

LETTER OPINION
94-L-165

June 16, 1994

Mr. Stephen R. Dawson
Assistant Cass County State's Attorney
PO Box 2806
Fargo, ND 58108

Dear Mr. Dawson:

Thank you for your letter asking whether a person convicted of an attempt to commit offenses listed in N.D.C.C. ? 12.1-32-15(1)(c) is required to register as a sexual offender pursuant to N.D.C.C. ? 12.1-32-15.

In 1993, the North Dakota Legislative Assembly merged into N.D.C.C. ? 12.1-32-15 the provisions of two separate bills adopted in 1991. As passed in 1991, Senate Bill 2575 established registration requirements for persons convicted of crimes against children and Senate Bill 2440 imposed similar registration provisions for certain sexual offenders.

The Senate Bill 2575 definition of "a crime against a child" was readopted in substantially the same form and set forth in N.D.C.C. ? 12.1-32-15(1)(a). This section provides:

a. "A crime against a child" means a violation of chapter 12.1-16, 12.1-17, 12.1-18, 12.1-27.2, or 12.1-29 in which the victim is a minor or is otherwise of the age required for the act to be a crime.

The Senate Bill 2440 definition of a "sexual offender" was incorporated and set forth in N.D.C.C. ? 12.1-32-15(1)(c) as:

c. "Sexual offender" means a person who has been convicted of a violation of section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, or 12.1-20-11.

N.D.C.C. ? 12.1-32-15(2) sets forth the registration requirements for the persons convicted of crimes

against children or sexual offenders. This section states:

2. After a person has been convicted of a crime against a child or an attempted crime against a child, the court may impose, or after a person has been convicted as a sexual offender, the court shall impose, in addition to any other penalty provided by law, a requirement that the person register, within thirty 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 shall require a person to register by stating this requirement on the court records.

As can be seen, a registration requirement may be imposed upon a person convicted of a crime against a child "or an attempted crime against a child." However, no similar language is applied to a registration requirement to a sexual offender if that offender has been convicted of an attempt to commit the offenses listed in N.D.C.C. ? 12.1-32-15(1)(c).

Senate Bill 2440 as adopted by the 1991 Legislature was based upon a Montana sexual offender registration statute. Mont. Code Ann. ? 46-23-502. This Montana statute defines offenses subject to its registration requirement but, like the North Dakota statute, does not list conviction of an attempt to commit the listed offenses.

A review of the legislative history of Senate Bill 2440 does not disclose an intent that the offenses now listed in N.D.C.C. ? 12.1-32-15(1)(c) also include a conviction of an attempt to commit those offenses. Further, where the language of a statute is plain and unambiguous, the letter of the statute cannot be disregarded under the guise of pursuing its spirit because legislative intent is presumed clear from the face of the statute. Rheaume v. State, 339 N.W.2d 90 (N.D. 1983).

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In my opinion, the language of N.D.C.C. ? 12.1-32-15(2) is clear. A person is required to register as a sexual offender only if that person has been convicted of the offenses listed in N.D.C.C. ? 12.1-32-15(1)(c). Neither the definition of "sexual offender" in N.D.C.C. ? 12.1-32-15(1)(c) nor the imposition of the registration requirement in N.D.C.C. ? 12.1-32-15(2) includes an attempt to commit the listed criminal offenses, unlike those offenses which are delineated as crimes against a child.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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