levels are similar; if not exactly the same to some of the others if you are directing someone to create child prone or possessing it. If your sexual imposition is a b felony so there are similar levels and we just don't want a prosecutor to be looking at the facts and searching the code and not sure what to charge.

Chairman K. Koppelman: As a prosecutor would this lead to stacked charges for the purposes of plea bargaining?

Britta Rice: It could. All prosecutors have discussion so you could have a prosecutor who looks at this and says I would rather just charge possession of certain materials prohibited; it is way easier to prove. Prosecutors charge differently all across the state.

Rep. Magrum: So if a 15-year-old sends nude pictures to an 18-year-old; what is the law that applies to that? Does the 18-year-old in violation of possessing photographs that person didn't actually have anything to do with. They just appeared on their electronic device?

Britta Rice: Technically they are in possession of child prone. However, if you receive something like that immediately tell an adult and contact law enforcement. There will be other things that will be taken into consideration in this instance.

Rep. Rick Becker: The act of extortion is what you are trying to criminalize. You are trying to criminalize extortion but the person you are extorting complies; then it becomes a felony. So whether I have committed a misdemeanor or felony is not based on my action, it is based on the action of the person I am extorting? Are there other areas of law where I would become a felon based on the action of the victim?

Britta Rice: I would have to check. I am sure it exists. We could change the levels. We could talk about making an exception where if it is for money you don't have to register? The definition of a sex offender excludes certain exception of certain portions of a section so it doesn't apply. Sexual assault under offensive contact is 1 a. That doesn't apply to a sexual offender. We could work with it to amend it.

Chairman K. Koppelman: Attempted crimes are sometimes lesser crimes than the actual crime.

Rep. Vetter: Did we not last session pass the unsolicited electronic submissions? It came through this committee. It seems to me we are adding on another charge where we have plenty of other things they can charge them with. You left out the one with the electronic submission?

Britta Rice: If I am thinking of the same one you are thinking of it is indecent exposure. We add that you can commit indecent exposure by sending a picture of your genitals through a text message to a victim. That is not this.

Rep. McWilliams: If a minor receives a picture from another minor that indecent is that minor in possession of prone?

Britta Rice: Yes, technically. That is why we want young people to understand about sending these photos. It would be a really good idea not to do this.

Representative Simons: What is the penalty for child pornography?

Britta Rice: If you are in possession of child prone it is a c felony. That is punishable up to five years in jail and a fine. If you have a certain amount of images it could go federal and you could end up in a federal prison for many years. If you are making child pornography which also occurs in our state, it is a higher offense.

Representative Simons: Child pornography would be anyone under the age of 18. The worse we have seen is infants.

Chairman K. Koppelman: We did have another bill that would have been a crime if he would have been an adult.

Marlys Baker, Child Protection Service Administrator for the DHS: (Attachment # 3)
Read testimony. (28:40) Offered an amendment.

Chairman K. Koppelman: Just so I understand your proposed amendment. What are the services that you would be providing?

Marlys Baker: Services required is the language in the child abuse and neglect law that indicates abuse and neglect has been determined by preponderance of the evidence. The services that would be required would vary according to the type of abuse or neglect or the needs of the family. In a case with sexual extortion and there would likely be an evaluation for sex offender behaviors and any appropriate treatment that was determined by an evaluation.

Chairman K. Koppelman: So the services would be for the abused or abuser?

Marlys Baker: Both of them.

Chairman K. Koppelman: The amendment basically as it related to this type of instance; would contemplate a circumstance where someone who is responsible for the child's welfare were to commit this crime, so you are contemplating someone threatening their child with exposing nude photographs unless the child does something. Is that correct?

Marlys Baker: Yes that is correct. Under 50-25.1-02 1 the definition of a person responsible for a child's welfare means an individual who has responsibility for the care or supervision of a child and who is the child's parent, an adult family member of the child, any member of the child's household; the child's guardian or the child's foster parent or an employee of or any person providing care for the child in a public or private school or child care setting.

Opposition: None

Neutral: None

Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2273
3/27/2019
34300

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek typed by Mary Brucker
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Explanation or reason for introduction of bill/resolution:

Relating to offenders against children, sexual offenders, and sexually violent predators.

Minutes:

1-2

Chairman K. Koppelman: Opened the meeting on SB 2273. I was wondering whether the wording in the first section is appropriate. I know what it's attempting to do but the demand for money is in number three of that section. I wonder if the demand for money belongs in that first paragraph rather than the last one. When it talks about the intent to coerce a victim to engage in then it may not be an attempt to do that, it may be a demand for money in exchange for a threat to release or distribute something.

Rep. Hanson: (inaudible as microphone was not on)

Chairman K. Koppelman: Would someone like to move the Attorney General's office's suggested amendment?

Rep. Hanson: Made a motion to adopt the Attorney General's amendment.

Rep. McWilliams: Seconded.

Voice vote: Motion carries

Rep. Hanson: (inaudible as microphone was not on)

Chairman K. Koppelman: This is the one from Marlys Baker which includes this section under the definition of sexually abused child. (See attachment #1)

Rep. Hanson: Made a motion to adopt the amendment from Marlys Baker dated 3-13-19 on section one of this act under the definition of the abused child.

Rep. Roers Jones: Seconded

Voice vote: Motion carries

Chairman K. Koppelman: We have the amended bill before us. What are the wishes of the committee?

Rep. McWilliams: Earlier when we were discussing this bill Rep. Becker brought up a good point about if there was anything else in code that requires the action of a victim to convict a perpetrator.

Rep. Rick Becker: I was looking at the differences between A and B; A being you tell them that you want them to do something or else is a Class A Misdemeanor. If they do what you want them to do, then it's a Class C Felony or a Class A Felony. It's the action of the victim on whether they complied that will determine if you go to prison. I think that is quite problematic.

Chairman K. Koppelman: Are you looking at subsection 2 on page 2?

Rep. Rick Becker: Yes.

Rep. McWilliams: I have to disagree with that analogy. You have taken the action and the bullet has left your gun. I think it's the difference of threatening to kill somebody versus you shooting yourself. That analogy falls apart because you have taken the same action but results can be different. In this case the threat is one but the action is taken strictly by the victim itself regardless of an additional action taken by the perpetrator.

Rep. Rick Becker: Another component would be the aspect that it's not really the action of the victim to die because it's not their choice it's whether their aim was good or not in this example. When you're looking at both options as being felonies, attempted murder is a misdemeanor. My concern is going from a misdemeanor to a felony in this circumstance.

Chairman K. Koppelman: It also has to do with their status as a minor. That goes to the discussion we had about the ability of someone reaching an age of reason to make adult choices.

Rep. Rick Becker: That's for Class A. If they are not a minor or a vulnerable adult, then it's a Class C Felony.

Chairman K. Koppelman: Right. It's both their action and their age that would trigger the A. Then the question is if you believe the action should not be a piece then should the age of perpetrating against a minor be a greater offense?

Rep. Vetter: Is extortion not already illegal? Are we adding sexual extortion?

Chairman K. Koppelman: That was my first question during the hearing and they said they were having trouble charging this under regular extortion too. They need this language in order to prosecute those cases.

Rep. Hanson: Plain extortion does not exist as a crime now.

Chairman K. Koppelman: The sense that I got was that they can charge it if it was a different kind of extortion case, such as blackmail. This is so unique and specific and that's why they wanted this statute. We have a few choices; we can entertain amendments, move on it as is, or hold it until later.

Rep. Rick Becker: Made a motion for a do not pass.

Rep. Magrum: Seconded

Rep. Rick Becker: My understanding is that things could be charged out. We were looking for circumstances in which they couldn't be charged but this is to somehow make the state's attorney or prosecutor's lives a little easier. My concern is that the real effect of this is just stacking charges. It's adding people to a sex offender registry when they should really be added to an extortionist registry if there was one. There is a concern of moving from a misdemeanor to a felony based on the compliance of the individual being coerced. For all of these reasons and if this doesn't pass there will be no difference in who would be a criminal. I'm opposed to the bill.

Rep. Hanson: One of the reasons I'm going to resist this motion is that prosecutors don't want to stack charges; they want as few charges as possible. They would like a precise charge on exactly what this person has done. I think the Attorney General doesn't bring us proposals to fill a gap very often so there's a lot of thought put into this. There is a narrow charge that fills a gap that they are seeing today based on specific scenarios and that's why I'm supporting it.

Rep. Vetter: I'm going to support the motion. I think this could be charged a lot of different ways already. I'm concerned with how stiff these penalties are.

Rep. Hanson: If there's a concern about the stiffness of the penalty then let's amend the bill to adjust that and not do away with this entirely because this is needed.

Rep. Paur: I'm going to support the motion. I liked the sex offender registration part for extortion since I first saw this bill.

Rep. Satrom: Whether you rape somebody physically or rape them through extortion I think it's still rape so I don't think it matters how you get there.

Chairman K. Koppelman: I would entertain discussion about the stiffness of the penalty and also the registration. It says you have to register if you violate section 1 of this act except for subdivision a of subsection 1. I'm looking at that in the context of the amendment we just adopted. I think there might be some confusion on that point. I'd like to stop our discussion on this right now. When we take this back up the do not pass is the prevailing motion we'll have to act on. I'd like to get some clarity on this first.

Recessed

Chairman K. Koppelman: I have some proposed amendments but we have a do not pass motion on the table. I'd like you all to see the amendment before we take any action. Brought

forward a proposed amendment (Attachment #2). On page 3, line 21 and on page 13, line 4 has to do with who is defined as a sexual offender and needs to register on the sex offender registry. As we talked about it one of the concerns was as the bill is drafted it already excludes A of subsection 1 on page 1 which deals with coercion. This would involve an attempt to coerce someone into this activity. That has a lesser penalty under the bill. In subsection 1 B that is the case where the act has occurred and has the higher penalty. We can decide if it's appropriate to be registered as a sex offender. The one area where we felt uncomfortable labeling someone as a sex offender if this is an extortion case where somebody has demanded money but the tool happens to be a nude photograph versus something else the person has. If the perpetrator is after money and not trying to coerce someone into those acts, then it's not really any different than any other extortion crime. There should still be a penalty but the question is if they should be a sex offender. The amendment removes the demand for money a portion in terms of them registering as a sex offender. If they demand one of these other things, then they would still be if this amendment were on the bill. Rep. Becker was the maker of the motion for the do not pass. Do you wish to withdraw that for the purpose of this amendment?

Rep. Rick Becker: Yes, I'll withdraw my motion.

Rep. Magrum: Seconded motion to withdraw.

Chairman K. Koppelman: We have the amended bill before us. What are the wishes of the committee?

Rep. Karls: Made a motion to adopt the amendment.

Rep. Satrom: Seconded

Rep. Paur: If the offense includes a demand for money, what if it includes a demand for sex and money or a demand for videos and money? I wonder if it should be "includes."

Chairman K. Koppelman: Good question. We could say instead of "includes" say "if the offense involves only."

Rep. McWilliams: Could it be argued in court that there was a demand for money and for sex that there were separate demands then the demand for money would be thrown out but the demand for sex would be sustained?

Chairman K. Koppelman: Yes, you could argue that as a two-part extortion attempt. With the word "includes" you could also argue that it included a demand for money therefore this individual should not have to register. If it involves "only a demand for money" rather than the word "includes" I think that would solve that concern. I think that's a valid point though. With that motion on the floor I would entertain a further amendment if we wish or modify the amendment that's before us if that is the desire of the committee.

Motion to adopt the amendment failed due to lack of action.

Rep. Paur: Made a motion to add to the amendment and remove the word “includes” and replace it with the words “involves only.”

Rep. Hanson: Seconded

Chairman K. Koppelman: We have the revised amended motion before us. Is there any further discussion?

Voice vote: Motion carries

Chairman K. Koppelman: We have the amended bill before us. We have three amendments on this now; we adopted the Attorney General’s, Department of Human Services, and these amendments. Other discussion was on the level of penalty. Does anyone wish to propose further amendments on that?

Rep. Satrom: Made a motion for a do pass as amended.

Rep. Karls: Seconded.

Rep. Becker: Several of the concerns I previously mentioned where we started off with a do not pass motion still remained. I like the most recent amendment. I’m going to resist the motion specifically because I would like to see a change in the offense. If the motion fails, we can look at that next amendment.

Rep. McWilliams: What is the current offense for rape?

Britta Rice: If we’re talking about rape by force, unconscious victim, under the influence, and under the age of 15 that’s a sexual act then it’s only a AA felony for by force. You also have by contact with those four subcategories and sexual imposition. GSI can be a AA or A felony. Sexual imposition is a B felony. Sexual assault is sexual contact versus a sexual act and that’s a C felony or an A misdemeanor. Rape is gross sexual imposition which can be a AA felony or A felony.

Rep. McWilliams: If this bill passed right now it would be a Class A felony to extort pictures or other sexual favors from someone?

Britta Rice: It is only an A felony if your victim is a juvenile or a vulnerable adult. If you had an adult victim of following through with the crime, then it’s a C felony.

Rep. McWilliams: Would that be a consistent class of felony in our current code? Would you say that’s higher?

Britta Rice: It depends on the offense; it could even be less of an offense. It depends on the age of the victim and what occurred. Possession of certain materials prohibited for an offender is a C felony. If they are getting more photos from an adult victim it would be just the same as if they are getting photos of a child.

Rep. Satrom: Would it be appropriate to ask about the stacking of charges?

Britta Rice: I think this could be a useful tool to prevent stacking. If you had this one crime that fit, all the facts you could charge one crime and not have to prove six different crimes. Usually when you're stacking charges like that it actually puts more work on the prosecutor because they have to prove beyond a reasonable doubt every single element of every single crime to a jury of 12 people. This could help prevent stacking but there's no guarantee.

Rep. Rick Becker: I am not sure that's an argument that supports the premise that this would help avoid stacking. You could pick the one with the highest offense. I wonder if Rep. Satrom and Rep. Karls would consider polling back on that to make it a better bill. Can we try to make this better again before we go on with a do pass?

Chairman K. Koppelman: If someone wants to amend I like to give them the opportunity to do that.

Rep. Satrom: Withdrew motion for a do pass as amended.

Rep. Karls: Withdrew second.

Rep. Rick Becker: Made a motion to adopt amendment on page 2, lines 5-8 and strike the second capital A and in its place put C, strike C felony and put in its place A misdemeanor, and striking all of lines seven and eight.

Rep. Vetter: Seconded motion.

Chairman Koppelman: So if you strike 7 and 8 it's not a crime?

Rep. Rick Becker: No, in the case of a minor or vulnerable adult under subsection b it would be a Class C felony and anything else would be a Class A misdemeanor.

Chairman K. Koppelman: Except lines 7 and 8 refer to subdivision a of subsection 1 whereas 5 and 6 refer to subdivision b of subsection 1.

Rep. Rick Becker: Except that the otherwise it's "otherwise" and preceding the comma is the subdivision a of subsection 1 so following if it's not subdivision a of subsection 1 then everything else would be a Class A misdemeanor.

Chairman K. Koppelman: But all that still refers back to subdivision b because the A felony or reduced charge would only apply if the victim is a minor or vulnerable adult. I think the "otherwise" still refers back to that subdivision. If they commit the crime outlined in subdivision b on page 1 it's a Class C felony, however, if the victim is a minor or vulnerable adult then it would go up to an A felony. If you remove lines 7-8 it would remove any criminal consequence for violating subdivision a.

Rep. Rick Becker: That's not how I read it. If you leave 7 and 8 in at the very worst, it's simply redundant and at the very best it was necessary.

Chairman K. Koppelman: Your motion is to change Class A felony on line 5 to Class C and to change Class C felony on line 6 to a Class A misdemeanor, is that correct?

Rep. Rick Becker: Yes.

Rep. Roers Jones: Since we have representatives from the Attorney General's office can we get their interpretation of this amendment?

Britta Rice: That would mean if you have an adult who was in a consenting relationship with someone and they provided nude photos to that person then their relationship ended but he or she still wanted sex from them saying if they didn't then he or she would send out their photos so they submit to further sex acts that would only be an A misdemeanor. An A misdemeanor is one year in county jail or a fine.

Rep. Rick Becker: In statute is there a crime constituting an act of sex via coercion?

Britta Rice: Sexual imposition would be submitting to a sex act by coercion.

Chairman K. Koppelman: This might encourage stacking of charges then if a prosecutor felt the lower penalty wasn't sufficient.

Britta Rice: The problem with this from my experience is that it's really hard to prove to a jury that anybody would submit to a sex act based on coercion. It's hard enough to prove a forced sex act when you're talking about a AA felony. Juries are a very interesting group of people; very hard to prove sex crimes in the first place. You could have a charge of sexual imposition. I have never charged it. It doesn't still cover the fact that this victim is in a position of being extorted so they have to give up a part of themselves in order to comply and protect part of themselves.

Rep. McWilliams: When you're prosecuting something you can choose what charges to assert. If the claim in this bill is to prevent stacked charges so if there's only one charge and their found not guilty of a Class A felony then they're not charged with anything, right?

Britta Rice: The intent of this bill is not to prevent stacking. It could. I don't see this being stacked with the other offenses because I see a challenge to double jeopardy. If there are elements in this crime that are similar to another crime, we could get it thrown out for double jeopardy purposes. Same with an acquittal. We would have a battle on our hands if we got an acquittal then went back and tried to charge that perpetrator with something else. It also takes a lot of time.

Rep. McWilliams: In a previous example you said this person was charged with six crimes. What would the penalty impact be if they charged with this crime versus six different crimes?

Britta Rice: It depends on where you are in the state, your judge, and the facts of your case. Across the state they sentence very differently.

Chairman K. Koppelman: Would that be the result of a plea bargain typically or the result of a more lenient sentence by the judge?

Britta Rice: This case I spoke about was not a plea agreement because it went to trial and he wasn't convicted of all six charges. In some situations, there could be plea agreements where the defense attorney and the prosecutor come up with an agreement ahead of time.

Chairman K. Koppelman: In cases like this the bill as originally presented without the amendment, if it is that high a charge or that serious of an offense would there be more likelihood if the perpetrator is willing to plead to charge something lesser?

Britta Rice: That does happen all the time. Sometimes it goes to the perpetrator's history, how good our evidence is, and if the victim can testify but doesn't want to.

Rep. Paur: When you return to the podium didn't you say it is very hard to prove sexual coercion?

Britta Rice: I think it would be easier to prove the coercion if we had a bribe to show why the victim would submit. In other cases, where we're just proving coercion I think it would be hard to prove.

Rep. Paur: You don't think line 10 with the intent to coerce a victim to engage in sexual contact is coercion?

Britta Rice: That's the attempt part though. Often how this kind is perpetrated is by text message or some type of online social media networking where you have the records and show the coercion.

Rep. McWilliams: In some cases maybe it would be advantageous for the perpetrator to stack the charges because then you're dissecting the crime into different elements to be charged instead of one larger charge.

Britta Rice: I do not think so. I don't think a perpetrator ever wants one charge, let alone six charges. It may make them more of a flight risk if you have two AA felonies that carry 20 minimums so they're looking at 40 years in prison.

Rep. Rick Becker: With sexual imposition/coercion if you had a phone as evidence with a string of texts that would be evidence, correct?

Britta Rice: It could be.

Rep. Rick Becker: It sounds to me like you're saying the evidence necessary to convict on extortion of sex in this bill is the same evidence that you would need to convict of sexual imposition yet you're saying we need to have this extortion because we don't convict on sexual imposition.

Britta Rice: I understand your point. It is not a bad thing when you have crimes that are similar. The problem is our fact situations in each crime are always going to be different where one crime may not quite fit. When one crime doesn't fit you risk the fact of an acquittal then that perpetrator is never held responsible for their crime. You want to give a prosecutor

a tool so we can do our job the best we can and hold offenders accountable keeping society safe.

Rep. Rick Becker: I agree with you but when we separate this bill out and you have subdivisions a and b we're talking about the aggravated offense under b. A penalty and a crime doesn't have to do with the extortion process but the completion of it. Why do we need the aggravated offense under subdivision b? When the crime is completed you already have a new offense but we're bringing it into the extortion part where it gets convoluted.

Britta Rice: First point; if you had a victim under 15 and they had sex it would be an A felony so it would not be the same crime. Second point; you could get rid of 1a and I could still charge attempt. If you just had this law as sexual extortion without the attempt part, we could still charge attempted sexual extortion. Any of those crimes mentioned still doesn't cover the bribe and that's the whole point of this. This is not a bad thing.

Rep. Magrum: This whole bill doesn't seem necessary because you have the evidence of the video and photos. Why aren't you using that?

Britta Rice: No sex case is a slam dunk; it is the hardest work you can imagine. If we had text messages that showed he coerced her to do something, then that would be a smoking gun and may be easier to prove sexual imposition getting him under a B felony.

Rep. Magrum: Isn't that's what this bill is about using videos and photos for extortion?

Britta Rice: It could be. If your perpetrator already has naked photos of your victim, then they want more so they threaten to send out these naked photos they could do that.

Chairman K. Koppelman: Before us is the motion for the amendment. The amendment would take the Class A felony down to a Class C and it would take the Class C down to a misdemeanor.

Rep. Rick Becker: I don't think that when it goes under subsection b meaning that someone complies that their action causes an increased penalty. I think a C felony is reasonable; it's still a felony and it carries a very significant penalty.

Chairman K. Koppelman: The attempt in subdivision A deals with the act of the perpetrator for that to be an offense. Subdivision B requires the activity of both because the perpetrator has to accept the response of the victim and follow through on it.

Rep. Rick Becker: When you look at attempted robbery completion would be a different charge of robbery. We have extortion here and upon completion every case is able to be prosecuted as a new crime.

Chairman K. Koppelman: There's less likelihood to search around for a charge that can be brought when there's a clear definition in code of what the offense is.

Rep. Paulson: Say there's a high school boy, age 17 or 18, who asks a girl for naked pictures and she does but he asks for another one and she doesn't want to. He then tells

her to send it or he's sending the first photo out to their class so she does. The act is completed. Now he wants a third photo so she tells her parents who want to charge him. Without the amendment is he looking at 20 years and 15 years as a registered sex offender?

Chairman K. Koppelman: I think yes. It varies by court, by prosecutor, by judge, and area. In other statutes over the years we've said there has to be at least three years' difference in age or something like that to avoid the 18-year-old boy with a 16-year-old girl.

Rep. Paulson: That scenario and 15 years as a felon and a registered sex offender is a lot.

Rep. Hanson: I'm hearing a lot of concern about the consequences for the perpetrator but I think we also need to think of the lifelong consequences of the victims. Sexual attacks to women are incredibly common.

Rep. Jones: Rape is rape and if you have someone there with threats to do something; that is rape. It's not whether she agrees to it or not, it's what he did to create the situation where she had to do it. That is a violent action and penalties need to stay where they are. These boys need to be accountable for what they do. If they want to be a felon for the next 20 years because they can't control themselves then so be it. This bill is something to be used by prosecutors so these things can't be used as leverage and tools to extort this type of things.

Rep. Hanson: Two years ago during the legislative session we made some changes to the indecent exposure law that modernized our statute to reflect the fact that we now have a lot of usage of social media. I see this as building on that with a different level of offense.

Rep. Magrum: This is all to do with somebody using a video or images to coerce somebody. We are not taking away anything that would protect the victims.

Chairman K. Koppelman: There is no real crime of sexual extortion like this. It is when you threaten to distribute this type of material in exchange for things.

Rep. Magrum: We already have laws for that.

Chairman K. Koppelman: Now we don't have a statute that specifically fits that crime.

Rep. Magrum: It's not a perfect world, we're not going to fit everything.

Chairman K. Koppelman: We try to modernize and there are things that come up that we haven't thought of before. Let's get back to the motion of the amendment which deals with the penalty.

Rep. Vetter: If we accept the amendment I'm going to support the bill but if we don't accept this and it's an A felony I will vote no on the bill.

Chairman K. Koppelman: We have the proposed amendment before us.

Voice vote: Motion failed.

Chairman K. Koppelman: What are the committee's wishes?

Rep. McWilliams: Made a motion to adopt the amendment that the Class A would go to a Class B versus a Class C and a Class C would go to Class A misdemeanor.

Rep. Karls: Seconded.

Chairman K. Koppelman: On line 5 a Class A felony would be a Class B felony and on line 6 the Class C felony would be a Class A misdemeanor.

Rep. McWilliams: I can't find a penalty in that section that deals with distributing images, 12.1-17-07.2.

Rep. Hanson: It's a C felony for certain materials prohibited.

Voice Vote: Motion carries.

Chairman K. Koppelman: We have three amendments on the bill.

Rep. Paulson: If there wasn't any sex involved, it was just an image then this individual could be looking at 15 years as a registered sex offender?

Chairman K. Koppelman: No. The penalty section only deals with someone who violates subdivision b of subsection 1. That's the act. The difference would be if their demand is for money they would not be forced to register as a sex offender but if the demand was for sex they would be.

Rep. Paulson: What if the demand is for a photo?

Chairman K. Koppelman: The photo can be part of the demand. This means the completion of the sex act or the receipt of money. Subdivision a on that page deals with the attempt or the threat. If you violate subsection b which is the completion of the act, then you could go up to that higher charge.

Rep. Paulson: I see the sending of a video or image as a completion of the act, on line 21.

Rep. Paur: Aren't all of them related and don't all of them make them a sexual offender except if they extort money?

Chairman K. Koppelman: Under subdivision b, yes, but not under subdivision a. Rep. Paulson, if you look at line 19 where it says "knowingly causes a victim to engage" so you're not only sent the picture you have caused them to engage in something so that's where the crime comes in.

Rep. Jones: I respectfully disagree. When you read that paragraph on the second line it says "or distribute any image, video, or other recording of any individual engaged in sexually explicit conduct or any intimate image of an individual by means of..." The way it's written if somebody is making threats and if they follow through with that threat and distribute naked

photos to everyone in high school they're saying that's just as bad or subject to the same penalty as if they had a sexual act with that person.

Chairman K. Koppelman: I see your point.

Rep. McWilliams: In the century code it's actually a Class A misdemeanor. It talks about explicit representation, actual or simulated, and all of these things previously in the century code.

Chairman K. Koppelman: I think you both have a point. That's not the way I read it the first time. If there was a desire to do what I thought the bill was doing, we would have to remove everything beginning with "or" on line 20 through the words "or demand for money" as we amended it. It would read "knowingly causes a victim to engage in sexual contact in sexually explicit conduct or in simulated sexually explicit conduct by means of (list those three things)" then we'd probably have to reinsert "a demand for money" there. That would be another potential amendment if you wish to modify that.

Rep. McWilliams: I had a wise chairman tell me that if we amend it so many times to fix it then it might just be best to kill the bill.

Chairman K. Koppelman: That's a different vote. Is there anyone who wants to amend this?

Rep. Magrum: I'd move a do not pass as amended.

Rep. McWilliams: Seconded.

Chairman K. Koppelman: We have this four times amended right now. I disagree with Rep. McWilliams. I think it's our job to make good law. We are policymakers. I'm going to resist the motion for a do not pass. If we need to pass it, we're going to need to look at that one section. The motion before us is for the do not pass.

Rep. Paulson: This is a serious issue. I think for the penalty to fit the crime is the part that bothers me. I'm not sure how to fix it. If we could somehow to disconnect this issue from the registered sex offender issue entirely because that's chargeable under another section of statute, then maybe I could support that. As this is I can't vote for the bill.

Chairman K. Koppelman: I think we can fix that. I would support that revision to clarify.

Rep. Rick Becker: I agree with Rep. Paulson. I'm okay with the idea of creating an offense for sexual extortion. I think this has gone so far beyond what was necessary in the zealous aspect of trying to gain control of it. For me to be comfortable with it we'd have to hog house it and have a very simple, easily understood bill. Outside of that I don't see myself supporting this bill.

Roll Call Vote: 7 Yes 7 No 0 Absent
Motion failed.

Rep. Vetter: Made a motion for Without Committee Recommendation.

Rep. Magrum: Seconded.

Chairman K. Koppelman: We don't normally send those out unless there's complete deadlock in the committee. I sense that it would probably come out the same way as the bill stands. We can hold the bill if you want time but I think we need to get this right. If we send it out without committee recommendation, then it's either going to pass or fail on the floor. If it passes on the floor some of the concerns that have been brought up become law unless the Senate doesn't concur.

Rep. Simons: What I'm reading in century code this is already against the law. We're at a day and age when sexual things are happening. I'm seeing things happening here where a 19-year-old dumb kid that does something horrible, we're messing with kids' lives. There is a victim here and in a lot of cases they are women. This is a major problem. If someone is exploiting a young girl's naked image this is already a major offense. I ask that we not overcorrect on any of this; this is already against the law. Do we really need this law in century code?

Chairman K. Koppelman: Elements of the crime are against the law; this specific crime is not and that's why the bill is before us. I understand the concerns.

Rep. Rick Becker: I would offer a motion to adopt an amendment on page 1 strike on line 10 the letter a, retain the previous amendment regarding the demand for money, lines 19-23 on page 1 and lines 1-3 on page 2 would be deleted, line 4 would remain but following the word "is" we would have a Class A misdemeanor, lines 5-8 would be deleted, retain subsection 3 "for the purposes of this section" down through line 17, and the remainder of the bill would be deleted.

Chairman K. Koppelman: The rest of the bill is the registry.

Rep. Rick Becker: The rest of the bill all pertains to subdivision b of subsection 1 which in my amendment would be removed.

Chairman K. Koppelman: Could you read how your amendment would read?

Rep. Paur: Can we hold this and if the committee is comfortable with his amendments then we wait until Monday so he has time to formally draw it up so we can see it?

Chairman K. Koppelman: We've adopted four amendments at this point. We can have our intern draft the amendments into the bill and get us a Christmas tree version then have Rep. Becker get his amendment in writing so we can look at it.

Rep. Paur: Would there be enough support for Rep. Becker's amendment?

Chairman K. Koppelman: I just wanted to make sure we understood it before we voted. We'll pause on this for now. I'm going to ask that Legislative Council put those amendments together and show us the Christmas tree version of the bill then Rep. Becker can draft his

proposed amendment and if anyone else has amendments. I didn't accept the motion on the without committee recommendation as we didn't have a motion on a do pass.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2273
4/1/2019
34406

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to offenders against children, sexual offenders, and sexually violent predators.

Minutes:

1,2,3,4,5.

Chairman Koppelman: Opened the meeting on SB 2273. Passed out Attachments #1 & #2. These are the amendments we have attached to the bill and also a Christmas tree version of the amendments in context. This is what is attached to the bill so far.

Vice Chairman Karls: (Attachment #5) (Handed out later) When Ms. Britta Rice testified that first day she mentioned the case that had occurred in Bismarck and this is the newspaper article on how that case turned out. The perpetrator was charged with two felony counts of possession of prohibited materials; for receiving nude photo via snap chat and felony sexual imposition for threatening to send those photos to school mates if she didn't continue her sexual relationship, and leering a minor by computer because he used social media to ask the underage girl for sex when he was 19 as well as misdemeanor corruption of a minor for his role in setting up sexual acts between a girl and one of his friends. Her point was this bill would allow a single charge.

Rep. Rick Becker: Proposed amendments. .01003 plus Christmas tree version which shows us what the bill would look like if we were to adopt that amendment. (Attachment #3 & #4) I discussed with legislative counsel some of the thoughts and we got definitions in different sections of the code. Extortion only really apply as it is currently defined legally extortion would have to be for subdivision b of subsection 1; meaning the act has to be completed or reciprocated to be considered extortion. Otherwise it would be attempted extortion. We discussed what this bill is trying to do is already able to be done. Legislative Counsel brought out 12.1-06-01; that is criminal attempt so if you try to do anything that would result in a crime and the offense is the same as the offense for that thing that you are trying to do. A lot of what is in subdivision a of subsection 1 is covered. What is not covered is if you are trying to extort something; that the act, if completed wouldn't be illegal. For instance, if you were to distribute pictures that would be illegal. A person could argue even attempting to do that would be covered. The whole point is that there is this gray area that there is reason to have attempted sexual extortion in here. If you are threatening to do something that is illegal, it is already illegal by 12.1-06-01. Once it is completed it is already illegal by the other things we talked about. I was also pointed to Chapter 12.1-23-01 consolidation of offenses as an

example of what happens. The bottom line is what amendment .01003 does it clarifies this is attempted sexual extortion in subsection 1 subdivision a and that covers any attempt at this new thing that is now called sexual extortion. Subsection b is rendered unneeded because anything that is illegal is already illegal and is able to be acted on with the current code. When we get down to the offense it would be a class a misdemeanor, which doesn't change. Initially in the bill the offense for subdivision a was a class a misdemeanor. Subsection 3 is just definitions. Everything else has to do with issues with subdivision b and if it is a minor and going on the sexual registry. What we are looking at with this amendment is we are going to create an area of code for attempted sexual extortion to make sure that is covered. Then the follow through is not needed because it is elsewhere in the century code.

Motion Made to amend as per 19.8161.01003 by Rep. Rick Becker; Seconded by Rep. Magrum

Discussion:

Rep. Hanson: I understand the purpose of the amendment and I have concerns about the lowering of the penalty and lack of deformation of a penalty for a minor or vulnerable adult versus an adult. I will be resisting the motion for the amendment.

Rep. Rick Becker: The amendment does lower the penalty because the penalty for subdivision a initially was and following previous amendments and my amendment remains a class a misdemeanor. That is unchanged. What we did was change an a felony to a b felony after unsuccessfully to move to a c felony; subdivision b of subsection 1. That is not in there any longer so what we are doing in separating out; not lowering anything.

Chairman K. Koppelman: So the penalty you are talking about for a class a felony elsewhere in code?

Rep. Rick Becker: So subsection b of this bill originally came to us as a class a felony. It was moved to make it a c; that didn't pass. It was then moved to make it a b and that did pass and that is in the .01002 amendment. That pertains to subdivision b which is not included in the .01003 amendment; there by reverting for any individual circumstance. Taking subdivision b out then leaves it as it already is in code that some of them will be class felonies; some will be class b and some of them will be class c; which I think is better than one size fits all approach.

Chairman K. Koppelman: So as the bill currently stands you are correct in stating that the ultimate result was that on line 5, page 2 class a felony was changed to class b felony; however, that only applies if the victim is a minor or vulnerable adult. Then the change was otherwise from a c felony; to an a misdemeanor. Am I correct about that?

Rep. Rick Becker: Yes both of them pertain to subdivision b.

Chairman K. Koppelman: with your amendment it would revert to some other section of code where the penalties vary from class a felony to a misdemeanor. You said you discussed this with legislative counsel and some of these things are cared for elsewhere in code; however, this bill was brought to us by the Attorney General's office based upon an actual

case that occurred where apparently what is proposed here in subdivision b was violated and the difficulty was finding appropriate charges to make. What is the harm in leaving this in?

Rep. Rick Becker: I thought they indicated that they almost never charge sexual imposition because they need a smoking gun and this would give them the smoking gun, the in this case is a serious of text messages. If they had that then it is enough to charge SI as it is to charge this. Then they are concerned they don't have to stack and in fact they don't have to stack. The States Attorney has complete leeway to say we are going to pick this felony or this misdemeanor or we are going to stack them. This is another option so this could be stacked on what they are stacking.

Roll call vote: 7 yes 7 no 0 absent
Motion failed.

Do Pass as Amended .01002 by Rep. Hanson; Seconded by Rep. Roers Jones

Chairman K. Koppelman: That would be the .01002 version of the bill.

Discussion:

Rep. Rick Becker: I am going to resist the motion. I don't think it is good law to be redundant. Some of this type of stuff is put into statute to send a message or to show that we care and that is not good enough reason to create law. It is clear nobody is in favor of sexual extortion or any of the offenses in here, but because they are already covered elsewhere I am going to give the no vote.

Rep. McWilliams: I think it is a better bill than it was previously. Having only heard from one prosecutor in one particular case, I don't believe it is good law to pass a bill based on the experience of one prosecutor in one particular case.

Rep. Hanson: The testimony was brought to us from the Attorney General's office. It is to fill in a narrow gap in current law. Instead of stacking charges where the facts don't necessarily line up with current law we can have a precise law that exactly meets the facts of the circumstance. I think this is a good bill and I encourage people to vote green because it will fill in a gap.

Chairman K. Koppelman: Prosecutorial discretion is available.

Rep. Rick Becker: Does anyone in the committee recall any specific circumstance?

Rep. Hanson: Ms. Rice gave two examples.

Rep. Rick Becker: One of those I recall and then she backtracked to say that the evidence required for the one which actually be able to apply for the other. Perhaps I can understand better and swing my vote? Can you recall those circumstances?

Rep. Paur: I found the testimony on this bill contradictory and confusing.

Rep. Bob Paulson: We heard about a variety of prosecutorial and judicial discretion that can be taken. I have the concern where if you have a three-year deference that is addressed in the statute, but if you have a 20-year-old and 17-year-old minor my understanding, even with an amended bill, there can be only pictures sent; no actual contact and that could lead to a felony which is a mandatory sex registry situation is my understanding. If a felony is charged or plead to that there isn't judicial discretion for that; but they shall be put on the sex registry. I like what the bill is trying to do but I am concerned about that piece. So I will be voting no.

Chairman K. Koppelman: The I002 version we did address the registry.

Rep. Bob Paulson: Page 4, line 8 is my concern on the amended version. The new language aspect is if there is a demand for a picture and then the picture is sent, that fulfills the extortion and that would trigger the existing language of requiring sex registry.

Chairman K. Koppelman: On page 3, line 20-22 in the I002 version the committee changed we intended to remove the demand for money as a trigger for registration; so the person would only have to register as a sex offender if they are dealing with the sexually explicit material in the bill. If it is simply and extortion where they are seeding dollars it would not trigger the registration.

Roll Call Vote: 7 Yes 7 No 0 Absent Failed

**Motion Made to send this out without committee recommendation by Rep. Satrom
Seconded by Rep. McWilliams**

Discussion:

Roll Call Vote: 8 Yes 6 No 0 Absent Carrier: Vice Chairman Karls

Closed.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2273

Page 1, line 13, after "individual," insert "or a demand for money,"

Page 1, line 15, after "reputation," add "or"

Page 1, line 17, replace "; or" with an underscored period

Page 1, remove line 18

Page 1, line 22, after "individual," insert "or a demand for money,"

Page 1, line 23, after "reputation," add "or"

Page 2, line 2, replace "; or" with an underscored period

Page 2, remove line 3

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2273

Page 1, line 2, after "12.1-32-15" insert "and subsection 3 of section 50-25.1-02"

Page 1, line 4, after "predators" insert ", and child abuse and neglect"

Page 21, after line 18, insert:

"SECTION 3. AMENDMENT. Subsection 3 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Abused child" means an individual under the age of eighteen years who is suffering from abuse as defined in section 14-09-22 caused by a person responsible for the child's welfare and "sexually abused child" means an individual under the age of eighteen years who is subjected by a person responsible for the child's welfare, or by any individual who acts in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, section 1 of this Act, or chapter 12.1-27.2."

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2273

Page 3, line 21, after "1" insert "and subdivision b of subsection 1 if the offense includes a demand for money"

Page 13, line 4, after "1" insert "and subdivision b of subsection 1 if the offense includes a demand for money"

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2273

Page 1, line 2, after the first "to" insert "attempted"

Page 1, line 2, remove "amend and reenact section 12.1-32-15 of the"

Page 1, remove line 3

Page 1, line 4, replace "sexually violent predators" with "provide a penalty"

Page 1, line 8, replace "**Sexual**" with "**Attempted sexual**"

Page 1, line 9, after "of" insert "attempted"

Page 1, line 9, remove the underscored colon

Page 1, line 10, replace "a. With" with ", with"

Page 1, line 13, after the underscored comma insert "or a demand for money,"

Page 1, line 15, replace "(1)" with "a."

Page 1, line 15, after the underscored semicolon insert "or"

Page 1, line 16, replace "(2)" with "b."

Page 1, line 17, remove "; or"

Page 1, remove lines 18 through 23

Page 2, remove lines 1 and 2

Page 2, line 3, remove "(3) A demand for money"

Page 2, line 4, remove "The offense is:"

Page 2, remove lines 5 through 7

Page 2, line 8, replace "subsection 1" with "An individual who violates subsection 1 is guilty of a class A misdemeanor"

Page 2, remove lines 17 through 30

Page 3, remove lines 1 through 30

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 30

Page 6, remove lines 1 through 30

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 30

Page 10, remove lines 1 through 30

Page 11, remove lines 1 through 30

Page 12, remove lines 1 through 31

Page 13, remove lines 1 through 30

Page 14, remove lines 1 through 31

Page 15, remove lines 1 through 31

Page 16, remove lines 1 through 31

Page 17, remove lines 1 through 31

Page 18, remove lines 1 through 31

Page 19, remove lines 1 through 31

Page 20, remove lines 1 through 31

Page 21, remove lines 1 through 18

Renumber accordingly

DO 4/1/19

PROPOSED AMENDMENTS TO SENATE BILL NO. 2273

Page 1, line 2, after "12.1-32-15" insert "and subsection 3 of section 50-25.1-02"

Page 1, line 3, remove "and"

Page 1, line 4, after "predators" insert ", and child abuse and neglect"

Page 1, line 13, after the underscored comma insert "or a demand for money."

Page 1, line 15, after the underscored semicolon insert "or"

Page 1, line 17, remove "; or"

Page 1, line 18, remove "(3) A demand for money"

Page 1, line 22, after "individual" insert ", or a demand for money."

Page 1, line 23, after the underscored semicolon insert "or"

Page 2, line 2, remove "; or"

Page 2, line 3, remove "(3) A demand for money"

Page 2, line 5, replace the second "A" with "B"

Page 2, line 6, replace "C felony" with "A misdemeanor"

Page 3, line 21, after "1" insert "and subdivision b of subsection 1 if the offense involves only a demand for money"

Page 13, line 4, after "1" insert "and subdivision b of subsection 1 if the offense involves only a demand for money"

Page 21, after line 18, insert:

"SECTION 3. AMENDMENT. Subsection 3 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Abused child" means an individual under the age of eighteen years who is suffering from abuse as defined in section 14-09-22 caused by a person responsible for the child's welfare and "sexually abused child" means an individual under the age of eighteen years who is subjected by a person responsible for the child's welfare, or by any individual who acts in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, section 1 of this Act, or chapter 12.1-27.2."

Renumber accordingly

Date: 3-27-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES 2273

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: pg 1, lines 13 office
Attorney Gen.

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By HANSON Seconded By DR. Williams

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

voice
vote carried

Date: 3-27-18
Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES 2273

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description:

Definition of "Abused" child (attachment #1 from Member Becker)

Recommendation:

☒ Adopt Amendment

☐ Do Pass

☐ Do Not Pass

☐ Without Committee Recommendation

☐ As Amended

☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions:

☐ Reconsider

☐

Motion Made By

HANSON

Seconded By

Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Vote
Vote
Carried

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES 2273

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: removes the demand for money - 19.8161.01001
attachment #2

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Karls Seconded By Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Failed for lack of action

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES 2273

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: ^{Remove} ~~"includes"~~ and replace with "involves only" ^{19.8161.01001 attachment #2}
and → on p. 3, line 21 and page 13, line 4

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐

Motion Made By Paur Seconded By Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*Voice
Vote
carried*

Date: 3-27-19
Roll Call Vote #: 5

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES 2273

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: pg 2, lines 5-8 change from Class A felony to Class C felony # 5, 6, 7, 8, 1

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Becker Seconded By Vetter

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*Voiced
Vote
Failed*

Date: 3-27-19
Roll Call Vote #: 6

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES 2273

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: Close line 5, Class A-B,

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By McWhorter Seconded By Karls

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Carried

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES 2273

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Magnum Seconded By McWilliams

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman		<input checked="" type="checkbox"/>	Rep. Buffalo		<input checked="" type="checkbox"/>
Vice Chairman Karls		<input checked="" type="checkbox"/>	Rep. Karla Rose Hanson		<input checked="" type="checkbox"/>
Rep. Becker	<input checked="" type="checkbox"/>				
Rep. Terry Jones		<input checked="" type="checkbox"/>			
Rep. Magnum	<input checked="" type="checkbox"/>				
Rep. McWilliams	<input checked="" type="checkbox"/>				
Rep. B. Paulson	<input checked="" type="checkbox"/>				
Rep. Paur	<input checked="" type="checkbox"/>				
Rep. Roers Jones		<input checked="" type="checkbox"/>			
Rep. Satrom		<input checked="" type="checkbox"/>			
Rep. Simons	<input checked="" type="checkbox"/>				
Rep. Vetter	<input checked="" type="checkbox"/>				

Total (Yes) 7 No 7

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Failed

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES 2273

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☒ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Vetter Seconded By Magnum

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Chairman did not accept motion.

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES 2273

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: pg 1, line 10, line 19-23, pg. 1, lines 1-3, pg. 2
line 4 Class A Misdemeanor, lines 5-8 delete

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Becker Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Motion not completed -
meeting paused.

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
SB 2273**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 19.8161.01003

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Becker Seconded By Rep. Magrum

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Rep. Buffalo	X	
Vice Chairman Karls	X		Rep. Karla Rose Hanson	X	
Rep. Becker		X			
Rep. Terry Jones	X				
Rep. Magrum		X			
Rep. McWilliams		X			
Rep. B. Paulson		X			
Rep. Paur		X			
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons		X			
Rep. Vetter		X			

Total (Yes) 7 No 7

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Failed

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
SB 2273**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 19.8161.01002

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Hanson Seconded By Rep. Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Rep. Buffalo	X	
Vice Chairman Karls	X		Rep. Karla Rose Hanson	X	
Rep. Becker		X			
Rep. Terry Jones	X				
Rep. Magrum		X			
Rep. McWilliams		X			
Rep. B. Paulson		X			
Rep. Paur		X			
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons		X			
Rep. Vetter		X			

Total (Yes) 7 No 7

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

FAILED

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
SB 2273**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 19.8161.01002

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☒ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐

Motion Made By Rep. Satrom Seconded By Rep. McWilliams

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Rep. Buffalo	X	
Vice Chairman Karls	X		Rep. Karla Rose Hanson		X
Rep. Becker		X			
Rep. Terry Jones		X			
Rep. Magrum		X			
Rep. McWilliams					
Rep. B. Paulson	X				
Rep. Paur		X			
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons		X			
Rep. Vetter	X				

Total (Yes) 8 No 6

Absent 0

Floor Assignment Rep. Karls

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2273: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). SB 2273 was placed on the Sixth order on the calendar.

Page 1, line 2, after "12.1-32-15" insert "and subsection 3 of section 50-25.1-02"

Page 1, line 3, remove "and"

Page 1, line 4, after "predators" insert ", and child abuse and neglect"

Page 1, line 13, after the underscored comma insert "or a demand for money."

Page 1, line 15, after the underscored semicolon insert "or"

Page 1, line 17, remove ", or"

Page 1, line 18, remove "(3) A demand for money"

Page 1, line 22, after "individual" insert ", or a demand for money."

Page 1, line 23, after the underscored semicolon insert "or"

Page 2, line 2, remove ", or"

Page 2, line 3, remove "(3) A demand for money"

Page 2, line 5, replace the second "A" with "B"

Page 2, line 6, replace "C felony" with "A misdemeanor"

Page 3, line 21, after "1" insert "and subdivision b of subsection 1 if the offense involves only a demand for money"

Page 13, line 4, after "1" insert "and subdivision b of subsection 1 if the offense involves only a demand for money"

Page 21, after line 18, insert:

"SECTION 3. AMENDMENT. Subsection 3 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Abused child" means an individual under the age of eighteen years who is suffering from abuse as defined in section 14-09-22 caused by a person responsible for the child's welfare and "sexually abused child" means an individual under the age of eighteen years who is subjected by a person responsible for the child's welfare, or by any individual who acts in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, section 1 of this Act, or chapter 12.1-27.2."

Renumber accordingly

2019 TESTIMONY

SB 2273

Nicole Poolman

Testimony on SB 2273

Senate Judiciary Committee

January 21, 2019

Good morning, Chair Larson and members of the Judiciary committee, my name is Nicole Poolman, state senator from District 7 representing Bismarck and Lincoln. I am here today to introduce SB 2273 relating to sexual extortion - an issue I wish I did not know anything about. However, with the rampant sexting taking place in our schools, this is a situation that happens much more than you would think. We have dealt with the simple issue of putting these photos out on the internet with revenge porn bills in past sessions, but we haven't addressed the unique extortion taking place when young men (or women) tell someone they will post these pictures online if they do not have sex with them or perform sexual favors.

Much of this goes unreported, but for those who do step up to report it, there really isn't a law addressing this specific type of extortion. Attorney General Stenehjem has asked me to sponsor this legislation, and he is the expert on this issue, so I would direct any questions you may have to the attorney general and staff members from his office.

I would respectfully ask for a DO PASS recommendation on SB 2273.

SENATE BILL 2273 TESTIMONY
SENATE JUDICIARY COMMITTEE
JANUARY 21ST, 2019
FORT LINCOLN ROOM

2
SB 2273
1/21
page 1

By Britta Demello Rice, Assistant Attorney General

Madame Chair and Members of the Committee:

My name is Demello Rice and I appear on behalf of the Attorney General. I wish to testify in favor of Senate Bill 2273.

A recent case in Bismarck is a great example of sex extortion. A tenth grade female student was in a relationship with a twenty-year-old man. During the relationship, he requested a full body nude. She sent him one and later admitted to sending inappropriate photos. A few months later he threatened to send all her nudes to the seniors at her high school. She begged him not to and that she would do anything. He indicated they were going to have sex that day and demanded that she skip school so they could have sex during school hours. The victim stated several times that she could not skip school. He then promised to delete the nude photos if she gave him sex during the school day. So, she did. On another incident, the victim gave oral sex to one of the man's friends because he said she had to do it. The victim said she complied because he scared her.

A Minot case is another good example of sex extortion in our state. An eighteen-year-old man met a sixteen-year-old female online. They had an online relationship by way of text messaging and various video and social networking websites. Around a year after they met he convinced her to send him pictures of herself. At first, the photos were of her partially clad. However, the male continued to threaten to end the relationship if she did not send more explicit photos. The photos gradually progressed to nude photos and to photos of her simulating masturbation. The male then threatened to forward the

photos to others if she did not send him more. By the time it was reported to law enforcement, the male had 75-80 photos of her.

Current sex offense statutes criminalize similar activity such as: an adult who directs a minor to take nude photos of themselves (12.1-27.2-04); an adult who possesses nude photos of a minor (12.1-27.2-04.1); when video or images are made between consenting adults but later disseminated without one's permission (12.1-17-07.2); and, submitting to a sexual act based upon coercion (12.1-20-04). However, none of these statutes criminalize the extortion aspect of a crime involving the exchange of sex or intimate images to maintain one's privacy.

The proposed bill would make sexual extortion a crime. It also amends the registration law to include a violation of subsection (2) under the definition of a sexual offender – which basically requires a suspect who commits the crime of sexual extortion to have to register as a sexual offender.

Other states that have enacted legislation addressing Sex Extortion are: Alabama, Arizona, Arkansas, California, Maryland, Rhode Island, Texas, Utah, and West Virginia. (currently pending legislation in the District of Columbia)

#1
SB2273
3-13-19
P.1

Nicole Poolman

Testimony on SB 2273

House Judiciary Committee

Wednesday, March 13, 2019 10:15

Good morning, Chairman Koppleman and members of the Judiciary committee, my name is Nicole Poolman, state senator from District 7 representing Bismarck and Lincoln.

I am here today to introduce SB 2273 relating to sexual extortion - an issue I wish I did not know anything about. However, with the rampant sexting taking place in our schools, this is a situation that happens much more than you would think. We have dealt with the simple issue of putting these photos out on the internet with revenge porn bills in past sessions, but we haven't addressed the unique extortion taking place when young men (or women) tell someone they will post these pictures online if they do not have sex with them or perform sexual favors.

Much of this goes unreported, but for those who do step up to report it, there really isn't a law addressing this specific type of extortion. Attorney General Stenehjem has asked me to sponsor this legislation, and he is the expert on this issue, so I would direct any questions you may have to the attorney general and staff members from his office. I do believe they will be offering an amendment to the bill, as well.

I would respectfully ask for a DO PASS recommendation on SB 2273.

SENATE BILL 2273 TESTIMONY
HOUSE JUDICIARY COMMITTEE
MARCH 13, 2019
PRAIRIE ROOM

#2
SB 2273
3-13-19
P.1

By Britta Demello Rice, Assistant Attorney General

Chair Koppelman and Members of the Committee:

My name is Britta Demello Rice and I appear on behalf of the Attorney General. I wish to testify in favor of Senate Bill 2273.

A recent case in Bismarck is a great example of sex extortion. A tenth grade female student was in a relationship with a twenty-year-old man. During the relationship, he requested a full body nude. She sent him one and later admitted to sending inappropriate photos. A few months later he threatened to send all her nudes to the seniors at her high school. She begged him not to and that she would do anything. He indicated they were going to have sex that day and demanded that she skip school so they could have sex during school hours. The victim stated several times that she could not skip school. He then promised to delete the nude photos if she gave him sex during the school day. So, she did. On another incident, the victim gave oral sex to one of the man's friends because he said she had to do it. The victim said she complied because he scared her.

A Minot case is another good example of sex extortion in our state. An eighteen-year-old man met a sixteen-year-old female online. They had an online relationship by way of text messaging and various video and social networking websites. Around a year after they met he convinced her to send him pictures of herself. At first, the photos were of her partially clad. However, the male continued to threaten to end the relationship if she did not send more explicit photos. The photos gradually progressed to nude photos and to photos of her simulating masturbation. The male then threatened to forward the

photos to others if she did not send him more. By the time it was reported to law enforcement, the male had 75-80 photos of her.

#2
SB 2273
3-13-19
P. 2

Current sex offense statutes criminalize similar activity such as: an adult who directs a minor to take nude photos of themselves (12.1-27.2-04); an adult who possesses nude photos of a minor (12.1-27.2-04.1); when video or images are made between consenting adults but later disseminated without one's permission (12.1-17-07.2); and, submitting to a sexual act based upon coercion (12.1-20-04). However, none of these statutes criminalize the extortion aspect of a crime involving the exchange of sex or intimate images to maintain one's privacy.

The proposed bill would make sexual extortion a crime. It also amends the registration law to include a violation of subsection (2) under the definition of a sexual offender – which basically requires a suspect who commits the crime of sexual extortion to have to register as a sexual offender.

Other states that have enacted legislation addressing Sex Extortion are: Alabama, Arizona, Arkansas, California, Maryland, Rhode Island, Texas, Utah, and West Virginia. (currently pending legislation in the District of Columbia)

After the bill was passed by the Senate, I was informed that there was a technical error that requires an amendment. The language referring to the demand for money is in the wrong section of the bill. Instead of being in subsections (a)(3) and (b)(3), it should be in sections (a) and (b).

PROPOSED AMENDMENTS TO SENATE BILL NO. 2273

#2
582273
3-13-19
P. 3

Page 1, line 13, after "individual," insert "or a demand for money,"

Page 1, line 15, after "reputation;" add "or"

Page 1, line 17, replace "or" with an underscored period

Page 1, remove line 18

Page 1, line 22, after "individual," insert "or a demand for money,"

Page 1, line 23, after "reputation;" add "or"

Page 2, line 2, replace "or" with an underscored period

Page 2, remove line 3

Renumber accordingly

#3
SB 2273
3-13-19
P.1

Testimony
Senate Bill 2273 - Department of Human Services
House Judiciary Committee
Representative Kim Koppelman, Chairman

March 13, 2019

Chairman Koppelman and members of the House Judiciary Committee, I am Marlys Baker, Child Protection Services Administrator for the Department of Human Services (Department). I appear today to provide testimony in support of Senate Bill 2273 and to offer an amendment.

Chapter 50-25.1 of the North Dakota Century Code, entitled Child Abuse and Neglect provides a definition of "sexually abused child" and references several sections of Chapter 12.1-20 of the North Dakota Century Code entitled Sex Offenses. Among the offenses listed in the Child Abuse and Neglect chapter are: gross sexual imposition; continuous sexual abuse of a child; sexual imposition; corruption or solicitation of minors; luring minors by computer or other electronic means; sexual abuse of wards; sexual assault; incest; deviate sexual act; indecent exposure; and surreptitious intrusion. The definitions of these offenses are used by the Child Protection Services administrative program in making determinations whether services are required for the protection and treatment of an abused or neglected child under Chapter 50-25.1 of the North Dakota Century Code, when committed by a person responsible for a child's welfare. It is the desire of the Department to include sexual extortion to the definition of "sexually abused child" as proposed by the attached amendment.

In an increasingly digital age, our young people continue to be exposed to ever expanding forms of sexual material transmitted through various electronic means, including transmission of intimate images and recordings. Likewise, our young people may be easily coerced into producing sexually explicit material by peers and older teens, adults, and sometimes by a parent, step parent, family members or members of their household. Enacting a criminal offense for sexual extortion and criminal penalty and including this in the child abuse and neglect definitions, will send a strong message to those who seek to exploit a child's trust and inexperience that this is criminal behavior and is harmful to children. The Department of Human Services supports enacting Senate Bill 2273.

I am available for any questions you may have.

3
SB 2273
3-13-19
P. 2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2273

Page 1, line 2, after "12.1-32-15" insert "and subsection 3 of section 50-25.1-02"

Page 1, line 4, after "predators" insert ", and child abuse and neglect"

Page 21, after line 18, insert:

"SECTION 3. AMENDMENT. Subsection 3 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Abused child" means an individual under the age of eighteen years who is suffering from abuse as defined in section 14-09-22 caused by a person responsible for the child's welfare and "sexually abused child" means an individual under the age of eighteen years who is subjected by a person responsible for the child's welfare, or by any individual who acts in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, section 1 of this Act, or chapter 12.1-27.2."

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2273

Page 1, line 2, after "12.1-32-15" insert "and subsection 3 of section 50-25.1-02"

Page 1, line 4, after "predators" insert ", and child abuse and neglect"

Page 21, after line 18, insert:

"SECTION 3. AMENDMENT. Subsection 3 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Abused child" means an individual under the age of eighteen years who is suffering from abuse as defined in section 14-09-22 caused by a person responsible for the child's welfare and "sexually abused child" means an individual under the age of eighteen years who is subjected by a person responsible for the child's welfare, or by any individual who acts in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, section 1 of this Act, or chapter 12.1-27.2."

Renumber accordingly

19.8161.01001
Title.

Prepared by the Legislative Council staff for
the House Judiciary Committee
March 27, 2019

#2
SB 2273
3-27-19
P.1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2273

Page 3, line 21, after "1" insert "and subdivision b of subsection 1 if the offense includes a demand for money"

Page 13, line 4, after "1" insert "and subdivision b of subsection 1 if the offense includes a demand for money"

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2273

Page 1, line 2, after "12.1-32-15" insert "and subsection 3 of section 50-25.1-02"

Page 1, line 3, remove "and"

Page 1, line 4, after "predators" insert ", and child abuse and neglect"

Page 1, line 13, after the underscored comma insert "or a demand for money,"

Page 1, line 15, after the underscored semicolon insert "or"

Page 1, line 17, remove "or"

Page 1, line 18, remove "(3) A demand for money"

Page 1, line 22, after "individual" insert ", or a demand for money,"

Page 1, line 23, after the underscored semicolon insert "or"

Page 2, line 2, remove "or"

Page 2, line 3, remove "(3) A demand for money"

Page 2, line 5, replace the second "A" with "B"

Page 2, line 6, replace "C felony" with "A misdemeanor"

Page 3, line 21, after "1" insert "and subdivision b of subsection 1 if the offense involves only a demand for money"

Page 13, line 4, after "1" insert "and subdivision b of subsection 1 if the offense involves only a demand for money"

Page 21, after line 18, insert:

"SECTION 3. AMENDMENT. Subsection 3 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Abused child" means an individual under the age of eighteen years who is suffering from abuse as defined in section 14-09-22 caused by a person responsible for the child's welfare and "sexually abused child" means an individual under the age of eighteen years who is subjected by a person responsible for the child's welfare, or by any individual who acts in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, section 1 of this Act, or chapter 12.1-27.2."

Renumber accordingly

Introduced by

Senators Poolman, Bakke, D. Larson

Representatives Hanson, Karls

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 sexual extortion; and to amend and reenact section 12.1-32-15 and
3 subsection 3 of section 50-25.1-02 of the North Dakota Century Code, relating to offenders
4 against children, sexual offenders, ~~and~~ sexually violent predators, and child abuse and neglect.

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

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

8 **Sexual extortion.**

9 1. An individual commits the offense of sexual extortion if the individual:

10 a. With an intent to coerce a victim to engage in sexual contact, in sexually explicit
11 conduct, or in simulated sexually explicit conduct, or to produce, provide, or
12 distribute an image, video, or other recording of any individual engaged in
13 sexually explicit conduct or any intimate image of an individual, or a demand for
14 money, communicates in person or by electronic means:

15 (1) A threat to the victim's or another's person, property, or reputation; or

16 (2) A threat to distribute or an enticement to delete an intimate image or video
17 of the victim or another; ~~or~~

18 ~~(3) A demand for money.~~

19 b. Knowingly causes a victim to engage in sexual contact, in sexually explicit
20 conduct, or in simulated sexually explicit conduct, or to produce, provide, or
21 distribute any image, video, or other recording of any individual engaged in
22 sexually explicit conduct or any intimate image of an individual, or a demand for
23 money, by means of:

24 (1) A threat to the victim's or another's person, property, or reputation; or

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(2) A threat to distribute or an enticement to delete an intimate image or video of the victim or another; ~~or~~

~~(3) A demand for money.~~

2. The offense is:

a. A class ~~AB~~ felony if the actor's conduct violates subdivision b of subsection 1 and the victim is a minor or vulnerable adult, otherwise a class ~~C~~ ~~felony~~ ^A misdemeanor.

b. A class A misdemeanor if the actor's conduct violates subdivision a of subsection 1.

3. For purposes of this section:

a. "Intimate image" has the meaning provided in subsection 1 of section 12.1-17-07.2.

b. "Sexual contact" has the meaning provided in section 12.1-20-02.

c. "Sexually explicit conduct" has the meaning provided in subsection 1 of section 12.1-17-07.2.

d. "Simulated sexually explicit conduct" has the meaning provided in subsection 1 of section 12.1-17-07.

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

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

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.

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

- a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender, including juvenile delinquent adjudications of equivalent offenses unless the offense is listed in subdivision c.
- 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. Is a juvenile found delinquent under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual offender for a misdemeanor. The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a crime against a child, and the juvenile did not exhibit 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

- 1 offender or for a crime against a child, and the individual did not exhibit mental
2 abnormality or predatory conduct in the commission of the offense.
- 3 e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated
4 delinquent of any crime against another individual which is not otherwise
5 specified in this section if the court determines that registration is warranted by
6 the nature of the crime and therefore orders registration for the individual. If the
7 court orders an individual to register as an offender under this section, the
8 individual shall comply with all of the registration requirements in this chapter.
- 9 3. If a court has not ordered an individual to register in this state, an individual who
10 resides, is homeless, or is temporarily domiciled in this state shall register if the
11 individual:
- 12 a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime
13 against a child described in section 12.1-29-02, or section 12.1-18-01 or
14 12.1-18-02 if the individual was not the parent of the victim, or as a sexual
15 offender;
- 16 b. Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of,
17 an offense in a court of this state for which registration is mandatory under this
18 section or an offense from another court in the United States, a tribal court, or
19 court of another country equivalent to those offenses set forth in this section; or
- 20 c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against
21 a child or as a sexual offender for which registration is mandatory under this
22 section if the conviction occurred after July 31, 1985.
- 23 4. In its consideration of mental abnormality or predatory conduct, the court shall
24 consider the age of the offender, the age of the victim, the difference in ages of the
25 victim and offender, the circumstances and motive of the crime, the relationship of the
26 victim and offender, and the mental state of the offender. The court may order an
27 offender to be evaluated by a qualified counselor, psychologist, or physician before
28 sentencing. Except as provided under subdivision e of subsection 2, the court shall
29 state on the record in open court its affirmative finding for not requiring an offender to
30 register.

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

7. Registration consists of a written 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 with which that individual last registered 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 with which that individual last registered 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 with which the individual last registered. 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 shall also register within three days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. 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.

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

- 1 b. The attorney general shall conduct a risk assessment of sexual offenders who
2 are not under the custody or supervision of the department. The attorney general
3 may adopt a law enforcement agency's previous assignment of risk level for an
4 individual if the assessment was conducted in a manner substantially similar to
5 the guidelines developed under this subsection.
- 6 c. The juvenile courts or the agency having legal custody of a juvenile shall conduct
7 a risk assessment of juvenile sexual offenders who are required to register under
8 this section. The juvenile courts or the agency having legal custody of a juvenile
9 shall provide the attorney general any information, including the offender's level
10 of risk and supporting documentation, concerning juveniles required to register
11 and who are about to be released or placed into the community.
- 12 d. The attorney general shall notify the offender of the risk level assigned to that
13 offender. An offender may request a review of that determination with the attorney
14 general's sexual offender risk assessment committee and may present any
15 information that the offender believes may lower the assigned risk level.
- 16 13. Relevant and necessary conviction and registration information must be disclosed to
17 the public by a law enforcement agency if the individual is a moderate or high risk and
18 the agency determines that disclosure of the conviction and registration information is
19 necessary for public protection. The attorney general shall develop guidelines for
20 public disclosure of offender registration information. Public disclosure may include
21 internet access if the offender:
- 22 a. Is required to register for a lifetime under subsection 8;
23 b. Has been determined to be a high risk to the public by the department, the
24 attorney general, or the courts, according to guidelines developed by those
25 agencies; or
26 c. Has been determined to be a high risk to the public by an agency of another state
27 or the federal government.
- 28 If the offender has been determined to be a moderate risk, public disclosure must include, at a
29 minimum, notification of the offense to the victim registered under chapter 12.1-34 and to any
30 agency, civic organization, or group of persons who have characteristics similar to those of a

1 victim of the offender. Upon request, law enforcement agencies may release conviction and
2 registration information regarding low-risk, moderate-risk, or high-risk offenders.

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

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

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

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

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

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

3 1. As used in this section:

- 4 a. "A crime against a child" means a violation of chapter 12.1-16, section
5 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04,
6 subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01,
7 12.1-18-02, 12.1-18-05, chapter 12.1-29, or section 14-09-22, subsection 3 of
8 section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense
9 from another court in the United States, a tribal court, or court of another country,
10 in which the victim is a minor or is otherwise of the age required for the act to be
11 a crime or an attempt or conspiracy to commit these offenses.
- 12 b. "Department" means the department of corrections and rehabilitation.
- 13 c. "Homeless" means an individual who is physically present in this state, but is
14 living in a park, under a bridge, on the streets, in a vehicle or camper, or is
15 otherwise without a traditional dwelling, and also one who resides in this state but
16 does not maintain a permanent address. The term does not include individuals
17 who are temporarily domiciled or individuals residing in public or private shelters
18 that provide temporary living accommodations.
- 19 d. "Mental abnormality" means a congenital or acquired condition of an individual
20 that affects the emotional or volitional capacity of the individual in a manner that
21 predisposes that individual to the commission of criminal sexual acts to a degree
22 that makes the individual a menace to the health and safety of other individuals.
- 23 e. "Predatory" means an act directed at a stranger or at an individual with whom a
24 relationship has been established or promoted for the primary purpose of
25 victimization.
- 26 f. "Reside" means to live permanently or be situated for a considerable time in a
27 home or a particular place.
- 28 g. "Sexual offender" means a person who has pled guilty to or been found guilty,
29 including juvenile delinquent adjudications, of a violation of section 12.1-20-03,
30 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,
31 12.1-20-07 except for subdivision a of subsection 1, 12.1-20-11, 12.1-20-12.1, or

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- 1 12.1-20-12.2, chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1,
2 subdivision b of subsection 1 of section 12.1-41-02, section 12.1-41-04,
3 12.1-41-05, or 12.1-41-06, section 1 of this Act except for subdivision a of
4 subsection 1 and subdivision b of subsection 1 if the offense involves only a
5 demand for money, or an equivalent offense from another court in the United
6 States, a tribal court, or court of another country, or an attempt or conspiracy to
7 commit these offenses.
- 8 h. "Sexually dangerous individual" means an individual who meets the definition
9 specified in section 25-03.3-01.
- 10 i. "Temporarily domiciled" means staying or being physically present in this state for
11 more than thirty days in a calendar year or at a location for longer than ten
12 consecutive days, attending school for longer than ten days, or maintaining
13 employment in the jurisdiction for longer than ten days, regardless of the state of
14 the residence.
- 15 2. The court shall impose, in addition to any penalty provided by law, a requirement that
16 the individual register, within three days of coming into a county in which the individual
17 resides, is homeless, or within the period identified in this section that the individual
18 becomes temporarily domiciled. The individual must register with the chief of police of
19 the city of the individual's place of residence, or the sheriff of the county if the
20 individual resides in an area other than a city. A homeless individual shall register
21 every three days with the sheriff or chief of police of the jurisdiction in which the
22 individual is physically present. The court shall require an individual to register by
23 stating this requirement on the court records, if that individual:
- 24 a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual
25 offender or an attempted felonious sexual offender, including juvenile delinquent
26 adjudications of equivalent offenses unless the offense is listed in subdivision c.
- 27 b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender
28 for, a misdemeanor or attempted misdemeanor. The court may deviate from
29 requiring an individual to register if the court first finds the individual is no more
30 than three years older than the victim if the victim is a minor, the individual has
31 not previously been convicted as a sexual offender or of a crime against a child,

- 1 and the individual did not exhibit mental abnormality or predatory conduct in the
2 commission of the offense.
- 3 c. Is a juvenile found delinquent under subdivision d of subsection 1 of section
4 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual
5 offender for a misdemeanor. The court may deviate from requiring the juvenile to
6 register if the court first finds the juvenile has not previously been convicted as a
7 sexual offender or for a crime against a child, and the juvenile did not exhibit
8 mental abnormality or predatory conduct in the commission of the offense.
- 9 d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a
10 child or an attempted crime against a child, including juvenile delinquent
11 adjudications of equivalent offenses. Except if the offense is described in section
12 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent
13 of the victim, the court may deviate from requiring an individual to register if the
14 court first finds the individual has not previously been convicted as a sexual
15 offender or for a crime against a child, and the individual did not exhibit mental
16 abnormality or predatory conduct in the commission of the offense.
- 17 e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated
18 delinquent of any crime against another individual which is not otherwise
19 specified in this section if the court determines that registration is warranted by
20 the nature of the crime and therefore orders registration for the individual. If the
21 court orders an individual to register as an offender under this section, the
22 individual shall comply with all of the registration requirements in this chapter.
- 23 3. If a court has not ordered an individual to register in this state, an individual who
24 resides, is homeless, or is temporarily domiciled in this state shall register if the
25 individual:
- 26 a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime
27 against a child described in section 12.1-29-02, or section 12.1-18-01 or
28 12.1-18-02 if the individual was not the parent of the victim, or as a sexual
29 offender;
- 30 b. Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of,
31 an offense in a court of this state for which registration is mandatory under this

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

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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

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

- 27 8. An individual required to register under this section shall comply with the registration
28 requirement for the longer of the following periods:
- 29 a. A period of fifteen years after the date of sentence or order deferring or
30 suspending sentence upon a plea or finding of guilt or after release from
31 incarceration, whichever is later;

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- 1 b. A period of twenty-five years after the date of sentence or order deferring or
- 2 suspending sentence upon a plea or finding of guilt or after release from
- 3 incarceration, whichever is later, if the offender is assigned a moderate risk by the
- 4 attorney general as provided in subsection 12; or
- 5 c. For the life of the individual, if that individual:
- 6 (1) On two or more occasions has pled guilty or nolo contendere to, or been
- 7 found guilty of a crime against a child or as a sexual offender. If all qualifying
- 8 offenses are misdemeanors, this lifetime provision does not apply unless a
- 9 qualifying offense was committed after August 1, 1999;
- 10 (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense
- 11 committed after August 1, 1999, which is described in subdivision a of
- 12 subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of
- 13 subsection 1 of section 12.1-20-03 if the person is an adult and the victim is
- 14 under age twelve, or section 12.1-18-01 if that individual is an adult other
- 15 than a parent of the victim, or an equivalent offense from another court in
- 16 the United States, a tribal court, or court of another country; or
- 17 (3) Is assigned a high risk by the attorney general as provided in subsection 12.
- 18 9. An individual required to register under this section who violates this section is guilty of
- 19 a class C felony. The failure of a homeless individual to register as required in
- 20 subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of
- 21 court shall forward all warrants issued for a violation of this section to the county
- 22 sheriff, who shall enter all such warrants into the national crime information center
- 23 wanted person file. A court may not relieve an individual, other than a juvenile, who
- 24 violates this section from serving a term of at least ninety days in jail and completing
- 25 probation of one year.
- 26 10. When an individual is released on parole or probation and is required to register
- 27 pursuant to this section, but fails to do so within the time prescribed, the court shall
- 28 order the probation, or the parole board shall order the parole, of the individual
- 29 revoked.
- 30 11. If an individual required to register pursuant to this section is temporarily sent outside
- 31 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.

- 1 13. An individual assessed as a high-risk sexual offender in accordance with
2 subsection 12, may not reside within five hundred feet [152.4 meters] of a public or
3 nonpublic preschool or elementary, middle, or high school.
- 4 14. Relevant and necessary conviction and registration information must be disclosed to
5 the public by a law enforcement agency if the individual is a moderate or high risk and
6 the agency determines that disclosure of the conviction and registration information is
7 necessary for public protection. The attorney general shall develop guidelines for
8 public disclosure of offender registration information. Public disclosure may include
9 internet access if the offender:
- 10 a. Is required to register for a lifetime under subsection 8;
11 b. Has been determined to be a high risk to the public by the department, the
12 attorney general, or the courts, according to guidelines developed by those
13 agencies; or
14 c. Has been determined to be a high risk to the public by an agency of another state
15 or the federal government.
- 16 If the offender has been determined to be a moderate risk, public disclosure must
17 include, at a minimum, notification of the offense to the victim registered under chapter
18 12.1-34 and to any agency, civic organization, or group of persons who have
19 characteristics similar to those of a victim of the offender. Upon request, law
20 enforcement agencies may release conviction and registration information regarding
21 low-risk, moderate-risk, or high-risk offenders.
- 22 15. A state officer, law enforcement agency, or public school district or governing body of a
23 nonpublic school or any appointee, officer, or employee of those entities is not subject
24 to civil or criminal liability for making risk determinations, allowing a sexual offender to
25 attend a school function under section 12.1-20-25, or for disclosing or for failing to
26 disclose information as permitted by this section.
- 27 16. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual
28 offender or as an offender against a child under this section, the juvenile shall comply
29 with the registration requirements in this section. Notwithstanding any other provision
30 of law, a law enforcement agency shall register a juvenile offender in the same manner
31 as adult offenders and may release any relevant and necessary information on file to

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other law enforcement agencies, the department of 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 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.

SECTION 3. AMENDMENT. Subsection 3 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Abused child" means an individual under the age of eighteen years who is suffering from abuse as defined in section 14-09-22 caused by a person responsible for the child's welfare and "sexually abused child" means an individual under the age of eighteen years who is subjected by a person responsible for the child's welfare, or by any individual who acts in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, section 1 of this Act, or chapter 12.1-27.2.

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2273

Page 1, line 2, after the first "to" insert "attempted"

Page 1, line 2, remove "amend and reenact section 12.1-32-15 of the"

Page 1, remove line 3

Page 1, line 4, replace "sexually violent predators" with "provide a penalty"

Page 1, line 8, replace "**Sexual**" with "**Attempted sexual**"

Page 1, line 9, after "of" insert "attempted"

Page 1, line 9, remove the underscored colon

Page 1, line 10, replace "a. With" with ", with"

Page 1, line 13, after the underscored comma insert "or a demand for money."

Page 1, line 15, replace "(1)" with "a."

Page 1, line 15, after the underscored semicolon insert "or"

Page 1, line 16, replace "(2)" with "b."

Page 1, line 17, remove ", or"

Page 1, remove lines 18 through 23

Page 2, remove lines 1 and 2

Page 2, line 3, remove "(3) A demand for money"

Page 2, line 4, remove "The offense is:"

Page 2, remove lines 5 through 7

Page 2, line 8, replace "subsection 1" with "An individual who violates subsection 1 is guilty of a class A misdemeanor"

Page 2, remove lines 17 through 30

Page 3, remove lines 1 through 30

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 30

Page 6, remove lines 1 through 30

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 30

Page 10, remove lines 1 through 30

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Page 11, remove lines 1 through 30

Page 12, remove lines 1 through 31

Page 13, remove lines 1 through 30

Page 14, remove lines 1 through 31

Page 15, remove lines 1 through 31

Page 16, remove lines 1 through 31

Page 17, remove lines 1 through 31

Page 18, remove lines 1 through 31

Page 19, remove lines 1 through 31

Page 20, remove lines 1 through 31

Page 21, remove lines 1 through 18

Renumber accordingly

Introduced by

Senators Poolman, Bakke, D. Larson

Representatives Hanson, Karls

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 attempted sexual extortion; and to ~~amend and reenact section~~
3 ~~12.1-32-15 of the North Dakota Century Code, relating to offenders against children, sexual~~
4 ~~offenders, and sexually violent predators~~provide a penalty.

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

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

8 **SexualAttempted sexual extortion.**

9 1. An individual commits the offense of attempted sexual extortion if the individual:

10 ~~a. With,~~ with an intent to coerce a victim to engage in sexual contact, in sexually
11 explicit conduct, or in simulated sexually explicit conduct, or to produce, provide,
12 or distribute an image, video, or other recording of any individual engaged in
13 sexually explicit conduct or any intimate image of an individual, or a demand for
14 money, communicates in person or by electronic means:

15 ~~(1)a.~~ A threat to the victim's or another's person, property, or reputation; or

16 ~~(2)b.~~ A threat to distribute or an enticement to delete an intimate image or video of the
17 victim or another; or

18 ~~(3)~~ A demand for money.

19 ~~b. Knowingly causes a victim to engage in sexual contact, in sexually explicit~~
20 ~~conduct, or in simulated sexually explicit conduct, or to produce, provide, or~~
21 ~~distribute any image, video, or other recording of any individual engaged in~~
22 ~~sexually explicit conduct or any intimate image of an individual by means of:~~

23 ~~(1) A threat to the victim's or another's person, property, or reputation;~~

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1 ~~(2) A threat to distribute or an enticement to delete an intimate image or video~~
2 ~~of the victim or another; or~~

3 ~~(3) A demand for money.~~

4 2. The offense is:

5 ~~a. A class A felony if the actor's conduct violates subdivision b of subsection 1 and~~
6 ~~the victim is a minor or vulnerable adult, otherwise a class C felony.~~

7 ~~b. A class A misdemeanor if the actor's conduct violates subdivision a of~~
8 ~~subsection 1~~ An individual who violates subsection 1 is guilty of a class A
9 misdemeanor.

10 3. For purposes of this section:

11 a. "Intimate image" has the meaning provided in subsection 1 of section
12 12.1-17-07.2.

13 b. "Sexual contact" has the meaning provided in section 12.1-20-02.

14 c. "Sexually explicit conduct" has the meaning provided in subsection 1 of section
15 12.1-17-07.2.

16 d. "Simulated sexually explicit conduct" has the meaning provided in subsection 1 of
17 section 12.1-17-07.

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

20 ~~**12.1 32-15. Offenders against children and sexual offenders - Sexually violent**~~
21 ~~**predators - Registration requirement - Penalty. (Contingent effective date - See note)**~~

22 ~~1. As used in this section:~~

23 ~~a. "A crime against a child" means a violation of chapter 12.1 16, section~~
24 ~~12.1 17-01.1 if the victim is under the age of twelve, 12.1 17-02, 12.1 17-04,~~
25 ~~subdivision a of subsection 6 of section 12.1 17-07.1, section 12.1 18-01,~~
26 ~~12.1 18-02, 12.1 18-05, chapter 12.1 29, or section 14-09-22, subsection 3 of~~
27 ~~section 12.1 41-02, subsection 3 of section 12.1 41-03, or an equivalent offense~~
28 ~~from another court in the United States, a tribal court, or court of another country,~~
29 ~~in which the victim is a minor or is otherwise of the age required for the act to be~~
30 ~~a crime or an attempt or conspiracy to commit these offenses.~~

31 ~~b. "Department" means the department of corrections and rehabilitation.~~

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

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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 or the sheriff of the county if the individual resides, attends school, or is employed in an area other than a city. A homeless individual shall register every three days with the sheriff or chief of police of the jurisdiction in which the individual is physically present. The court shall require an individual to register by stating this requirement on the court records, if that individual:~~

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

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. ~~Is a juvenile found delinquent under subdivision d of subsection 1 of section 12.1 20-03, subdivision a of subsection 2 of section 12.1 20-03, or as a sexual offender for a misdemeanor. The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a crime against a child, and the juvenile did not exhibit 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~~

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

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

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

a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime against a child described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 if the individual was not the parent of the victim, or as a sexual offender;

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

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

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

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

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7. Registration consists of a written 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 with which that individual last registered 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 with which that individual last registered 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 with which the individual last registered. 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,

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

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

12 a. A period of fifteen years after the date of sentence or order deferring or
13 suspending sentence upon a plea or finding of guilt or after release from
14 incarceration, whichever is later;

15 b. A period of twenty five years after the date of sentence or order deferring or
16 suspending sentence upon a plea or finding of guilt or after release from
17 incarceration, whichever is later, if the offender is assigned a moderate risk by the
18 attorney general as provided in subsection 12; or

19 c. For the life of the individual, if that individual:

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

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

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

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

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- 1 ~~b. The attorney general shall conduct a risk assessment of sexual offenders who~~
2 ~~are not under the custody or supervision of the department. The attorney general~~
3 ~~may adopt a law enforcement agency's previous assignment of risk level for an~~
4 ~~individual if the assessment was conducted in a manner substantially similar to~~
5 ~~the guidelines developed under this subsection.~~
- 6 ~~c. The juvenile courts or the agency having legal custody of a juvenile shall conduct~~
7 ~~a risk assessment of juvenile sexual offenders who are required to register under~~
8 ~~this section. The juvenile courts or the agency having legal custody of a juvenile~~
9 ~~shall provide the attorney general any information, including the offender's level~~
10 ~~of risk and supporting documentation, concerning juveniles required to register~~
11 ~~and who are about to be released or placed into the community.~~
- 12 ~~d. The attorney general shall notify the offender of the risk level assigned to that~~
13 ~~offender. An offender may request a review of that determination with the attorney~~
14 ~~general's sexual offender risk assessment committee and may present any~~
15 ~~information that the offender believes may lower the assigned risk level.~~
- 16 ~~13. Relevant and necessary conviction and registration information must be disclosed to~~
17 ~~the public by a law enforcement agency if the individual is a moderate or high risk and~~
18 ~~the agency determines that disclosure of the conviction and registration information is~~
19 ~~necessary for public protection. The attorney general shall develop guidelines for~~
20 ~~public disclosure of offender registration information. Public disclosure may include~~
21 ~~internet access if the offender:~~
- 22 ~~a. Is required to register for a lifetime under subsection 8;~~
- 23 ~~b. Has been determined to be a high risk to the public by the department, the~~
24 ~~attorney general, or the courts, according to guidelines developed by those~~
25 ~~agencies; or~~
- 26 ~~c. Has been determined to be a high risk to the public by an agency of another state~~
27 ~~or the federal government.~~
- 28 ~~If the offender has been determined to be a moderate risk, public disclosure must include, at a~~
29 ~~minimum, notification of the offense to the victim registered under chapter 12.1-34 and to any~~
30 ~~agency, civic organization, or group of persons who have characteristics similar to those of a~~

1 ~~victim of the offender. Upon request, law enforcement agencies may release conviction and~~
2 ~~registration information regarding low risk, moderate risk, or high risk offenders.~~

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

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

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

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

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~~Offenders against children and sexual offenders - Sexually violent predators~~

~~Registration requirement - Penalty. (Contingent effective date - See note)~~

~~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, or~~

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12.1 20 12.2, chapter 12.1 27.2, or subsection 2 of section 12.1 22-03.1,
subdivision b of subsection 1 of section 12.1 41-02, section 12.1 41-04,
12.1 41-05, or 12.1 41-06, section 1 of this Act except for subdivision a of
subsection 1, or an equivalent offense from another court in the United States, a
tribal court, or court of another country, or an attempt or conspiracy to commit
these offenses.

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

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

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

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

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,

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

e. Is a juvenile found delinquent under subdivision d of subsection 1 of section 12.1 20 03, subdivision a of subsection 2 of section 12.1 20 03, or as a sexual offender for a misdemeanor. The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a crime against a child, and the juvenile did not exhibit 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

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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

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

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

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.

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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~~

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

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

29 a. A period of fifteen years after the date of sentence or order deferring or
30 suspending sentence upon a plea or finding of guilt or after release from
31 incarceration, whichever is later;

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

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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.

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- 1 ~~13. An individual assessed as a high risk sexual offender in accordance with~~
2 ~~subsection 12, may not reside within five hundred feet [152.4 meters] of a public or~~
3 ~~nonpublic preschool or elementary, middle, or high school.~~
- 4 ~~14. Relevant and necessary conviction and registration information must be disclosed to~~
5 ~~the public by a law enforcement agency if the individual is a moderate or high risk and~~
6 ~~the agency determines that disclosure of the conviction and registration information is~~
7 ~~necessary for public protection. The attorney general shall develop guidelines for~~
8 ~~public disclosure of offender registration information. Public disclosure may include~~
9 ~~internet access if the offender:~~
- 10 ~~a. Is required to register for a lifetime under subsection 8;~~
11 ~~b. Has been determined to be a high risk to the public by the department, the~~
12 ~~attorney general, or the courts, according to guidelines developed by those~~
13 ~~agencies; or~~
- 14 ~~c. Has been determined to be a high risk to the public by an agency of another state~~
15 ~~or the federal government.~~
- 16 ~~If the offender has been determined to be a moderate risk, public disclosure must~~
17 ~~include, at a minimum, notification of the offense to the victim registered under chapter~~
18 ~~12.1 34 and to any agency, civic organization, or group of persons who have~~
19 ~~characteristics similar to those of a victim of the offender. Upon request, law~~
20 ~~enforcement agencies may release conviction and registration information regarding~~
21 ~~low risk, moderate risk, or high risk offenders.~~
- 22 ~~15. A state officer, law enforcement agency, or public school district or governing body of a~~
23 ~~nonpublic school or any appointee, officer, or employee of those entities is not subject~~
24 ~~to civil or criminal liability for making risk determinations, allowing a sexual offender to~~
25 ~~attend a school function under section 12.1 20-25, or for disclosing or for failing to~~
26 ~~disclose information as permitted by this section.~~
- 27 ~~16. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual~~
28 ~~offender or as an offender against a child under this section, the juvenile shall comply~~
29 ~~with the registration requirements in this section. Notwithstanding any other provision~~
30 ~~of law, a law enforcement agency shall register a juvenile offender in the same manner~~
31 ~~as adult offenders and may release any relevant and necessary information on file to~~

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1 other law enforcement agencies, the department of human services, or the public if
2 disclosure is necessary to protect public health or safety. The law enforcement agency
3 shall release any relevant and necessary information on file to the superintendent or
4 principal of the school the juvenile attends. The school administration shall notify
5 others in similar positions if the juvenile transfers to another learning institution in or
6 outside the state.

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

12 ~~18.~~ A sexual offender who is currently assigned a moderate or high risk level by the
13 attorney general may not use a state park of this state as a residence or residential
14 address to comply with the registration requirements of this section. Before arriving at
15 a state park for overnight lodging or camping, a sexual offender who is assigned a
16 moderate or high risk level by the attorney general shall notify a parks and recreation
17 department law enforcement officer at the state park where the sexual offender will be
18 staying.

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SECTION B

Man sentenced in sex crime case

Davies solicited nude photos of 15-year-old girl

BLAIR EMERSON
Bismarck Tribune

A man was sentenced to three years in prison for soliciting nude photos of a 15-year-old girl and using them to coerce her to perform sexual acts.

South Central District Judge David Reich sentenced Philip Davies, of Bismarck, on Monday.

In September, a jury convicted

Davies of two felony counts of possession of prohibited materials for receiving nude photos via Snapchat and felony sexual imposition for threatening to send those photos to schoolmates if she didn't continue her sexual relationship with him.

Davies was also found guilty of luring a minor by computer because he used social media to ask the underage girl for sex when he was 19 years old, as well as misdemeanor corruption of a minor for his role in setting up sexual acts between the

girl and one of his friends.

Burleigh County State's Attorney Julie Lawyer recommended Davies serve six years in prison, while Davies' attorney William Kirschner recommended Davies be sentenced to probation.

"There is nothing in this case that indicates that (the victim) had any control over this. She, according to even Mr. Kirschner, was moved by the defendant and his superstar status, which he used to victimize this girl," Lawyer said, referring to his status as an athlete.

Kirschner told the judge the recommended sentence was "out of line with the misconduct," and that Davies has acknowledged his wrongdoings and offered to make restitution in any way possible.

"He wants a second chance at life, he understands that he is being punished now for what is going on," Kirschner said.

Davies also told the judge that he would like a second chance.

Reich said, while he understood the arguments on both sides, Davies doesn't have a clean record.

"You have a number of different contacts with the court in other matters," Reich said. "There's just a complete total disregard of the right of another individual that you exhibited for an extended period of time in this case. It's very troublesome to me."

Davies must also register as a sex offender and complete five years of supervised probation.

Reach Blair Emerson at 701-250-8251 or Blair.Emerson@bismarcktribune.com.