

HOUSE BILL NO. 1407

Introduced by

Representatives Thoreson, Dockter, Kading, Kasper

Senators Carlisle, Flakoll, Poolman

1 A BILL ~~for an Act to amend and reenact subsections 1, 2, and 9 of section 12.1-32-15 of the~~
2 ~~North Dakota Century Code, relating to the registration of sex offenders and offenders against~~
3 ~~children who are homeless domiciled; and to provide a penalty~~for an Act to amend and reenact
4 section 12.1-32-15 of the North Dakota Century Code, relating to the registration of sex
5 offenders and offenders against children who are homeless; to provide a penalty; and to declare
6 an emergency.

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

8 ~~— **SECTION 1. AMENDMENT.** Subsections 1, 2, and 9 of section 12.1-32-15 of the North~~
9 ~~Dakota Century Code are amended and reenacted as follows:~~

10 ~~— 1. As used in this section:~~

11 ~~— a. "A crime against a child" means a violation of chapter 12.1-16, section~~
12 ~~12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04,~~
13 ~~subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01,~~
14 ~~12.1-18-02, 12.1-18-05, chapter 12.1-29, or subdivision a of subsection 1 or~~
15 ~~subsection 2 of section 14-09-22, labor trafficking in violation of chapter 12.1-40,~~
16 ~~or an equivalent offense from another court in the United States, a tribal court, or~~
17 ~~court of another country, in which the victim is a minor or is otherwise of the age~~
18 ~~required for the act to be a crime or an attempt or conspiracy to commit these~~
19 ~~offenses.~~

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

21 ~~— c. "Homeless domiciled" means to not have a permanent address in any location~~
22 ~~and to be physically present in the state.~~

23 ~~— d. "Mental abnormality" means a congenital or acquired condition of an individual~~
24 ~~that affects the emotional or volitional capacity of the individual in a manner that~~

1 predisposes that individual to the commission of criminal sexual acts to a degree
2 that makes the individual a menace to the health and safety of other individuals.

3 ~~d.e. "Predatory" means an act directed at a stranger or at an individual with whom a~~
4 relationship has been established or promoted for the primary purpose of
5 victimization.

6 ~~e.f. "Sexual offender" means a person who has pled guilty to or been found guilty,~~
7 including juvenile delinquent adjudications, of a violation of section 12.1-20-03,
8 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,
9 12.1-20-07 except for subdivision a, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2,
10 chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, sex trafficking in
11 violation of chapter 12.1-40, or an equivalent offense from another court in the
12 United States, a tribal court, or court of another country, or an attempt or
13 conspiracy to commit these offenses.

14 ~~f.g. "Sexually dangerous individual" means an individual who meets the definition~~
15 specified in section 25-03.3-01.

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

21 ~~2. The court shall impose, in addition to any penalty provided by law, a requirement that~~
22 the individual register, within three days of coming into a county in which the individual
23 resides, is homeless domiciled, or within the period identified in this section that the
24 individual becomes temporarily domiciled. The individual must register with the chief of
25 police of the city or the sheriff of the county if the individual resides, attends school, or
26 is employed in an area other than a city. A homeless domiciled individual shall register
27 every three days with the sheriff or chief of police of the jurisdiction in which the
28 individual is physically present. The court shall require an individual to register by
29 stating this requirement on the court records, if that individual:

- 1 ~~_____ a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual~~
2 ~~offender or an attempted felonious sexual offender, including juvenile delinquent~~
3 ~~adjudications of equivalent offenses unless the offense is listed in subdivision c.~~
- 4 ~~_____ b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender~~
5 ~~for, a misdemeanor or attempted misdemeanor. The court may deviate from~~
6 ~~requiring an individual to register if the court first finds the individual is no more~~
7 ~~than three years older than the victim if the victim is a minor, the individual has~~
8 ~~not previously been convicted as a sexual offender or of a crime against a child,~~
9 ~~and the individual did not exhibit mental abnormality or predatory conduct in the~~
10 ~~commission of the offense.~~
- 11 ~~_____ c. Is a juvenile found delinquent under subdivision d of subsection 1 of section~~
12 ~~12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual~~
13 ~~offender for a misdemeanor. The court may deviate from requiring the juvenile to~~
14 ~~register if the court first finds the juvenile has not previously been convicted as a~~
15 ~~sexual offender or for a crime against a child, and the juvenile did not exhibit~~
16 ~~mental abnormality or predatory conduct in the commission of the offense.~~
- 17 ~~_____ d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a~~
18 ~~child or an attempted crime against a child, including juvenile delinquent~~
19 ~~adjudications of equivalent offenses. Except if the offense is described in section~~
20 ~~12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent~~
21 ~~of the victim, the court may deviate from requiring an individual to register if the~~
22 ~~court first finds the individual has not previously been convicted as a sexual~~
23 ~~offender or for a crime against a child, and the individual did not exhibit mental~~
24 ~~abnormality or predatory conduct in the commission of the offense.~~
- 25 ~~_____ e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated~~
26 ~~delinquent of any crime against another individual which is not otherwise~~
27 ~~specified in this section if the court determines that registration is warranted by~~
28 ~~the nature of the crime and therefore orders registration for the individual. If the~~
29 ~~court orders an individual to register as an offender under this section, the~~
30 ~~individual shall comply with all of the registration requirements in this chapter.~~

~~9. An individual required to register under this section who violates this section is guilty of a class C felony. The failure of a homeless domiciled individual to register as required in subsection 1 is prima facie evidence of a violation of this section. The clerk of court shall forward all warrants issued for a violation of this section to the county sheriff, who shall enter all such warrants into the national crime information center wanted person file. A court may not relieve an individual, other than a juvenile, who violates this section from serving a term of at least ninety days in jail and completing probation of one year.~~

SECTION 1. 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.

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 subdivision a of subsection 1 or subsection 2 of section 14-09-22, labor trafficking in violation of chapter 12.1-40, 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

1 predisposes that individual to the commission of criminal sexual acts to a degree
2 that makes the individual a menace to the health and safety of other individuals.

3 d.e. "Predatory" means an act directed at a stranger or at an individual with whom a
4 relationship has been established or promoted for the primary purpose of
5 victimization.

6 e.f. "Sexual offender" means a person who has pled guilty to or been found guilty,
7 including juvenile delinquent adjudications, of a violation of section 12.1-20-03,
8 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,
9 12.1-20-07 except for subdivision a, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2,
10 chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, sex trafficking in
11 violation of chapter 12.1-40, or an equivalent offense from another court in the
12 United States, a tribal court, or court of another country, or an attempt or
13 conspiracy to commit these offenses.

14 f.g. "Sexually dangerous individual" means an individual who meets the definition
15 specified in section 25-03.3-01.

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

21 2. The court shall impose, in addition to any penalty provided by law, a requirement that
22 the individual register, within three days of coming into a county in which the individual
23 resides, is homeless, or within the period identified in this section that the individual
24 becomes temporarily domiciled. The individual must register with the chief of police of
25 the city or the sheriff of the county if the individual resides, attends school, or is
26 employed in an area other than a city. A homeless individual shall register every three
27 days with the sheriff or chief of police of the jurisdiction in which the individual is
28 physically present. The court shall require an individual to register by stating this
29 requirement on the court records, if that individual:

- 1 a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual
2 offender or an attempted felonious sexual offender, including juvenile delinquent
3 adjudications of equivalent offenses unless the offense is listed in subdivision c.
- 4 b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender
5 for, a misdemeanor or attempted misdemeanor. The court may deviate from
6 requiring an individual to register if the court first finds the individual is no more
7 than three years older than the victim if the victim is a minor, the individual has
8 not previously been convicted as a sexual offender or of a crime against a child,
9 and the individual did not exhibit mental abnormality or predatory conduct in the
10 commission of the offense.
- 11 c. Is a juvenile found delinquent under subdivision d of subsection 1 of section
12 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual
13 offender for a misdemeanor. The court may deviate from requiring the juvenile to
14 register if the court first finds the juvenile has not previously been convicted as a
15 sexual offender or for a crime against a child, and the juvenile did not exhibit
16 mental abnormality or predatory conduct in the commission of the offense.
- 17 d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a
18 child or an attempted crime against a child, including juvenile delinquent
19 adjudications of equivalent offenses. Except if the offense is described in section
20 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent
21 of the victim, the court may deviate from requiring an individual to register if the
22 court first finds the individual has not previously been convicted as a sexual
23 offender or for a crime against a child, and the individual did not exhibit mental
24 abnormality or predatory conduct in the commission of the offense.
- 25 e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated
26 delinquent of any crime against another individual which is not otherwise
27 specified in this section if the court determines that registration is warranted by
28 the nature of the crime and therefore orders registration for the individual. If the
29 court orders an individual to register as an offender under this section, the
30 individual shall comply with all of the registration requirements in this chapter.

- 1 3. If a court has not ordered an individual to register in this state, an individual who
2 resides, is homeless, or is temporarily domiciled in this state shall register if the
3 individual:
- 4 a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime
5 against a child described in section 12.1-29-02, or section 12.1-18-01 or
6 12.1-18-02 if the individual was not the parent of the victim, or as a sexual
7 offender;
- 8 b. Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of,
9 an offense in a court of this state for which registration is mandatory under this
10 section or an offense from another court in the United States, a tribal court, or
11 court of another country equivalent to those offenses set forth in this section; or
- 12 c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against
13 a child or as a sexual offender for which registration is mandatory under this
14 section if the conviction occurred after July 31, 1985.
- 15 4. In its consideration of mental abnormality or predatory conduct, the court shall
16 consider the age of the offender, the age of the victim, the difference in ages of the
17 victim and offender, the circumstances and motive of the crime, the relationship of the
18 victim and offender, and the mental state of the offender. The court may order an
19 offender to be evaluated by a qualified counselor, psychologist, or physician before
20 sentencing. Except as provided under subdivision e of subsection 2, the court shall
21 state on the record in open court its affirmative finding for not requiring an offender to
22 register.
- 23 5. When an individual is required to register under this section, the official in charge of a
24 facility or institution where the individual required to register is confined, or the
25 department, shall, before the discharge, parole, or release of that individual, inform the
26 individual of the duty to register pursuant to this section. The official or the department
27 shall require the individual to read and sign a form as required by the attorney general,
28 stating that the duty of the individual to register has been explained to that individual.
29 The official in charge of the place of confinement, or the department, shall obtain the
30 address where the individual expects to reside, attend school, or work upon discharge,
31 parole, or release and shall report the address to the attorney general. The official in

1 charge of the place of confinement, or the department, shall give three copies of the
2 form to the individual and shall send three copies to the attorney general no later than
3 forty-five days before the scheduled release of that individual. The attorney general
4 shall forward one copy to the law enforcement agency having jurisdiction where the
5 individual expects to reside, attend school, or work upon discharge, parole, or release,
6 one copy to the prosecutor who prosecuted the individual, and one copy to the court in
7 which the individual was prosecuted. All forms must be transmitted and received by
8 the law enforcement agency, prosecutor, and court thirty days before the discharge,
9 parole, or release of the individual.

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

22 7. Registration consists of a written statement signed by the individual, giving the
23 information required by the attorney general, and the fingerprints and photograph of
24 the individual. An individual who is not required to provide a sample of blood and other
25 body fluids under section 31-13-03 or by the individual's state or court of conviction or
26 adjudication shall submit a sample of blood and other body fluids for inclusion in a
27 centralized database of DNA identification records under section 31-13-05. The
28 collection, submission, testing and analysis of, and records produced from, samples of
29 blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile
30 comparison is admissible in accordance with section 31-13-02. A report of the DNA
31 analysis certified by the state crime laboratory is admissible in accordance with section

1 31-13-05. A district court shall order an individual who refuses to submit a sample of
2 blood or other body fluids for registration purposes to show cause at a specified time
3 and place why the individual should not be required to submit the sample required
4 under this subsection. Within three days after registration, the registering law
5 enforcement agency shall forward the statement, fingerprints, and photograph to the
6 attorney general and shall submit the sample of the individual's blood and body fluids
7 to the state crime laboratory. If an individual required to register under this section has
8 a change in vehicle or computer online identity, the individual shall inform in writing,
9 within three days after the change, the law enforcement agency with which that
10 individual last registered of the individual's new vehicle or computer online identity. If
11 an individual required to register pursuant to this section has a change in name,
12 school, or residence or employment address, that individual shall inform in writing, at
13 least ten days before the change, the law enforcement agency with which that
14 individual last registered of the individual's new name, school, residence address, or
15 employment address. A change in school or employment address includes the
16 termination of school or employment for which an individual required to register under
17 this section shall inform in writing within five days of the termination the law
18 enforcement agency with which the individual last registered. The law enforcement
19 agency, within three days after receipt of the information, shall forward it to the
20 attorney general. The attorney general shall forward the appropriate registration data
21 to the law enforcement agency having local jurisdiction of the new place of residence,
22 school, or employment. Upon a change of address, the individual required to register
23 shall also register within three days at the law enforcement agency having local
24 jurisdiction of the new place of residence, school, or employment. The individual
25 registering under this section shall periodically confirm the information required under
26 this subsection in a manner and at an interval determined by the attorney general. A
27 law enforcement agency that has previously registered an offender may omit the
28 fingerprint portion of the registration if that agency has a set of fingerprints on file for
29 that individual and is personally familiar with and can visually identify the offender.
30 These provisions also apply in any other state that requires registration.

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

- 1 10. When an individual is released on parole or probation and is required to register
2 pursuant to this section, but fails to do so within the time prescribed, the court shall
3 order the probation, or the parole board shall order the parole, of the individual
4 revoked.
- 5 11. If an individual required to register pursuant to this section is temporarily sent outside
6 the facility or institution where that individual is confined under conviction or sentence,
7 the local law enforcement agency having jurisdiction over the place where that
8 individual is being sent must be notified within a reasonable time period before that
9 individual is released from the facility or institution. This subsection does not apply to
10 any individual temporarily released under guard from the facility or institution in which
11 that individual is confined.
- 12 12. The attorney general, with the assistance of the department and the juvenile courts,
13 shall develop guidelines for the risk assessment of sexual offenders who are required
14 to register, with a low-risk, moderate-risk, or high-risk level being assigned to each
15 offender as follows:
 - 16 a. The department shall conduct a risk assessment of sexual offenders who are
17 incarcerated in institutions under the control of the department and sexual
18 offenders who are on supervised probation. The department, in a timely manner,
19 shall provide the attorney general any information, including the offender's level
20 of risk and supporting documentation, concerning individuals required to be
21 registered under this section who are about to be released or placed into the
22 community.
 - 23 b. The attorney general shall conduct a risk assessment of sexual offenders who
24 are not under the custody or supervision of the department. The attorney general
25 may adopt a law enforcement agency's previous assignment of risk level for an
26 individual if the assessment was conducted in a manner substantially similar to
27 the guidelines developed under this subsection.
 - 28 c. The juvenile courts or the agency having legal custody of a juvenile shall conduct
29 a risk assessment of juvenile sexual offenders who are required to register under
30 this section. The juvenile courts or the agency having legal custody of a juvenile
31 shall provide the attorney general any information, including the offender's level

- 1 of risk and supporting documentation, concerning juveniles required to register
2 and who are about to be released or placed into the community.
- 3 d. The attorney general shall notify the offender of the risk level assigned to that
4 offender. An offender may request a review of that determination with the attorney
5 general's sexual offender risk assessment committee and may present any
6 information that the offender believes may lower the assigned risk level.
- 7 13. Relevant and necessary conviction and registration information must be disclosed to
8 the public by a law enforcement agency if the individual is a moderate or high risk and
9 the agency determines that disclosure of the conviction and registration information is
10 necessary for public protection. The attorney general shall develop guidelines for
11 public disclosure of offender registration information. Public disclosure may include
12 internet access if the offender:
- 13 a. Is required to register for a lifetime under subsection 8;
14 b. Has been determined to be a high risk to the public by the department, the
15 attorney general, or the courts, according to guidelines developed by those
16 agencies; or
17 c. Has been determined to be a high risk to the public by an agency of another state
18 or the federal government.
- 19 If the offender has been determined to be a moderate risk, public disclosure must
20 include, at a minimum, notification of the offense to the victim registered under chapter
21 12.1-34 and to any agency, civic organization, or group of persons who have
22 characteristics similar to those of a victim of the offender. Upon request, law
23 enforcement agencies may release conviction and registration information regarding
24 low-risk, moderate-risk, or high-risk offenders.
- 25 14. A state officer, law enforcement agency, or public school district or governing body of a
26 nonpublic school or any appointee, officer, or employee of those entities is not subject
27 to civil or criminal liability for making risk determinations, allowing a sexual offender to
28 attend a school function under section 12.1-20-25, or for disclosing or for failing to
29 disclose information as permitted by this section.
- 30 15. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual
31 offender or as an offender against a child under this section, the juvenile shall comply

1 with the registration requirements in this section. Notwithstanding any other provision
2 of law, a law enforcement agency shall register a juvenile offender in the same manner
3 as adult offenders and may release any relevant and necessary information on file to
4 other law enforcement agencies, the department of human services, or the public if
5 disclosure is necessary to protect public health or safety. The law enforcement agency
6 shall release any relevant and necessary information on file to the superintendent or
7 principal of the school the juvenile attends. The school administration shall notify
8 others in similar positions if the juvenile transfers to another learning institution in or
9 outside the state.

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

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

22 **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.