

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 676*

Short Title: Sex Offender Laws/Fed. Compliance.

(Public)

Sponsors: Senators Odom; Albertson, Allran, Carpenter, Carrington, Cochrane, Cooper, East, Forrester, Foxx, Garwood, Gulley, Hoyle, Jordan, Kincaid, Martin of Guilford, McDaniel, Page, Perdue, Phillips, Plyler, Rand, Reeves, Rucho, Warren, Weinstein, Wellons, and Winner.

Referred to: Judiciary.

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 "REGISTRATION OF CRIMINAL OFFENDERS
10 AND SEXUALLY VIOLENT PREDATORS.

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

13 "§ 14-208.5. Purpose.

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

17 The General Assembly also recognizes that persons who commit certain other types of

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

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

18 **"§ 14-208.6. Definitions.**

19 The following definitions apply in this Article:

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

22 ~~(1b)~~'Division means the Division of Criminal Statistics of the Department of
23 Justice.

24 (1c) 'Mental abnormality' means a congenital or acquired condition of
25 a person that affects the emotional or volitional capacity of the
26 person in a manner that predisposes that person to the commission
27 of criminal sexual acts to a degree that makes the person a
28 menace to the health and safety of others.

29 (1d) 'Offense against a minor' means any of the following offenses if
30 the offense is committed against a minor and the person
31 committing the offense is not the minor's parent or legal
32 custodian: G.S. 14-39 (kidnapping), G.S. 14-41 (abduction of
33 children), G.S. 14-43.3(felonious restraint), and the common law
34 offense of false imprisonment.

35 (2) 'Penal institution' means a detention facility operated under the
36 jurisdiction of the Division of Prisons of the Department of
37 Correction, or a county jail.

38 (2a) 'Personality disorder' means an enduring pattern of inner
39 experience and behavior that deviates markedly from the
40 expectations of the individual's culture, is pervasive and
41 inflexible, has an onset in adolescence or early adulthood, is
42 stable over time, and leads to distress or impairment.

- 1 (2b) 'Predatory' means an act directed at a stranger or at a person with
2 whom a relationship has been established or promoted for the
3 primary purpose of victimization.
- 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 subsection.
- 24 (5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree
25 rape), 14-27.3 (second degree rape), 14-27.4 (first degree sexual
26 offense), 14-27.5 (second degree sexual offense), 14-27.6 (attempted
27 rape or sexual offense), 14-27.7 (intercourse and sexual offense with
28 certain victims), 14-178 (incest between near relatives), 14-190.6
29 (employing or permitting minor to assist in offenses against public
30 morality and decency), 14-190.16 (first degree sexual exploitation of a
31 minor), 14-190.17 (second degree sexual exploitation of a minor), 14-
32 190.17A (third degree sexual exploitation of a minor), 14-190.18
33 (promoting prostitution of a minor), 14-190.19 (participating in
34 prostitution of a minor), or 14-202.1 (taking indecent liberties with
35 children).
- 36 (6) 'Sexually violent predator' means a person who has been convicted of a
37 sexually violent offense and who suffers from a mental abnormality or
38 personality disorder that makes the person likely to engage in predatory
39 sexually violent offenses.
- 40 (4)(7) 'Sheriff' means the sheriff of a county in this State.
- 41 (8) 'Statewide registry' means the central registry compiled by the Division
42 in accordance with G.S. 14-208.14."
- 43 **"§ 14-208.6A. Registration requirements for criminal offenders and for criminal**
44 **offenders determined to be sexually violent predators.**

1 It is the objective of the General Assembly to establish a 10-year registration
2 requirement for persons convicted of certain offenses against minors or sexually violent
3 offenses. It is the further objective of the General Assembly to establish a more stringent
4 set of registration requirements for a sub-class of highly dangerous sex offenders who are
5 determined by a sentencing court with the assistance of a board of experts to be sexually
6 violent predators.

7 To accomplish this objective there are established two registration programs: the
8 Criminal Registration Program and the Sexually Violent Predator Registration Program.
9 Any person convicted of an offense against a minor or of a sexually violent offense as
10 defined by this Article shall register as a criminal offender in accordance with Part 2 of
11 this Article. Any person determined to be a sexually violent predator shall register as
12 such in accordance with Part 3 of this Article.

13 The information obtained under these programs shall be immediately shared with the
14 appropriate local, State, federal and out-of-State law enforcement officials and penal
15 institutions. In addition most information obtained under the programs is public record
16 and shall be readily available to and accessible by the public. However, the identity of
17 the victim is not public record and shall not be released as a public record.

18 **"PART 2. CRIMINAL REGISTRATION PROGRAM.**

19 **"§ 14-208.7. Registration.**

20 (a) A person who is a resident and who has a reportable conviction shall be
21 required to maintain registration with the sheriff of the county where the person resides.
22 If the person moves to North Carolina from outside this State, the person shall register
23 within 10 days of establishing residence in this State. If the person is a current resident of
24 North Carolina, the person shall register:

- 25 (1) Within 10 days of release from a penal institution or arrival in a county
26 to live outside a penal institution; or
27 (2) Immediately upon conviction for a reportable offense where an active
28 term of imprisonment was not imposed.

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

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

- 34 (1) The person's full name, each alias, date of birth, sex, race, height,
35 weight, eye color, hair color, drivers license number, and home address;
36 (2) The type of offense for which the person was convicted, the date of
37 conviction, and the sentence imposed;
38 (3) A current photograph; and
39 (4) The person's fingerprints.

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

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

6 **"§ 14-208.8. Prerelease notification.**

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

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

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

23 **"§ 14-208.9. Change of address.**

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

30 **"§ 14-208.9A. Verification of registration information.**

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

- 33 (1) Every year on the anniversary of a person's initial registration date, the
34 sheriff shall mail a nonforwardable verification form to the last reported
35 address of the person.
- 36 (2) The person shall mail the verification form to the sheriff within 10 days
37 after the receipt of the form.
- 38 (3) The verification form shall be signed by the person, and shall indicate
39 whether the person still resides at the address last reported to the Sheriff.
40 If the person has a different address, then the person shall indicate that
41 fact and the new address.
- 42 (4) If the person fails to mail the verification form to the sheriff within 10
43 days after receipt of the form the person is in violation of the law, unless

1 the person reports in person to the sheriff and proves that the person has
2 not changed his or her residential address.

3 **"§ 14-208.10. Access-Registration information is public record; access to registration**
4 **information.**

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

7 (1) ~~The individual's name and sex;~~

8 (2) ~~A physical description of the individual; and~~

9 (3) ~~Any other relevant information known to the requester concerning the~~
10 ~~individual.~~

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

18 ~~The following information regarding a person required to register under this Article is~~
19 ~~public record and shall be available for public inspection: name, sex, address, physical~~
20 ~~description, picture, conviction date, offense for which registration was required, the~~
21 ~~sentence imposed as a result of the conviction, and registration status. The sheriff may~~
22 ~~release any other information that is necessary to protect the public concerning a specific~~
23 ~~person, but shall not release the identity of the victim of the offense that required~~
24 ~~registration under this Article.~~

25 (b) ~~Any person may obtain a copy of an individual's registration form, excluding the~~
26 ~~photograph, upon payment to the sheriff of a reasonable fee for the costs of duplicating the form.~~
27 ~~form, a part of the county registry, or all of the county registry, by submitting a written~~
28 ~~request for the information to the sheriff and paying the fee for duplicating costs.~~
29 ~~However, the identity of the victim of an offense that requires registration under this~~
30 ~~Article shall not be released.~~

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

36 **"§ 14-208.11. Failure to register- register; falsification of verification notice; failure**
37 **to return verification form; order for arrest.**

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

43 (1) ~~Fails to register.~~

1 (2) Fails to notify the Division of a change of address.

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

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

5 (a1) If a person commits a violation of subsection (a) of this section, the Division,
6 probation officer, parole officer, or any other law enforcement office who is aware of the
7 violation shall immediately seek an order for arrest in accordance with G.S. 15A-305.

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

14 **"§ 14-208.12. Exemption.**

15 (a) ~~A person who has a reportable conviction may petition the superior court in the~~
16 ~~county where the person resides for an exemption from this Article. The person shall~~
17 ~~serve a copy of the petition on the district attorney. If the person shows for good cause,~~
18 ~~by clear and convincing evidence, that registration will not serve any useful purpose, the~~
19 ~~court shall grant the exemption.~~

20 (b) ~~When a registered person presents the sheriff with a certified copy of the court~~
21 ~~order showing that an exemption has been granted, the sheriff shall remove any~~
22 ~~information from his records that was obtained pursuant to this Article. The sheriff shall~~
23 ~~then notify the Division of the exemption by sending a copy of the exemption to the~~
24 ~~Division within three days and the Division shall remove any information from its files~~
25 ~~obtained pursuant to this Article. The Division shall notify the registered person of the~~
26 ~~exemption by letter telling the registrant that the exemption has been accomplished.~~

27 **"§ 14-208.12A. Termination of registration requirement.**

28 The requirement that a person register under this Part automatically terminates 10
29 years from the date of initial registration if the person has not been convicted of a
30 subsequent offense requiring registration under this Article.

31 **"§ 14-208.13. File with Police Information Network.**

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

34 (b) Except as provided in G.S. 14-208.12(b), the Division shall maintain the
35 registration information permanently even after the registrant's reporting requirement
36 expires.

37 **"§ 14-208.14. Statewide registry; Division of Criminal Statistics designated**
38 **custodian of statewide registry.**

39 (a) The Division of Criminal Statistics shall compile and keep current a central
40 statewide sex offender registry. The Division is the State agency designated as the
41 custodian of the statewide registry. As custodian the Division has the following
42 responsibilities:

- 1 (1) To receive from the sheriff or any other law enforcement agency or
2 penal institution all sex offender registrations, changes of address, and
3 prerelease notifications required under this Article or under federal law.
4 The Division shall also receive notices of any violation of this Article,
5 including a failure to register or a failure to report a change of address.
6 (2) To notify all appropriate law enforcement agencies, (local, State,
7 federal, and those located in other states) immediately upon receipt by
8 the Division of any of the following: registration information, a
9 prerelease notification, a change of address, or notice of a violation of
10 the Article.
11 (3) To coordinate efforts among law enforcement agencies and penal
12 institutions to ensure that the registration information, changes of
13 address, prerelease notifications, and notices of failure to register or to
14 report a change of address are conveyed in an appropriate and timely
15 manner.
16 (4) To provide public access to the statewide registry in accordance with
17 this Article.
18 (b) The statewide registry shall include the following:
19 (1) Registration information obtained by a sheriff or penal institution under
20 this Article or from any other local or State law enforcement agency.
21 (2) Registration information received from a state or local law enforcement
22 agency or penal institution in another state.
23 (3) Registration information received from a federal law enforcement
24 agency or penal institution.

25 **§ 14-208.15. Certain statewide registry information is public record: access to**
26 **statewide registry.**

27 (a) The information in the statewide registry that is public record is the same as in
28 G.S. 14-208.10 and shall be available for public inspection. The Division may release
29 any other information that is necessary to protect the public concerning a specific person,
30 but shall not release the identity of the victim of the offense that required registration
31 under this Article.

32 (b) Any person may obtain from the Division a copy of an individual's
33 registration form, a part of the statewide registry, or all of the statewide registry, by
34 submitting a written request for the information to the Division and paying the fee for
35 duplicating costs. However, the identity of the victim of an offense that requires
36 registration under this Article shall not be released.

37 (c) The Division may charge a reasonable fee for duplicating costs and for mailing
38 costs when appropriate.

39 **"PART 3. SEXUALLY VIOLENT PREDATOR REGISTRATION PROGRAM.**
40 **§ 14-208.20. Sexually violent predator determination; notice of intent; presentence**
41 **investigation.**

42 (a) When a person is charged by indictment with the commission of a sexually
43 violent offense, the district attorney shall decide whether to seek classification of the

1 offender as a sexually violent predator if the person is convicted. If the district attorney
2 intends to seek the classification of a sexually violent predator, the district attorney shall
3 within the time provided for the filing of pretrial motions under G.S. 15A-952 file a
4 notice of the district attorney's intent. The court may for cause shown allow late filing of
5 the notice, grant additional time to the parties to prepare for trial, or make other
6 appropriate orders.

7 (b) Prior to sentencing a person as a sexually violent predator, the court shall order
8 a presentence investigation in accordance with G.S. 15A-1332(c). However, the study of
9 the defendant and whether the defendant is a sexually violent predator shall be conducted
10 by a board of experts selected by the Department of Correction. The board of experts
11 shall be composed of at least two people who are experts in the field of the behavior and
12 treatment of sexual offenders.

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

18 **§ 14-208.21. Registration procedure for sexually violent predator; application of**
19 **Part 2 of this Article.**

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

23 **§ 14-208.22. Additional registration information required.**

24 (a) In addition to the information required by G.S. 14-208.7, the following
25 information shall also be obtained from a person who is classified as a sexually violent
26 predator:

27 (1) Identifying factors.

28 (2) Anticipated future residence.

29 (3) Offense history.

30 (4) Documentation of any treatment received by the person for the person's
31 mental abnormality or personality disorder.

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

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

37 **§ 14-208.23. Length of registration.**

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

43 **§ 14-208.24. Verification of registration information.**

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

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

7 **"§ 14-208.25. Termination of registration requirement.**

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

18 Section 2. This act becomes effective December 1, 1997.