

**SENATE BILL NO. 2299**

Introduced by

Senators W. Stenehjem, Cook, Tomac

Representatives R. Kelsch, Porter

1 A BILL for an Act to amend and reenact section 12.1-32-15 of the North Dakota Century Code,  
2 relating to the registration of offenders against children and sexual offenders.

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

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

6 **12.1-32-15. Offenders against children and sexual offenders - Sexually violent**  
7 **predators - Registration requirement - Penalty.**

8 1. As used in this section:

9 a. "A crime against a child" means a violation of chapter 12.1-16, 12.1-17,  
10 12.1-18, or 12.1-29, or an equivalent ordinance, in which the victim is a minor  
11 or is otherwise of the age required for the act to be a crime or an attempt to  
12 commit these offenses.

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

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

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

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

f. "Sexual offender" means a person who has pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, or an equivalent ordinance, or an attempt to commit these offenses.

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

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

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

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

b. Has pled guilty or been found guilty as a sexual offender and at the time of the commission of the offense was twenty-two years of age or older and the victim was under fifteen years of age.

c. Is found to be a sexually violent predator.

d. Has pled guilty or been found guilty as a sexual offender for a misdemeanor or attempted misdemeanor. The court may deviate from requiring an offender

1           to register if the court first finds the offender has not previously been  
2           convicted as a sexual offender or of a felony crime against a child, and the  
3           offender did not exhibit mental abnormality or predatory conduct in the  
4           commission of the offense.

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

12          f. Has pled guilty or been found guilty of a felony crime against a child or an  
13          attempted felony crime against a child, including juvenile delinquent  
14          adjudications of equivalent offenses. The court may deviate from requiring an  
15          offender to register if the court first finds the offender has not previously been  
16          convicted as a sexual offender or for a felony crime against a child, and the  
17          offender did not exhibit mental abnormality or predatory conduct in the  
18          commission of the offense.

19          g. Has pled guilty, been found guilty, or been adjudicated delinquent of any  
20          crime against another person which is not otherwise specified in this section if  
21          the court finds the person demonstrated mental abnormality or predatory  
22          conduct in the commission of the offense and therefore orders registration for  
23          the individual. If the court orders a person to register as an offender under  
24          this section, the offender must comply with all of the registration requirements  
25          in this chapter.

26          h. Is incarcerated or is on probation or parole on August 1, 1995, ~~for a crime~~  
27          ~~against a child~~ or as a sexual offender;

28          b- i. Has pled guilty or nolo contendere to, or been found guilty of, an offense in a  
29          court of another state or the federal government equivalent to those offenses  
30          set forth in subdivisions a and e f of subsection 1; or

1           ~~e. j.~~     Has pled guilty to or been found guilty of a crime against a child or as a  
2                               sexual offender within ten years prior to August 1, 1995.

3           4.     In its consideration of mental abnormality or predatory conduct, the court shall  
4                   consider the age of the offender, the age of the victim, the difference in ages of the  
5                   victim and offender, the circumstances and motive of the crime, the relationship of  
6                   the victim and offender, and the mental state of the offender. The court may order  
7                   an offender to be evaluated by a qualified counselor or physician before  
8                   sentencing. Except as provided under subdivision g of subsection 3, the court  
9                   shall state on the record in open court its affirmative finding for not requiring an  
10                  offender to register.

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

29          ~~5.~~ 6.     A person who is required to register pursuant to this section who is released on  
30                  probation or discharged upon payment of a fine must, before the release or  
31                  discharge, be informed of that person's duty to register under this section by the

1 court in which that person is convicted. The court shall require the person to read  
2 and sign a form as required by the attorney general, stating that the duty of the  
3 person to register under this section has been explained to that person. The court  
4 shall obtain the address where the person expects to reside upon release or  
5 discharge and shall report the address to the attorney general within three days.  
6 The court shall give one copy of the form to the person and shall send two copies  
7 to the attorney general. The attorney general shall forward one copy to the  
8 appropriate law enforcement agency having jurisdiction where the person expects  
9 to reside upon discharge, parole, or release.

10 ~~6.~~ 7. Registration consists of a written statement signed by the person, giving the  
11 information required by the attorney general, and the fingerprints and photograph  
12 of the person. Within three days after registration, the registering law enforcement  
13 agency shall forward the statement, fingerprints, and photograph to the attorney  
14 general. If a person required to register pursuant to this section has a change in  
15 name or address, that person shall inform in writing, within ten days, the law  
16 enforcement agency with whom that person last registered of the person's new  
17 name or address. The law enforcement agency, within three days after receipt of  
18 the information, shall forward it to the attorney general. The attorney general shall  
19 forward the appropriate registration data to the law enforcement agency having  
20 local jurisdiction of the new place of residence. Upon a change of address, the  
21 person required to register shall also register within ten days at the law  
22 enforcement agency having local jurisdiction of the new place of residence. A law  
23 enforcement agency that has previously registered an offender may omit the  
24 fingerprint portion of the registration if that agency has a set of fingerprints on file  
25 for that individual and is personally familiar with and can visually identify the  
26 offender. These provisions also apply in any other state that requires registration.

27 ~~7.~~ 8. A person 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 ten 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; or

b. Until a court determination is made that the person no longer is a sexually violent predator. The sexually violent predator may petition no more than once a year for a court determination on the status of being a sexually violent predator. The court must receive a report from the qualified board before making the determination.

~~8.~~ 9. A person required to register under this section who violates this section is guilty of a class A misdemeanor. A court may not relieve a person who willfully violates this section from serving a term of at least ninety days in jail and completing probation of one year. A person who violates this section who previously has pled guilty or been found guilty of violating this section is guilty of a class C felony.

~~9.~~ 10. When a person is released on parole or probation and is required to register pursuant to this section, but fails to do so within the time prescribed, the court shall order the probation, or the parole board shall order the parole, of the person revoked. The statements, photographs, and fingerprints required by this section are open to inspection by the public.

~~10.~~ 11. If a person required to register pursuant to this section is temporarily sent outside the facility or institution where that person is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that person is being sent must be notified within a reasonable time period before that person is released from the facility or institution. This subsection does not apply to any person temporarily released under guard from the facility or institution in which that person is confined.

~~11.~~ 12. Relevant and necessary registration information shall be disclosed to the public by a law enforcement agency if the agency determines that the individual registered under this section is a public risk and disclosure of the registration information is necessary for public protection. The department, in a timely manner, shall provide law enforcement agencies any information the department determines is relevant concerning individuals required to be registered under this section who are about to be released or placed into the community. A law enforcement agency, its officials, and its employees are not subject to civil or criminal liability for disclosing or for failing to disclose information as permitted by this section. Nonregistration

1 information concerning an offender required to register under this section  
2 consisting of the name of the offender, the last known address of the offender, the  
3 offense or offenses as defined in subsection 1 to which the offender pled guilty or  
4 of which the offender was found guilty, the date of the judgment or order imposing  
5 a sentence or probation and the court entering the judgment or order, the sentence  
6 or probation imposed upon the offender, and any disposition, if known, of a  
7 sentence or probation may be disclosed to the public. The attorney general shall  
8 compile nonregistration information concerning offenders required to register under  
9 this section from criminal history record information maintained pursuant to chapter  
10 12-60 or from an agency or department of another state or the federal government  
11 and shall provide the information upon request at no cost.