

NORTH CAROLINA GENERAL ASSEMBLY  
1979 SESSION

CHAPTER 682  
HOUSE BILL 800

AN ACT TO CLARIFY, MODERNIZE AND CONSOLIDATE THE LAW OF SEX OFFENSES.

The General Assembly of North Carolina enacts:

**Section 1.** Chapter 14 of the North Carolina General Statutes as the same appears in the 1969 Replacement Volume 1B is hereby amended by adding thereto a new Article 7A to read as follows:

"Article 7A.

"Rape and Other Sex Offenses.

**"§ 14-27.1. Definitions.** — As used in this Article, unless the context requires otherwise: (a) 'Mentally defective' means (1) a victim who suffers from mental retardation, or (2) a victim who suffers from a mental disorder, either of which temporarily or permanently renders the victim substantially incapable of appraising the nature of his or her conduct, or of resisting the act of vaginal intercourse or a sexual act, or of communicating unwillingness to submit to the act of vaginal intercourse or a sexual act.

(b) 'Mentally incapacitated' means a victim who due to any act committed upon the victim is rendered substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act.

(c) 'Physically helpless' means (1) a victim who is unconscious; or (2) a victim who is physically unable to resist an act of vaginal intercourse or a sexual act or communicate unwillingness to submit to an act of vaginal intercourse or a sexual act.

(d) 'Sexual act' means cunnilingus, fellatio, analingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body: Provided, that it shall be an affirmative defense that the penetration was for accepted medical purposes.

**"§ 14-27.2. First degree rape.** — (a) A person is guilty of rape in the first degree if the person engages in vaginal intercourse:

- (1) with another person by force and against the will of the other person, and:
  - (i) employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or
  - (ii) inflicts serious personal injury upon the victim or another person; or
  - (iii) the person commits the offense aided and abetted by one or more other persons.
- (2) With a victim who is a child of the age of 12 years or less and the defendant is four or more years older than the victim.

(b) Any person who commits the offense defined in this section is guilty of a felony and upon conviction shall be imprisoned in the State's prison for life.

**"§ 14-27.3. Second degree rape.** — (a) A person is guilty of rape in the second degree if the person engages in vaginal intercourse with another person:

- (1) by force and against the will of the other person; or

(2) who is mentally defective, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally defective, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a felony and upon conviction shall be punished by imprisonment in the State's prison for a term of not more than 40 years.

**"§ 14-27.4. First degree sexual offense.** — (a) A person is guilty of a sexual offense in the first degree if the person engages in a sexual act:

- (1) with another person by force and against the will of the other person, and:
  - (i) employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or
  - (ii) inflicts serious personal injury upon the victim or another person; or
  - (iii) the person commits the offense aided and abetted by one or more other persons.

(2) The victim is a child of the age of 12 years or less and the defendant is four or more years older than the victim.

(b) Any person who commits the offense defined in this section is guilty of a felony and upon conviction shall be imprisoned in the State's prison for life.

**"§ 14-27.5. Second degree sexual offense.** — (a) A person is guilty of a sexual offense in the second degree if the person engages in a sexual act with another person:

- (1) by force and against the will of the other person; or
- (2) who is mentally defective, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally defective, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a felony and upon conviction shall be punished by imprisonment in the State's prison for a term of not more than 40 years.

**"§ 14-27.6. Penalty for attempt.** — An attempt to commit first degree rape as defined by G.S. 14-27.2, or an attempt to commit a first degree sexual offense as defined by G.S. 14-27.4 is a felony, and upon conviction, the defendant shall be punished by imprisonment in the State's prison for not more than 20 years. An attempt to commit second degree rape as defined by G.S. 14-27.3, or an attempt to commit a second degree sexual offense as defined by G.S. 14-27.5 is a felony, and upon conviction the defendant shall be punished by imprisonment in the State's prison for not more than 10 years.

**"§ 14-27.7. Intercourse and sexual offenses with certain victims; consent no defense.** — If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a felony and shall be punished by imprisonment in the State's prison for not less than two nor more than 15 years. Consent is not a defense to a charge under this section.

**"§ 14-27.8. Defense that victim is spouse of person committing act.** — A person may not be prosecuted under this Article if the victim is the person's legal spouse at the time of the commission of the alleged rape or sexual offense unless the parties are living separate and apart pursuant to a written agreement or a judicial decree.

**"§ 14-27.9. No presumption as to incapacity.** — In prosecutions under this Article there shall be no presumption that any person under the age of 14 years is physically incapable of committing a sex offense of any degree or physically incapable of committing rape, or that a male child under the age of 14 years is incapable of engaging in sexual intercourse.

**"§ 14-27.10. Evidence required in prosecutions under this Article.** — It shall not be necessary upon the trial of any indictment for an offense under this Article where the sex act alleged is vaginal intercourse or anal intercourse to prove the actual emission of semen in order to constitute the offense; but the offense shall be completed upon proof of penetration only. Penetration, however slight, is vaginal intercourse or anal intercourse."

**Sec. 2.** A new section is added to Chapter 15A, Subchapter I, Article 3, of the General Statutes to read:

**"§ 15A-136. Venue for sexual offenses.** — If a person is transported by any means, with the intent to violate any of the provisions of Article 7A of Chapter 14 of the General Statutes and the intent is followed by actual violation thereof, the defendant may be tried in the county where transportation was offered, solicited, begun, continued or ended."

**Sec. 3.** G.S. 15-166 as the same appears in the 1975 Replacement Volume 1C of the General Statutes, is hereby amended as follows: (a) in the catch line by inserting after the word "rape" the words "and sex offenses"; (b) in the second line thereof by deleting the words "assault with the intent to commit rape" and substituting in lieu thereof the words "or a sex offense or attempt to commit rape or attempt to commit a sex offense".

**Sec. 4.** G.S. 15-169 as the same appears in the 1975 Replacement Volume 1C of the General Statutes, is hereby amended in the second line by deleting the words "rape, or".

**Sec. 5.** G.S. 14-6 as the same appears in the 1969 Replacement Volume 1B of the General Statutes, is amended in the third line by inserting after the words "or rape" the words "or a sex offense".

**Sec. 6.** G.S. 14-17 as the same appears in the 1977 Cumulative Supplement to Volume 1IB of the General Statutes, is amended in the fifth line by inserting after the word "rape" the words "or a sex offense".

**Sec. 7.** Article 7 of Chapter 14 as the same appears in the 1969 Replacement Volume 1B of the General Statutes and the 1977 Cumulative Supplement thereto are hereby repealed.

**Sec. 8.** G.S. 8-58.6 as the same appears in the 1977 Cumulative Supplement to Volume 1C of the General Statutes is hereby amended in the catch line by inserting after the word "rape" the words "or sex offenses". G.S. 8-58.6(c) is amended in the second line by inserting after the words "rape or any lesser included offense thereof" the words "or a sex offense or any lesser included offense thereof".

**Sec. 9.** G.S. 15A-2000(e)(5) as the same appears in the 1977 Cumulative Supplement to the 1975 Replacement Volume 1C of the General Statutes is hereby amended in the third line by inserting after the word "rape" the words "or a sex offense".

**Sec. 10.** G.S. 15-144.1(a) as the same appears in the 1978 Replacement Volume 1C of the General Statutes is hereby amended by deleting the words "assault with intent to commit rape" on lines 11 and 12, and substituting in lieu thereof the words "attempted rape". G.S. 15-144.1(b) as the same appears in the 1978 Replacement Volume 1C of the General Statutes is hereby amended by deleting the word "virtuous" in lines 1, 3, and 6. G.S. 15-144.1 is further amended by adding thereto the following new subdivision "(c)" to read as follows:

"(c) If the victim is a person who is mentally defective, mentally incapacitated, or physically helpless it is sufficient to allege that the defendant unlawfully, willfully, and feloniously did carnally know and abuse a person who was mentally defective, mentally incapacitated or physically helpless, naming such victim, and concluding as aforesaid. Any bill of indictment containing the averments and allegations herein named shall be good and

sufficient in law for the rape of a mentally defective, mentally incapacitated or physically helpless person and all lesser included offenses."

**Sec. 11.** Article 15 of Chapter 15 of the General Statutes is hereby amended by adding thereto the following new section G.S. 15-144.2:

**"§ 15-144.2. Essentials of bill for sex offense.** — (a) In indictments for a sex offense it is not necessary to allege every matter required to be proved on the trial; but in the body of the indictment, after naming the person accused, the date of the offense, the county in which the sex offense was allegedly committed, and the averment 'with force and arms', as is now usual, it is sufficient in describing a sex offense to allege that the accused person unlawfully, willfully, and feloniously did engage in a sex offense with the victim, naming the victim, by force and against the will of such victim and concluding as is now required by law. Any bill of indictment containing the averments and allegations herein named shall be good and sufficient in law as an indictment for a first degree sex offense and will support a verdict of guilty of a sex offense in the first degree, a sex offense in the second degree, an attempt to commit a sex offense or an assault.

(b) If the victim is a person of the age of 12 years or less, it is sufficient to allege that the defendant unlawfully, willfully, and feloniously did engage in a sex offense with a child of 12 years or less, naming the child, and concluding as aforesaid. Any bill of indictment containing the averments and allegations herein named shall be good and sufficient in law as an indictment for a sex offense against a child of the age of 12 years or less and all lesser included offenses.

(c) If the victim is a person who is mentally defective, mentally incapacitated, or physically helpless it is sufficient to allege that the defendant unlawfully, willfully, and feloniously did engage in a sex offense with a person who was mentally defective, mentally incapacitated or physically helpless, naming such victim, and concluding as aforesaid. Any bill of indictment containing the averments and allegations herein named shall be good and sufficient in law for a sex offense against a mentally defective, mentally incapacitated or physically helpless person and all lesser included offenses."

**Sec. 12.** If any provisions of this act or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

**Sec. 13.** All laws and clauses of laws in conflict with this act are hereby repealed, provided however, nothing in this act shall be construed to repeal any portion of Article 26 of Chapter 14 which relates to offenses against public morality and decency.

**Sec. 14.** This act shall become effective January 1, 1980, and shall apply to offenses occurring on and after that date. Nothing herein shall be construed to render lawful acts committed prior to the effective date of this act and unlawful at the time the said acts occurred; and nothing contained herein shall be construed to affect any prosecution instituted under any section repealed by this act pending on the effective date hereof.

In the General Assembly read three times and ratified, this the 29th day of May, 1979.