

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED 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 section 12.1-32-15 of the North Dakota Century Code,
2 relating to the registration of sex offenders and offenders against children who are homeless; to
3 provide a penalty; and to declare an emergency.

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

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

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

9 1. As used in this section:

- 10 a. "A crime against a child" means a violation of chapter 12.1-16, section
11 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04,
12 subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01,
13 12.1-18-02, 12.1-18-05, chapter 12.1-29, or subdivision a of subsection 1 or
14 subsection 2 of section 14-09-22, labor trafficking in violation of chapter 12.1-40,
15 or an equivalent offense from another court in the United States, a tribal court, or
16 court of another country, in which the victim is a minor or is otherwise of the age
17 required for the act to be a crime or an attempt or conspiracy to commit these
18 offenses.
- 19 b. "Department" means the department of corrections and rehabilitation.
- 20 c. "Homeless" means an individual who is physically present in this state, but is
21 living in a park, under a bridge, on the streets, in a vehicle or camper, or is
22 otherwise without a traditional dwelling, and also one who resides in this state but
23 does not maintain a permanent address. The term does not include individuals

1 who are temporarily domiciled or individuals residing in public or private shelters
2 that provide temporary living accommodations.

3 d. "Mental abnormality" means a congenital or acquired condition of an individual
4 that affects the emotional or volitional capacity of the individual in a manner that
5 predisposes that individual to the commission of criminal sexual acts to a degree
6 that makes the individual a menace to the health and safety of other individuals.

7 d-e. "Predatory" means an act directed at a stranger or at an individual with whom a
8 relationship has been established or promoted for the primary purpose of
9 victimization.

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

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

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

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

1 physically present. The court shall require an individual to register by stating this
2 requirement on the court records, if that individual:

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

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

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

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

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

1 comparison is admissible in accordance with section 31-13-02. A report of the DNA
2 analysis certified by the state crime laboratory is admissible in accordance with section
3 31-13-05. A district court shall order an individual who refuses to submit a sample of
4 blood or other body fluids for registration purposes to show cause at a specified time
5 and place why the individual should not be required to submit the sample required
6 under this subsection. Within three days after registration, the registering law
7 enforcement agency shall forward the statement, fingerprints, and photograph to the
8 attorney general and shall submit the sample of the individual's blood and body fluids
9 to the state crime laboratory. If an individual required to register under this section has
10 a change in vehicle or computer online identity, the individual shall inform in writing,
11 within three days after the change, the law enforcement agency with which that
12 individual last registered of the individual's new vehicle or computer online identity. If
13 an individual required to register pursuant to this section has a change in name,
14 school, or residence or employment address, that individual shall inform in writing, at
15 least ten days before the change, the law enforcement agency with which that
16 individual last registered of the individual's new name, school, residence address, or
17 employment address. A change in school or employment address includes the
18 termination of school or employment for which an individual required to register under
19 this section shall inform in writing within five days of the termination the law
20 enforcement agency with which the individual last registered. The law enforcement
21 agency, within three days after receipt of the information, shall forward it to the
22 attorney general. The attorney general shall forward the appropriate registration data
23 to the law enforcement agency having local jurisdiction of the new place of residence,
24 school, or employment. Upon a change of address, the individual required to register
25 shall also register within three days at the law enforcement agency having local
26 jurisdiction of the new place of residence, school, or employment. The individual
27 registering under this section shall periodically confirm the information required under
28 this subsection in a manner and at an interval determined by the attorney general. A
29 law enforcement agency that has previously registered an offender may omit the
30 fingerprint portion of the registration if that agency has a set of fingerprints on file for

1 that individual and is personally familiar with and can visually identify the offender.

2 These provisions also apply in any other state that requires registration.

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

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

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

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

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

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

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

25 9. An individual required to register under this section who violates this section is guilty of
26 a class C felony. The failure of a homeless individual to register as required in
27 subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of
28 court shall forward all warrants issued for a violation of this section to the county
29 sheriff, who shall enter all such warrants into the national crime information center
30 wanted person file. A court may not relieve an individual, other than a juvenile, who

1 violates this section from serving a term of at least ninety days in jail and completing
2 probation of one year.

3 10. When an individual is released on parole or probation and is required to register
4 pursuant to this section, but fails to do so within the time prescribed, the court shall
5 order the probation, or the parole board shall order the parole, of the individual
6 revoked.

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

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

18 a. The department shall conduct a risk assessment of sexual offenders who are
19 incarcerated in institutions under the control of the department and sexual
20 offenders who are on supervised probation. The department, in a timely manner,
21 shall provide the attorney general any information, including the offender's level
22 of risk and supporting documentation, concerning individuals required to be
23 registered under this section who are about to be released or placed into the
24 community.

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

30 c. The juvenile courts or the agency having legal custody of a juvenile shall conduct
31 a risk assessment of juvenile sexual offenders who are required to register under

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

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

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

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

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