



# North Carolina General Assembly Legislative Services Office

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## MEMORANDUM

**TO:** Senator Odom

**FROM:** Andy Willis, Fiscal Analyst  
  
Tom L. Covington,  
Director, Fiscal Research Division

**DATE:** July 31, 1997

**RE:** Revised Certificate for Senate Bill 676 "Sex Offender Laws/Federal

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North Carolina General Statute 120-36.8 requires that each bill that proposes a change in law that is thought to be required to implement a federal law, or is needed to bring the State into compliance with federal law, or is needed in order to qualify for receipt of federal funds, must have attached to it a certificate prepared by the Fiscal Research Division that identifies the federal law in question. Senate Bill 676 "Sex Offender Laws/Federal Compliance" is a bill attempting to bring the state in compliance with federal law and to qualify for receipt of federal funds. The following explanations identifies the federal laws in question and explains why the federal laws makes Senate Bill 676 necessary. This memorandum will serve as the certificate required as identified in North Carolina General Statute 120-36.8.

### SUMMARY OF FEDERAL LEGISLATION

In 1994, President Clinton signed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. A 1996 amendment to the Wetterling Act, "Megan's Law", requires states to establish public sex offender registries that provide information to the public on violent sex offenders released or paroled from prison.

The Wetterling act calls for a two-tiered registration system. Offenders who have been convicted of (i) a criminal offense against a victim who is a minor or (ii) a sexually violent offense, are to register yearly until 10 years have elapsed from their release from prison, or release on parole or probation. The second tier is reserved for those offenders classified as "sexually violent predators" or offenders who suffer from a personality disorder or mental abnormality that would predispose them to commit violent sexual offenses. Offenders in this

category are required to report address information to the appropriate state law enforcement agency every 90 days. They

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must do so until they no longer suffer from the disorder or abnormality as determined by a state board of experts.

Megan's law stipulates that the registries and the information provided to them be public. Some questions remain about requirements for public notification. Proposed guidelines issued by the U.S. Department of Justice ask states to submit descriptions of their existing or proposed sex offender registration systems to the Bureau of Justice Administration. The submission will be reviewed to determine the status of state compliance and suggestions will be made on how to achieve compliance before the state loses funding. Submissions must be made by July 13, 1997.

#### **REQUIREMENTS OF FEDERAL LAW**

Specific sections of Senate Bill 676, "Sex Offender Laws/Federal Compliance", are requirements of Federal law. The following list highlights these specific requirements:

- 1) Section 14-208.6 - Definitions:
  - (1c) 'Mental abnormality' - Federal definition - required by Federal law.
  - (1d) 'Offense against a minor' - Required by Federal law.
  - (2a) 'Personality disorder' - Federal guidelines recommend this definition.
  - (5) 'Sexually violent offense' - Federal guidelines allow states to use Federal definition or list specific state statutes - List of these offenses is identical to the list in current NC law.
  - (6) 'Sexually violent predator' - Combines Federal definitions of sexually violent predator predatory - Required by Federal law.
- 2) Section 14-208.9A - Verification of registration information:

This entire section is a Federal requirement - Tracks Federal law.
- 3) Section 14-208.10: Sections A-B - Registration information is public record; access to registration information:

This is a Federal requirement, but the State has the discretion concerning the nature and the extent of disclosure that is necessary for public safety.
- 4) Section 14-208.11 - Failure to register; falsification of verification notice; failure to return verification form; order for arrest:

Federal law requires that a person who knowingly fails to register or to keep their registration current must be subject to criminal penalties - Federal requirement.
- 5) Section 14-208.12A - Termination of registration requirement:

Federal law requires that registration must continue for a period of at least 10 years.

- 6) Section 14-208.14 - Statewide registry; Division of Criminal Statistics designated custodian of statewide registry:  
Federal law requires that a state law enforcement agency be designated as the responsible state law enforcement agency. Immediate notification by state agency to appropriate law enforcement agencies on registration information, prerelease notification, a change of address, or violation of this article are requirements of Federal law.
- 7) Section 14-208.15 - Certain statewide registry information is public record - access to statewide registry:  
Federal law requires the registry to be public record. It is up to the State's discretion as to what information is public.
- 8) Section 14-208.20 - Sexually violent predator determination; notice of intent; presentence investigation:  
Federal law requires more stringent registration requirements of "sexually violent predator" subclass. The State has the discretion to decide at what point a person is determined a sexual predator or not. Federal law also requires a board of experts to assist the court in making sexual predator determination.
- 9) Section 14-208.22 - Additional registration information is required:  
Federal law requires this section.
- 10) Section 14-208.23 - Length of registration:  
Federal law requires this section.
- 11) Section 14-208.24 - Verification of registration information:  
Federal law requires this section.
- 12) Section 14-208.25 - Termination of registration of requirement:  
Federal law requires this section. It allows some discretion to the State.

**NOTE:** Federal law does not require the State to place the registry on the Internet. However, it does require public access to the registry. The Department of Justice, Division of Criminal Information believes the easiest and most cost effective method to provide access to the public is through the Internet.

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## **FEDERAL PENALTY FOR FAILURE TO COMPLY**

The penalty for failure to comply with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act and Megan's Law is a ten percent loss in the amount of Byrne Grant funds received by the State. Presently, the State receives a total of \$12,797,000 in Byrne Grant funds. \$1,279,700 equals ten percent of this total.

## **FISCAL RESEARCH OPINION**

It is the opinion of the Fiscal Research Division, in conjunction with the Bill Drafting and Research Divisions, that Senate Bill 676 will bring the State into compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act and Megan's Law.



**Signed Copy Located in the NCGA Principal Clerk's Offices**