

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 676*
Judiciary Committee Substitute Adopted 5/20/97
Third Edition Engrossed 5/21/97
House Committee Substitute Favorable 6/18/97
House Committee Substitute #2 Favorable 7/21/97

Short Title: Sex Offender Laws/Fed. Compliance.

(Public)

Sponsors:

Referred to:

April 2, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE SEXUAL OFFENDER REGISTRATION PROGRAM TO
3 COMPLY WITH FEDERAL LAW.

4 The General Assembly of North Carolina enacts:

5 Section 1. Article 27A of Chapter 14 of the General Statutes reads as
6 rewritten:

7 "ARTICLE 27A.

8 ~~"SEXUAL OFFENDER REGISTRATION PROGRAM.~~

9 "SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION
10 PROGRAMS.

11 "Part 1. Registration Programs, Purpose and Definitions Generally.

12 **"§ 14-208.5. Purpose.**

13 The General Assembly recognizes that sex offenders often pose a high risk of
14 engaging in sex offenses even after being released from incarceration or commitment and
15 that protection of the public from sex offenders is of paramount governmental interest.

1 The General Assembly also recognizes that persons who commit certain other types of
2 offenses against minors, such as kidnapping, pose significant and unacceptable threats to
3 the public safety and welfare of the State's children and that the protection of those
4 children is of great governmental interest. Further, the General Assembly recognizes that
5 ~~local~~—law enforcement officers' efforts to protect ~~their~~—communities, conduct
6 investigations, and quickly apprehend offenders who commit sex offenses or certain
7 offenses against minors are impaired by the lack of information available to law
8 enforcement agencies about convicted ~~sex~~—offenders who live within the agency's
9 jurisdiction. Release of information about ~~sex~~—these offenders will further the
10 governmental interests of public safety so long as the information released is rationally
11 related to the furtherance of those goals.

12 Therefore, it is the purpose of this Article to assist ~~local~~—law enforcement agencies'
13 efforts to protect ~~their~~—communities by requiring ~~sex offenders~~—persons who are convicted
14 of sex offenses or of certain other offenses committed against minors to register with
15 ~~local~~—law enforcement ~~ageneies~~—and agencies, to require the exchange of relevant
16 information about ~~sex~~—those offenders among law enforcement ~~ageneies~~—agencies, and to
17 authorize the access to necessary and relevant information about ~~sex~~—those offenders to
18 others as provided in this Article.

19 **"§ 14-208.6. Definitions.**

20 The following definitions apply in this Article:

21 (1a) 'County registry' means the information compiled by the sheriff of a
22 county in compliance with this Article.

23 ~~(1b)~~ (1b) 'Division' means the Division of Criminal Statistics of the
24 Department of Justice.

25 (1c) 'Mental abnormality' means a congenital or acquired condition of a
26 person that affects the emotional or volitional capacity of the person in a
27 manner that predisposes that person to the commission of criminal
28 sexual acts to a degree that makes the person a menace to the health and
29 safety of others.

30 (1d) 'Offense against a minor' means any of the following offenses if the
31 offense is committed against a minor, and the person committing the
32 offense is not the minor's parent or legal custodian: G.S. 14-39
33 (kidnapping), G.S. 14-41 (abduction of children), and G.S. 14-43.3
34 (felonious restraint).

35 (2) 'Penal institution' means:

36 a. A detention facility operated under the jurisdiction of the
37 Division of Prisons of the Department of Correction;

38 b. A detention facility operated under the jurisdiction of another
39 state or the federal government; or

40 c. A detention facility operated by a local government in this State
41 or another state.

42 (2a) 'Personality disorder' means an enduring pattern of inner experience and
43 behavior that deviates markedly from the expectations of the

1 individual's culture, is pervasive and inflexible, has an onset in
2 adolescence or early adulthood, is stable over time, and leads to distress
3 or impairment.

4 (3) 'Release' means discharged or paroled.

5 (4) 'Reportable conviction' means:

6 a. A final conviction for an offense against a minor, a sexually
7 violent offense, or an attempt to commit any of those offenses. A
8 final conviction for violation of G.S. 14-27.2 (first degree rape), 14-
9 27.3 (second degree rape), 14-27.4 (first degree sexual offense), 14-
10 27.5 (second degree sexual offense), 14-27.6 (attempted rape or sexual
11 offense), 14-27.7 (intercourse and sexual offense with certain victims),
12 14-178 (incest between near relatives), 14-190.6 (employing or
13 permitting minor to assist in offenses against public morality and
14 decency), 14-190.16 (first degree sexual exploitation of a minor), 14-
15 190.17 (second degree sexual exploitation of a minor), 14-190.17A
16 (third degree sexual exploitation of a minor), 14-190.18 (promoting
17 prostitution of a minor), 14-190.19 (participating in prostitution of a
18 minor), or 14-202.1 (taking indecent liberties with children).

19 b. A final conviction in another state of an offense, which if
20 committed in this State, would have been a sex offense as defined
21 by the sections of the General Statutes set forth in paragraph a. of this
22 subdivision. an offense against a minor or a sexually violent
23 offense as defined by this section.

24 c. A final conviction in a federal jurisdiction of an offense which is
25 substantially similar to an offense set forth in paragraph a. of this
26 subdivision. offense, which is substantially similar to an offense
27 against a minor or a sexually violent offense as defined by this
28 section.

29 (5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree
30 rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree
31 sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-
32 27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and
33 sexual offense with certain victims), G.S. 14-178 (incest between near
34 relatives), G.S. 14-190.6 (employing or permitting minor to assist in
35 offenses against public morality and decency), G.S. 14-190.16 (first
36 degree sexual exploitation of a minor), G.S. 14-190.17 (second degree
37 sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual
38 exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a
39 minor), G.S. 14-190.19 (participating in prostitution of a minor), or G.S.
40 14-202.1 (taking indecent liberties with children).

41 (6) 'Sexually violent predator' means a person who has been convicted of a
42 sexually violent offense and who suffers from a mental abnormality or
43 personality disorder that makes the person likely to engage in sexually
44 violent offenses directed at strangers or at a person with whom a

1 relationship has been established or promoted for the primary purpose
2 of victimization.

3 (4)(7) 'Sheriff' means the sheriff of a county in this State.

4 (8) 'Statewide registry' means the central registry compiled by the Division
5 in accordance with G.S. 14-208.14.

6 **"§ 14-208.6A. Registration requirements for criminal offenders and for criminal**
7 **offenders determined to be sexually violent predators.**

8 It is the objective of the General Assembly to establish a 10-year registration
9 requirement for persons convicted of certain offenses against minors or sexually violent
10 offenses. It is the further objective of the General Assembly to establish a more stringent
11 set of registration requirements for a subclass of highly dangerous sex offenders who are
12 determined by a sentencing court with the assistance of a board of experts to be sexually
13 violent predators.

14 To accomplish this objective, there are established two registration programs: the Sex
15 Offender and Public Protection Registration Program and the Sexually Violent Predator
16 Registration Program. Any person convicted of an offense against a minor or of a
17 sexually violent offense as defined by this Article shall register as an offender in
18 accordance with Part 2 of this Article. Any person determined to be a sexually violent
19 predator shall register as such in accordance with Part 3 of this Article.

20 The information obtained under these programs shall be immediately shared with the
21 appropriate local, State, federal, and out-of-state law enforcement officials and penal
22 institutions. In addition, the information designated under G.S. 14-208.10(a) as
23 public record shall be readily available to and accessible by the public. However, the
24 identity of the victim is not public record and shall not be released as a public record.

25 "Part 2. Sex Offender and Public Protection Registration Program.

26 **"§ 14-208.7. Registration.**

27 (a) A person who is a State resident and who has a reportable conviction shall be
28 required to maintain registration with the sheriff of the county where the person resides.
29 If the person moves to North Carolina from outside this State, the person shall register
30 within 10 days of establishing residence in this State. ~~State~~, or whenever the person has
31 been present in the State for 15 days, whichever comes first. If the person is a current
32 resident of North Carolina, the person shall register:

33 (1) Within 10 days of release from a penal institution or arrival in a county
34 to live outside a penal institution; or

35 (2) Immediately upon conviction for a reportable offense where an active
36 term of imprisonment was not imposed.

37 Registration shall be maintained for a period of 10 years following release from a penal
38 institution. If no active term of imprisonment was imposed, registration shall be
39 maintained for a period of 10 years following each conviction for a reportable offense.

40 (b) The Division shall provide each sheriff with forms for registering persons as
41 required by this Article. The registration form shall require:

42 (1) The person's full name, each alias, date of birth, sex, race, height,
43 weight, eye color, hair color, drivers license number, and home address;

- 1 (2) The type of offense for which the person was convicted, the date of
- 2 conviction, and the sentence imposed;
- 3 (3) A current photograph; and
- 4 (4) The person's fingerprints.

5 The sheriff shall photograph the individual at the time of registration and take
6 fingerprints from the individual at the time of registration both of which will be kept as
7 part of the registration form. The registrant will not be required to pay any fees for the
8 photograph or fingerprints taken at the time of registration.

9 (c) ~~Not later than the third day after~~ When a person registers, the sheriff with whom
10 the person registered shall immediately send the registration information to the Division
11 in a manner determined by the Division. The sheriff shall retain the original registration
12 form and other information ~~collected~~ collected and shall compile the information that is a
13 public record under this Part into a county registry.

14 **"§ 14-208.8. Prerelease notification.**

15 (a) At least 10 days, but not earlier than 30 days, before a person who will be
16 subject to registration under this Article is due to be released from a penal institution, an
17 official of the penal institution shall:

- 18 (1) Inform the person of the person's duty to register under this Article and
19 require the person to sign a written statement that the person was so
20 informed or, if the person refuses to sign the statement, certify that the
21 person was so informed;
- 22 (2) Obtain the registration information required under G.S. 14-208.7 (b)(1)
23 and (2), as well as the address where the person expects to reside upon
24 the person's release; and
- 25 (3) Send the Division and the sheriff of the county in which the person
26 expects to reside the information collected in accordance with
27 subdivision (2) of this subsection.

28 (b) If a person who is subject to registration under this Article does not receive an
29 active term of imprisonment, the court pronouncing sentence shall conduct, at the time of
30 sentencing, the notification procedures specified in subsection (a) of this section.

31 **"§ 14-208.9. Change of address.**

32 If a person required to register changes address, the person shall provide written
33 notice of the new address not later than the tenth day after the change to the sheriff of the
34 county with whom the person had last registered. ~~Not later than the third day after~~ Upon
35 receipt of the notice, the sheriff shall immediately forward this information to the
36 Division. If the person moves to another county in this State, the Division shall inform
37 the sheriff of the new county of the person's new residence.

38 **"§ 14-208.9A. Verification of registration information.**

39 The information in the county registry shall be verified annually for each registrant as
40 follows:

- 41 (1) Every year on the anniversary of a person's initial registration date, the
42 Division shall mail a nonforwardable verification form to the last
43 reported address of the person.

- 1 (2) The person shall return the verification form to the sheriff within 10
2 days after the receipt of the form.
- 3 (3) The verification form shall be signed by the person and shall indicate
4 whether the person still resides at the address last reported to the sheriff.
5 If the person has a different address, then the person shall indicate that
6 fact and the new address.
- 7 (4) If the person fails to return the verification form to the sheriff within 10
8 days after receipt of the form, the person is subject to the penalties
9 provided in G.S. 14-208.11. If the verification form is returned to the
10 sheriff as undeliverable, the sheriff shall make a reasonable attempt to
11 verify that the person is residing at the registered address. If the person
12 cannot be found at the registered address and has failed to report a
13 change of address, the person is subject to the penalties provided in G.S.
14 14-208.11, unless the person reports in person to the sheriff and proves
15 that the person has not changed his or her residential address.

16 **"§ 14-208.10. Access-Registration information is public record; access to registration**
17 **information.**

18 (a) ~~To obtain information concerning an individual's registration status, a requester~~
19 ~~shall submit to the sheriff the following:~~

- 20 (1) ~~The individual's name and sex;~~
21 (2) ~~A physical description of the individual; and~~
22 (3) ~~Any other relevant information known to the requester concerning the~~
23 ~~individual.~~

24 ~~Upon receipt of the information, the sheriff shall verify, in writing, to the requester~~
25 ~~whether the individual has registered as a sex offender in this State, the date of~~
26 ~~conviction, and the offenses for which registration was required. The registration~~
27 ~~information and the corresponding registry is a public record and shall be available for~~
28 ~~public inspection. The sheriff shall upon request, display any photograph provided in~~
29 ~~compliance with G.S. 14-208.7(b)(3); however, the sheriff shall not provide or allow a~~
30 ~~copy to be made of the photograph.~~

31 The following information regarding a person required to register under this Article is
32 public record and shall be available for public inspection: name, sex, address, physical
33 description, picture, conviction date, offense for which registration was required, the
34 sentence imposed as a result of the conviction, and registration status. The information
35 obtained under G.S. 14-208.22 regarding a person's medical records or documentation of
36 treatment for the person's mental abnormality or personality disorder shall not be a part of
37 the public record.

38 The sheriff shall release any other relevant information that is necessary to protect the
39 public concerning a specific person, but shall not release the identity of the victim of the
40 offense that required registration under this Article.

41 (b) Any person may obtain a copy of an individual's registration form, ~~excluding~~
42 ~~the photograph, upon payment to the sheriff of a reasonable fee for the costs of duplicating the~~
43 ~~form, a part of the county registry, or all of the county registry, by submitting a written~~

1 request for the information to the sheriff. However, the identity of the victim of an
2 offense that requires registration under this Article shall not be released. The sheriff may
3 charge a reasonable fee for duplicating costs and for mailing costs when appropriate.

4 ~~(c) The sheriff of each county is authorized, upon written request, to provide a~~
5 ~~copy of the entire registry to any group, entity, organization, corporation, or school, that~~
6 ~~utilizes volunteers or employees in working with, caring for, supervising or protecting~~
7 ~~children or disabled or elderly persons. The sheriff may charge a reasonable fee for~~
8 ~~duplicating costs and for mailing costs when appropriate.~~

9 **"§ 14-208.11. Failure to register; register; falsification of verification notice; failure**
10 **to return verification form; order for arrest.**

11 (a) A person required by this Article to register ~~who, knowingly and with the~~
12 ~~intent to violate the provisions of this Article, fails to register shall be guilty of a Class 3~~
13 ~~misdemeanor for a first conviction of a violation of this Article, and a Class I felony for a~~
14 ~~subsequent conviction of a violation of this Article. who does any of the following is~~
15 ~~guilty of a Class F felony:~~

16 (1) Fails to register.

17 (2) Fails to notify the last registering sheriff of a change of address.

18 (3) Fails to return a verification notice as required under G.S. 14-208.9A.

19 (4) Forges or submits under false pretenses the information or verification
20 notices required under this Article.

21 (a1) If a person commits a violation of subsection (a) of this section, the probation
22 officer, parole officer, or any other law enforcement officer who is aware of the violation
23 shall immediately arrest the person in accordance with G.S. 15A-401, or seek an order for
24 the person's arrest in accordance with G.S. 15A-305.

25 (b) Before a person convicted of a violation of this Article is due to be released
26 from a penal institution, an official of the penal institution shall conduct the prerelease
27 notification procedures specified under G.S. 14-208.8(a)(2) and (3). If upon a conviction
28 for a violation of this Article, no active term of imprisonment is imposed, the court
29 pronouncing sentence shall, at the time of sentencing, conduct the notification procedures
30 specified under G.S. 14-208.8(a)(2) and (3).

31 **"§ 14-208.12. Exemption.**

32 (a) A person who has a reportable conviction may petition the superior court in the
33 county where the person resides for an exemption from this Article.

34 The person shall serve a copy of the petition on the district attorney. If the person
35 shows for good cause, by clear and convincing evidence, that registration will not serve
36 any useful purpose, the court shall grant the exemption.

37 (b) When a registered person presents the sheriff with a certified copy of the court
38 order showing that an exemption has been granted, the sheriff shall remove any
39 information from his records that was obtained pursuant to this Article. The sheriff shall
40 then notify the Division of the exemption by sending a copy of the exemption to the
41 Division within three days and the Division shall remove any information from its files
42 obtained pursuant to this Article. The Division shall notify the registered person of the
43 exemption by letter telling the registrant that the exemption has been accomplished.

1 **"§ 14-208.12A. Termination of registration requirement.**

2 (a) The requirement that a person register under this Part automatically terminates 10
3 years from the date of initial county registration if the person has not been convicted of a
4 subsequent offense requiring registration under this Article.

5 (b) If there is a subsequent offense, the county registration records shall be
6 retained until the registration requirement for the subsequent offense is terminated.

7 **"§ 14-208.13. File with Police Information Network.**

8 (a) The Division shall include the registration information in the Police
9 Information Network as set forth in G.S. 114-10.1.

10 (b) ~~Except as provided in G.S. 14-208.12(b), the~~ The Division shall maintain the
11 registration information permanently even after the registrant's reporting requirement
12 expires.

13 **"§ 14-208.14. Statewide registry; Division of Criminal Statistics designated**
14 **custodian of statewide registry.**

15 (a) The Division of Criminal Statistics shall compile and keep current a central
16 statewide sex offender registry. The Division is the State agency designated as the
17 custodian of the statewide registry. As custodian the Division has the following
18 responsibilities:

19 (1) To receive from the sheriff or any other law enforcement agency or
20 penal institution all sex offender registrations, changes of address, and
21 prerelease notifications required under this Article or under federal law.
22 The Division shall also receive notices of any violation of this Article,
23 including a failure to register or a failure to report a change of address.

24 (2) To provide all need-to-know law enforcement agencies (local, State,
25 federal, and those located in other states) immediately upon receipt by
26 the Division of any of the following: registration information, a
27 prerelease notification, a change of address, or notice of a violation of
28 this Article.

29 (3) To coordinate efforts among law enforcement agencies and penal
30 institutions to ensure that the registration information, changes of
31 address, prerelease notifications, and notices of failure to register or to
32 report a change of address are conveyed in an appropriate and timely
33 manner.

34 (4) To provide public access to the statewide registry in accordance with
35 this Article.

36 (b) The statewide registry shall include the following:

37 (1) Registration information obtained by a sheriff or penal institution under
38 this Article or from any other local or State law enforcement agency.

39 (2) Registration information received from a state or local law enforcement
40 agency or penal institution in another state.

41 (3) Registration information received from a federal law enforcement
42 agency or penal institution.

1 **"§ 14-208.15. Certain statewide registry information is public record: access to**
2 **statewide registry.**

3 (a) The information in the statewide registry that is public record is the same as in
4 G.S. 14-208.10. The Division shall release any other relevant information that is
5 necessary to protect the public concerning a specific person, but shall not release the
6 identity of the victim of the offense that required registration under this Article.

7 (b) The Division shall provide free public access to automated data from the
8 statewide registry, including photographs provided by the registering sheriffs, via the
9 Internet. The public will be able to access the statewide registry to view an individual
10 registration record, a part of the statewide registry, or all of the statewide registry. The
11 Division may also provide copies of registry information to the public upon written
12 request and may charge a reasonable fee for duplicating costs and mailings costs.

13 **"PART 3. SEXUALLY VIOLENT PREDATOR REGISTRATION PROGRAM.**

14 **"§ 14-208.20. Sexually violent predator determination; notice of intent; presentence**
15 **investigation.**

16 (a) When a person is charged by indictment or information with the commission of
17 a sexually violent offense, the district attorney shall decide whether to seek classification
18 of the offender as a sexually violent predator if the person is convicted. If the district
19 attorney intends to seek the classification of a sexually violent predator, the district
20 attorney shall within the time provided for the filing of pretrial motions under G.S. 15A-
21 952 file a notice of the district attorney's intent. The court may for good cause shown
22 allow late filing of the notice, grant additional time to the parties to prepare for trial, or
23 make other appropriate orders.

24 (b) Prior to sentencing a person as a sexually violent predator, the court shall order
25 a presentence investigation in accordance with G.S. 15A-1332(c). However, the study of
26 the defendant and whether the defendant is a sexually violent predator shall be conducted
27 by a board of experts selected by the Department of Correction. The board of experts
28 shall be composed of at least two people who are experts in the field of the behavior and
29 treatment of sexual offenders, one of whom is selected from a panel of experts in those
30 fields provided by the North Carolina Medical Society and not employed with the
31 Department of Correction or employed on a full-time basis with any other State agency.

32 (c) When the defendant is returned from the presentence commitment, the court
33 shall hold a sentencing hearing in accordance with G.S. 15A-1334. At the sentencing
34 hearing, the court shall, after taking the presentencing report under advisement, make
35 written findings as to whether the defendant is classified as a sexually violent predator
36 and the basis for the court's findings.

37 **"§ 14-208.21. Registration procedure for sexually violent predator; application of**
38 **Part 2 of this Article.**

39 The provisions of Part 2 of this Article apply to a person classified as a sexually
40 violent predator unless provided otherwise by this Part. The procedure for registering as
41 a sexually violent predator is the same as under Part 2 of this Article.

42 **"§ 14-208.22. Additional registration information required.**

1 (a) In addition to the information required by G.S. 14-208.7, the following
2 information shall also be obtained in the same manner as set out in Part 2 of this Article
3 from a person who is classified as a sexually violent predator:

4 (1) Identifying factors.

5 (2) Offense history.

6 (3) Documentation of any treatment received by the person for the person's
7 mental abnormality or personality disorder.

8 (b) The Division shall provide each sheriff with forms for registering persons as
9 required by this Article.

10 (c) The Department of Correction shall also obtain the additional information set
11 out in subsection (a) of this section and shall include this information in the prerelease
12 notice forwarded to the sheriff or other appropriate law enforcement agency.

13 **"§ 14-208.23. Length of registration.**

14 The requirement that a person who is classified as a sexually violent predator
15 maintain registration shall terminate only upon a determination, made in accordance with
16 this Part, that the person no longer suffers from a mental abnormality or personality
17 disorder that would make the person likely to engage in a predatory sexually violent
18 offense.

19 **"§ 14-208.24. Verification of registration information.**

20 (a) The information in the county registry shall be verified by the sheriff for each
21 registrant who is classified as a sexually violent predator every 90 days after the person's
22 initial registration date.

23 (b) The procedure for verifying the information in the criminal offender registry is
24 the same as under G.S. 14-208.9A, except that verification shall be every 90 days as
25 provided by subsection (a) of this section.

26 **"§ 14-208.25. Termination of registration requirement.**

27 Ten years from the date of a person's initial registration as a sexually violent predator,
28 a person may petition the superior court to review the person's classification as a sexually
29 violent predator if the person has committed no subsequent reportable convictions. The
30 decision as to whether to grant the review is in the discretion of the court. If the court
31 grants the review, the court shall order a presentence commitment study as provided in
32 G.S. 14-208.20(b). Upon receipt of the study results, the court shall hold a hearing to
33 determine whether the person's classification as a sexually violent predator should be
34 terminated. The procedure for the hearing shall be the same as under G.S 15A-1334(b)
35 and (c). The court shall make written findings of fact with regard to the court's decision
36 and the basis for that decision."

37 Section 2. The Department of Justice shall use funds available within its
38 current operations budget for the 1997-98 fiscal year to design and implement a program
39 for electronic access to the statewide sex offender registry. The program shall provide
40 on-line access to the statewide sex offender registry through the Internet, allowing
41 members of the public to locate and access the public record of sex offender registration
42 information. The Division of Criminal Statistics shall be responsible for the on-line
43 maintenance of current information regarding each registered sex offender.

1 Section 3. This act becomes effective April 1, 1998.