

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 910

Short Title: Sale of a Child/Felony Offense. (Public)

Sponsors: Senators Atwater (Primary Sponsor); D. Berger, Bingham, Brock, East, and McKissick.

Referred to: Rules and Operations of the Senate.

May 30, 2012

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF UNLAWFUL SALE, SURRENDER, OR PURCHASE OF A CHILD; TO APPROPRIATE FUNDS TO THE DEPARTMENT OF PUBLIC SAFETY TO ASSIST WITH THE COST OF INCREASED PRISON BED CAPACITY; AND TO APPROPRIATE FUNDS TO THE NORTH CAROLINA CONFERENCE OF DISTRICT ATTORNEYS TO HELP EDUCATE INVESTIGATORS AND DISTRICT ATTORNEYS REGARDING THIS TYPE OF CRIMINAL ACTIVITY AND THE LEGAL RESOURCES AVAILABLE TO FIGHT THESE CRIMES AND TO CONDUCT A STUDY TO DETERMINE WHAT OTHER MEASURES MAY BE NEEDED TO STOP THIS TYPE OF CRIMINAL ACTIVITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-43.14. Unlawful sale, surrender, or purchase of a child.

(a) A person commits the offense of unlawful sale, surrender, or purchase of a child when that person participates in any of the following: the acceptance, solicitation, offer, payment, or transfer of any compensation, in money, property, or other thing of value, at any time, by any person in connection with the acquisition or transfer of the legal or physical custody or adoption of a minor child, except as ordered by the court or as authorized pursuant to G.S. 48-10-103.

(b) A person who violates this section is guilty of a Class D felony and shall pay a minimum fine of ten thousand dollars (\$10,000). For each subsequent violation, a person is guilty of a Class D felony and shall pay a minimum fine of fifty thousand dollars (\$50,000).

(c) A child whose parent, guardian, or custodian has sold or attempted to sell a child in violation of this Article is a dependent, neglected, and abused child as defined by G.S. 7B-101. The court may place the child in the custody of the Department of Social Services or with such other person as is in the best interest of the child.

(d) A violation of this section is a lesser included offense of G.S. 14-43.11."

SECTION 2. G.S. 7B-101(1) reads as rewritten:

"(1) Abused juveniles. – Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

- a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
- b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;



- 1 c. Uses or allows to be used upon the juvenile cruel or grossly
2 inappropriate procedures or cruel or grossly inappropriate devices to
3 modify behavior;
- 4 d. Commits, permits, or encourages the commission of a violation of
5 the following laws by, with, or upon the juvenile: first-degree rape,
6 as provided in G.S. 14-27.2; rape of a child by an adult offender, as
7 provided in G.S. 14-27.2A; second degree rape as provided in
8 G.S. 14-27.3; first-degree sexual offense, as provided in
9 G.S. 14-27.4; sexual offense with a child by an adult offender, as
10 provided in G.S. 14-27.4A; second degree sexual offense, as
11 provided in G.S. 14-27.5; sexual act by a custodian, as provided in
12 G.S. 14-27.7; sale, surrender, or purchase of a child, as provided in
13 G.S. 14-43.14; crime against nature, as provided in G.S. 14-177;
14 incest, as provided in G.S. 14-178; preparation of obscene
15 photographs, slides, or motion pictures of the juvenile, as provided in
16 G.S. 14-190.5; employing or permitting the juvenile to assist in a
17 violation of the obscenity laws as provided in G.S. 14-190.6;
18 dissemination of obscene material to the juvenile as provided in
19 G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating
20 material harmful to the juvenile as provided in G.S. 14-190.14 and
21 G.S. 14-190.15; first and second degree sexual exploitation of the
22 juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17;
23 promoting the prostitution of the juvenile as provided in
24 G.S. 14-190.18; and taking indecent liberties with the juvenile, as
25 provided in G.S. 14-202.1;
- 26 e. Creates or allows to be created serious emotional damage to the
27 juvenile; serious emotional damage is evidenced by a juvenile's
28 severe anxiety, depression, withdrawal, or aggressive behavior
29 toward himself or others; or
- 30 f. Encourages, directs, or approves of delinquent acts involving moral
31 turpitude committed by the juvenile."

32 **SECTION 3.** G.S. 14-208.6(5) reads as rewritten:

33 "(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree
34 rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second
35 degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex
36 offense with a child; adult offender), G.S. 14-27.5 (second degree sexual
37 offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or
38 sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain
39 victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is
40 13-, 14-, or 15-years-old where the defendant is at least six years older),
41 G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude),
42 G.S. 14-43.14 (sale, surrender, or purchase of a child), G.S. 14-178 (incest
43 between near relatives), G.S. 14-190.6 (employing or permitting minor to
44 assist in offenses against public morality and decency), G.S. 14-190.9(a1)
45 (felonious indecent exposure), G.S. 14-190.16 (first degree sexual
46 exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation
47 of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor),
48 G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19
49 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent
50 liberties with children), G.S. 14-202.3 (Solicitation of child by computer or
51 certain other electronic devices to commit an unlawful sex act),

1 G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-318.4(a1)
2 (parent or caretaker commit or permit act of prostitution with or by a
3 juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a
4 juvenile by parent or guardian). The term also includes the following: a
5 solicitation or conspiracy to commit any of these offenses; aiding and
6 abetting any of these offenses."

7 **SECTION 4.** G.S. 48-10-102(b) reads as rewritten:

8 "(b) ~~A~~ Unless the conduct is covered under some other provision of law providing
9 greater punishment, a person who violates this section is guilty of a Class 1 misdemeanor. For
10 each subsequent violation, a person is guilty of a Class H felony which may include a fine of
11 not more than ten thousand dollars (\$10,000)."

12 **SECTION 5.(a)** There is appropriated from the General Fund to the Department of
13 Public Safety the sum of twenty-five thousand dollars (\$25,000) for the 2012-2013 fiscal year
14 to help cover the cost for increased bed capacity in the State prison system.

15 **SECTION 5.(b)** There is appropriated from the General Fund to the North
16 Carolina Conference of District Attorneys the sum of five thousand dollars (\$5,000) for the
17 2012-2013 fiscal year to be used for the following: (i) to educate investigators and district
18 attorneys about the new law and how it can be used to help stop criminal activities that involve
19 the sale of children, and (ii) to conduct a study of additional measures that may be taken to stop
20 this type of criminal activity. In its study, the North Carolina Conference of District Attorneys
21 shall consider the measures taken by other states to address this type of criminal activity. The
22 North Carolina Conference of District Attorneys shall submit a final written report of its
23 findings and recommendations, including any additional legislative proposals, regarding this
24 issue to the 2013 General Assembly by January 30, 2013.

25 **SECTION 6.** Section 5 and Section 6 of this act become effective July 1, 2012.
26 The remainder of this act becomes effective December 1, 2012, and applies to offenses
27 committed on or after that date.