

SENATE BILL NO. 2446

Introduced by

Senators G. Nelson, Christmann, Nething

Representatives Delmore, Koppelman, Meier

1 A BILL for an Act to create and enact a new subdivision to subsection 2 of section 28-32-01 of
2 the North Dakota Century Code, relating to exclusions from the definition of administrative
3 agency; and to amend and reenact section 12.1-32-15 of the North Dakota Century Code,
4 relating to the registration of sexual offenders and offenders against children.

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

6 **SECTION 1. AMENDMENT.** Section 12.1-32-15 of the 1999 Supplement to the North
7 Dakota Century Code is amended and reenacted as follows:

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

- 10 1. As used in this section:
- 11 a. "A crime against a child" means a violation of chapter 12.1-16, 12.1-17,
12 12.1-18, 12.1-29, or subdivision a of subsection 1 or subsection 2 of section
13 14-09-22, or an equivalent ordinance, in which the victim is a minor or is
14 otherwise of the age required for the act to be a crime or an attempt to commit
15 these offenses.
- 16 b. "Department" means the department of corrections and rehabilitation.
- 17 c. "Mental abnormality" means a congenital or acquired condition of an
18 individual that affects the emotional or volitional capacity of the individual in a
19 manner that predisposes that individual to the commission of criminal sexual
20 acts to a degree that makes the individual a menace to the health and safety
21 of other individuals.
- 22 d. "Predatory" means an act directed at a stranger, or at an individual with whom
23 a relationship has been established or promoted for the primary purpose of
24 victimization.

- e. "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.
 - f. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.
 - g. "Temporarily domiciled" means staying or being physically present at a location for longer than ten 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 ten days of coming into a county in which the individual resides or is 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. 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 felony 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 felony 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 felony crime against a child or an attempted felony 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 felony 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 finds the individual demonstrated mental abnormality or sexual predatory conduct in the commission of the offense 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, the individual shall register if the individual:

a. Is incarcerated or is on probation or parole ~~on August 1~~ 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 found guilty of, an offense in a court of this state for which registration is mandatory under this section or another state or the federal government equivalent to those offenses set forth in this section if the individual was ordered by a court or required to register as

a sexual offender, or for a crime against a child in another state or by the federal government; or

c. Has pled guilty or nolo contendere to, or has been found guilty of, a felonious crime against a child or as a sexual offender for which registration is mandatory under this section if the conviction occurred ~~within ten years prior to August 1, 1995~~ 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

1 enforcement agency, prosecutor, and court thirty days before the discharge,
2 parole, or release of the individual.

- 3 6. An individual who is required to register pursuant to this section who is released on
4 probation or discharged upon payment of a fine must, before the release or
5 discharge, be informed of the duty to register under this section by the court in
6 which that individual is convicted. The court shall require the individual to read and
7 sign a form as required by the attorney general, stating that the duty of the
8 individual to register under this section has been explained to that individual. The
9 court shall obtain the address where the individual expects to reside, attend school,
10 or work upon release or discharge and shall report the address to the attorney
11 general within three days. The court shall give one copy of the form to the
12 individual and shall send two copies to the attorney general. The attorney general
13 shall forward one copy to the appropriate law enforcement agency having
14 jurisdiction where the individual expects to reside, attend school, or work upon
15 discharge, parole, or release.

- 16 7. Registration consists of a written statement signed by the individual, giving the
17 information required by the attorney general, and the fingerprints and photograph
18 of the individual. Within three days after registration, the registering law
19 enforcement agency shall forward the statement, fingerprints, and photograph to
20 the attorney general. If an individual required to register pursuant to this section
21 has a change in name, school, or address, that individual shall inform in writing,
22 within ten days, the law enforcement agency with whom that individual last
23 registered of the individual's new name, school, or address, or employment
24 address if the individual is working in this state but not residing in this state. The
25 law enforcement agency, within three days after receipt of the information, shall
26 forward it to the attorney general. The attorney general shall forward the
27 appropriate registration data to the law enforcement agency having local
28 jurisdiction of the new place of residence, school, or employment. Upon a change
29 of address, the individual required to register shall also register within ten days at
30 the law enforcement agency having local jurisdiction of the new place of residence,
31 school, or employment. A law enforcement agency that has previously registered

an offender may omit the fingerprint portion of the registration if that agency has a set of fingerprints 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 ten 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; or

b. 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, an offense in which that individual was ordered by a court or otherwise required to register as a felonious sexual offender or felonious offender against a child under this section;

(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

(3) Has been civilly committed as a sexually dangerous individual under chapter 25-03.3, under the laws of another state, or by the federal government.

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

10. When an individual is released on parole or probation and is required to register pursuant to this section, but fails to do so within the time prescribed, the court shall

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

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

11 12. The attorney general, with the assistance of the department and the juvenile
12 courts, shall develop guidelines for the risk assessment of sexual offenders who
13 are required to register, with a low-risk, moderate risk, or high-risk level being
14 assigned to each offender as follows:

15 a. The department shall conduct a risk assessment of sexual offenders who are
16 incarcerated in institutions under the control of the department and sexual
17 offenders who are on supervised probation. The department, in a timely
18 manner, shall provide law enforcement agencies any information, including
19 the offender's level of risk, which the department determines is relevant
20 concerning individuals required to be registered under this section who are
21 about to be released or placed into the community.

22 b. The attorney general shall conduct a risk assessment of sexual offenders who
23 are not under the custody or supervision of the department. The attorney
24 general may adopt a law enforcement agency's previous assignment of risk
25 for an individual if the assessment was conducted in a manner substantially
26 similar to the guidelines developed under this subsection.

27 c. The juvenile courts shall conduct a risk assessment of juvenile sex offenders
28 who are required to register under this section. The juvenile courts shall
29 provide law enforcement agencies any information, including the offender's
30 level of risk, which the juvenile courts determine is relevant concerning

juveniles required to register and who are about to be released or placed into the community.

d. The agency responsible for conducting the risk assessment shall notify the offender as to the level of risk assigned. An offender may request a review of that determination with the appropriate agency and may present any information that the offender believes may lower the assigned risk.

13. Upon written request, law enforcement agencies may disclose conviction and registration information regarding any offender residing in that agency's jurisdiction. Relevant and necessary conviction and registration information must be disclosed to the public by a law enforcement agency if the individual is a moderate or high risk and the agency determines that the individual registered under this section is a public risk and disclosure of the conviction and 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 state officer, law enforcement agency, or school district, and an appointee, officer, or employee of those entities are not subject to civil or criminal liability for making risk determinations or for disclosing or for failing to disclose information as permitted by this section. Nonregistration information concerning an offender required to register under this section consisting of the name of the offender, the last known address of the offender, the offense or offenses as defined in subsection 1 to which the offender pled guilty or of which the offender was found guilty, the date of the judgment or order imposing a sentence or probation and the court entering the judgment or order, the sentence or probation imposed upon the offender, and any disposition, if known, of a sentence or probation may be disclosed to the public. The attorney general shall compile nonregistration information concerning offenders required to register under this section from criminal history record information maintained pursuant to chapter 12-60 or from an agency or department of another state or the federal government and shall provide the information upon request at no cost. If the offender has been determined to be a moderate risk, public disclosure may

include notification of the victim of the offense and any agency, civic organization, or group of persons who have characteristics similar to those of a previous victim of the offender. Public disclosure may include internet access if the offender:

- a. Is required to register for a lifetime under subsection 8;
- b. Has been determined to be a high risk to the public by the department, the attorney general, or the courts, according to guidelines developed by those agencies; or
- c. Has been determined to be a high risk to the public by an agency of another state or the federal government.

14. A state officer, law enforcement agency, or school district, or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations or for disclosing or for failing to disclose information as permitted by this section.

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

~~14.~~ 16. 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.

SECTION 2. A new subdivision to subsection 2 of section 28-32-01 of the 1999

Supplement to the North Dakota Century Code is created and enacted as follows:

- 1 The attorney general with respect to guidelines adopted for the risk
- 2 assessment of sexual offenders under section 12.1-32-15.