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Short Title: Sex Offender Registration

(Public)

Sponsors:

Referred to:

January 26, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THE REGISTRATION OF PERSONS CONVICTED OF
3 CERTAIN CRIMINAL SEXUAL OFFENSES.

4 The General Assembly of North Carolina enacts:

5 Section 1. Subchapter VII of Chapter 14 of the General Statutes is amended by
6 adding a new Article to read:

7 **"ARTICLE 27A.**

8 **"SEXUAL OFFENDER REGISTRATION PROGRAM.**

9 **"§ 14-208.5. Purpose.**

10 The General Assembly recognizes that sex offenders often pose a high risk of
11 engaging in sex offenses even after being released from incarceration or commitment and
12 that protection of the public from sex offenders is of paramount governmental interest.
13 The General Assembly recognizes that the efforts of both citizens and local law
14 enforcement officers to protect their communities are often futile because of a lack of
15 information. Further, the General Assembly recognizes that the ability of local law
16 enforcement officers to conduct investigations and quickly apprehend offenders who
17 commit sex offenses is impaired by the lack of information available to law enforcement
18 agencies about convicted sex offenders who live within the agency's jurisdiction.

1 Persons found to have committed a sex offense have a reduced expectation of privacy
2 because of the public's interest in public safety and in the effective operation of
3 government. The release of information about sex offenders that is of public record to
4 citizens and the release of other relevant information about sex offenders to law
5 enforcement agencies will further the governmental interests of public safety so long as
6 the information released is rationally related to the furtherance of those goals.

7 Therefore, it is the purpose of this Article to assist citizens and local law enforcement
8 agencies in their efforts to protect their communities by requiring sex offenders to
9 register with local law enforcement agencies, to require the exchange of relevant
10 information about sex offenders among law enforcement agencies, and to clarify what
11 registration information is public record and may be released as provided in this Article.

12 **"§ 14-208.6. Definitions.**

13 The following definitions apply in this Article:

- 14 (1) Division. – The Division of Criminal Statistics of the Department of
15 Justice.
- 16 (2) Penal institution. – A detention facility operated under the jurisdiction
17 of the Division of Prisons of the Department of Correction, or a county
18 jail.
- 19 (3) Released. – Discharged, paroled, or placed on probation.
- 20 (4) Reportable conviction. – The term includes the following:
- 21 a. A conviction of a violation of G.S 14-27.2 (first degree rape), 14-
22 27.3 (second degree rape), 14-27.4 (first degree sexual offense),
23 14-27.5 (second degree sexual offense), 14-27.6 (attempted rape
24 or sexual offense), 14-27.7 (intercourse and sexual offense with
25 certain victims), 14-178 (incest between near relatives), 14-179
26 (incest between uncle and niece, nephew and aunt), 14-190.6
27 (employing or permitting minor to assist in offenses against
28 public morality and decency), 14-190.16 (first degree sexual
29 exploitation of a minor), 14-190.17 (second degree sexual
30 exploitation of a minor), 14-190.17A (third degree sexual
31 exploitation of a minor), 14-190.18 (promoting prostitution of a
32 minor), 14-190.19 (participating in prostitution of a minor), or
33 14-202.1 (taking indecent liberties with children).
- 34 b. The second conviction for a violation of G.S. 14-190.9 (indecent
35 exposure).
- 36 c. A conviction in another state of an offense, which if committed
37 in this State, would have been a sex offense as defined by the
38 sections of the General Statutes set forth in paragraphs a. and b.
39 of this subdivision.

40 **"§ 14-208.7. Registration; availability of registered information.**

41 (a) A person who has a reportable conviction shall register with the sheriff of the
42 county where the person resides or intends to reside for more than 10 days. If the person
43 moves to North Carolina from outside this State, the person shall register within 10 days

1 of establishing residence in this State, and a determination as to the potential risk of the
2 person committing a repeated offense shall be made in accordance with G.S. 14-208.9. If
3 the person is a current resident of North Carolina, the person shall register:

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

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

8 (b) The Division shall provide each sheriff with forms for registering persons as
9 required by this Article. The registration form shall require all of the following:

10 (1) The person's full name, each alias, date of birth, sex, race, height,
11 weight, eye color, hair color, social security number, drivers license
12 number, and home address.

13 (2) The type of offense for which the person was convicted, the date of
14 conviction, and the sentence imposed.

15 (3) The person's classification with regard to the potential risk of a repeated
16 offense, as determined by the court or the Post-Release Supervision and
17 Parole Commission pursuant to G.S. 15A-1334(f).

18 (4) A current photograph.

19 (5) Any other information required by the Division, including fingerprints
20 or other corroborative information.

21 (c) Not later than the third day after a person registers, the sheriff with whom the
22 person registered shall send the registration information to the Division in a manner
23 determined by the Division. The sheriff shall retain copies of the original registration
24 form and other information collected, and shall maintain a registry consisting of
25 information provided under subdivisions (b)(1), (2) and (3) of this section. The
26 registration information and the corresponding registry is a public record and shall be
27 available for public inspection. The sheriff shall upon request, display any photograph
28 provided in compliance with subdivision (b)(3) of this section; however, the sheriff is not
29 required to provide or to allow a copy to be made of the photograph.

30 (d) Any person may obtain a copy of an individual's registration form upon
31 payment to the sheriff of a reasonable fee for the costs of duplicating the form.

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

37 **"§ 14-208.8. Prerelease notification.**

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

41 (1) Inform the person of the person's duty to register under this Article and
42 require the person to sign a written statement that the person was so

1 informed or, if the person refuses to sign the statement, certify that the
2 person was so informed.

3 (2) Obtain the registration information required under G.S. 14-208.7(b)(1)
4 and (2), as well as the address where the person expects to reside upon
5 the person's release.

6 (3) Send the Division and the sheriff of the county in which the person
7 expects to reside the information collected in accordance with
8 subdivision (2) of this subsection.

9 (b) If a person who is subject to registration under this Article receives probation,
10 suspended sentence, or only a fine, the court pronouncing sentence shall direct the
11 Division of Adult Probation and Parole to conduct the prerelease notification specified in
12 subsection (a) of this section on the day of sentencing.

13 **"§ 14-208.9. Procedure to determine degree of risk of a repeated offense by a**
14 **convicted sex offender who moves into the State or for whom the degree of**
15 **risk of a repeated offense was not determined prior to registration.**

16 (a) When a person who moves to North Carolina from out-of-state registers in
17 accordance with this Article or when any other person registers in accordance with this
18 Article but no determination was made by either the court or the Post-Release
19 Supervision and Parole Commission regarding the degree of risk of a repeated offense,
20 the sheriff, within 10 days of the registration, shall notify the district attorney for the
21 judicial district of the registration. The district attorney shall file a motion in the superior
22 court of that judicial district that a hearing be held to determine the degree of risk of a
23 repeated offense by the person. The motion shall state the offense of which the person has
24 been convicted, the date of the conviction, the jurisdiction from which the conviction
25 originates, and to what reportable conviction in G.S. 14-208.6(4)a. it is comparable.

26 (b) The court shall set a date for a hearing to determine the risk that the person
27 may commit another sex offense. The procedure and relevant factors to be considered
28 shall be the same as those provided in G.S. 15A-1334.

29 (c) The court shall direct the district attorney to serve notice of the hearing no later
30 than 10 days prior to the hearing date on the person who is the subject of the hearing,
31 informing the person of the date, time, and place of the hearing, and of the right to be
32 present, present evidence, and be heard.

33 **"§ 14-208.10. Change of address.**

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

40 (b) Each person required to register pursuant to this statute shall, on each
41 anniversary of the person's initial registration date during the period in which the person
42 is required to register, return to the sheriff's department in the county in which he resides
43 an address verification form prepared and mailed to them by the sheriff's department.

1 This form shall be signed and returned to the sheriff's department within 10 days of its
2 receipt by the person required to register under this statute.

3 **"§ 14-208.11. Failure to register or falsification of registration information;**
4 **penalties; mitigating factor.**

5 (a) Any person who fails to register pursuant to this Article or any person who
6 submits a registration form containing false information commits the offense of failure to
7 register as a sex offender. Proof of the conviction requiring registration and absence of a
8 record of registration shall be prima facie evidence of a violation of this section. Any
9 person who is charged with an offense under this section shall be notified at the time of
10 arrest that registration within 72 hours shall be a mitigating factor to a charge of failure to
11 register.

12 (b) A person who is convicted of an offense under this section:

13 (1) Is guilty of a Class 1 misdemeanor if the offense is a first violation of
14 this section, and the offense for which the person was required to
15 register is a misdemeanor offense. However, notwithstanding G.S.
16 15A-1340.23, a person sentenced under this subdivision may be
17 sentenced to an active term of imprisonment not to exceed six months.

18 (2) Is guilty of a Class I felony if: (i) the offense is a second or subsequent
19 violation of subdivision (1) of this subsection; or (ii) the offense is a
20 first violation of this section, and the offense for which the person was
21 required to register is a felony offense. However, notwithstanding G.S.
22 15A-1340.17, a person sentenced under this subdivision may be
23 sentenced to an active term of imprisonment not to exceed 12 months.

24 (3) Is guilty of a Class H felony if the offense is a second or subsequent
25 offense of subdivision (2) of this subsection. However, notwithstanding
26 G.S. 15A-1340.17, a person sentenced under this subdivision may be
27 sentenced to an active term of imprisonment not to exceed 24 months.

28 (c) The court shall consider as a mitigating factor to any charge of failure to
29 register that the person arrested produced in court or submitted to the prosecuting
30 attorney a sworn affidavit from the sheriff of the appropriate county that within 72 hours
31 after the arrest the person registered in accordance with the requirements of this Article.
32 If the court finds that the mitigating factor is present, the court may depart from the range
33 of sentences provided in G.S. 15A-1340.23 or G.S. 15A-1340.17 and may impose a
34 maximum active sentence of 30 days.

35 **"§ 14-208.12. File with Police Information Network.**

36 The Division shall include the registration information in the Police Information
37 Network as set forth in G.S. 114-10.1.

38 **"§ 14-208.13. Discontinuance of registration requirement; procedure.**

39 (a) A person may petition the court for an order to discontinue the requirement for
40 registration as follows:

41 (1) If the court or the Post-Release Supervision and Parole Commission
42 determined pursuant to G.S. 15A-1334(f) that the risk of a person
43 repeating a sex offense is low and there are no repeated offenses, then

1 after a period of five years from the date of the person's final release
2 from the jurisdiction of the court for the offense, the person may petition
3 the court to discontinue the registration requirement.

4 (2) If the court or the Post-Release Supervision and Parole Commission
5 determined pursuant to G.S. 15A-1334(f) that the risk of a person
6 repeating a sex offense is moderate and there are no repeated offenses,
7 then after a period of 10 years from the date of the person's final release
8 from the jurisdiction of the court for the offense, the person may petition
9 the court to discontinue the registration requirement.

10 (3) If the court or the Post-Release Supervision and Parole Commission
11 determined pursuant to G.S. 15A-1334(f) that the risk of a person
12 repeating a sex offense is high and there are no repeated offenses, then
13 after a period of 25 years from the date of the person's final release from
14 the jurisdiction of the court for the offense, the person may petition the
15 court to discontinue the registration requirement.

16 (b) The petitioner shall bear the burden to prove by a preponderance of the
17 evidence that the petitioner no longer poses a substantial risk of committing an unlawful
18 sexual act and that there is no reasonable probability that the petitioner will repeat the
19 prior unlawful act."

20 Sec. 2. G.S. 114-10 reads as rewritten:

21 "**§ 114-10. Division of Criminal Statistics.**

22 The Attorney General shall set up in the Department of Justice a division to be
23 designated as the Division of Criminal Statistics. There shall be assigned to this Division
24 by the Attorney General duties as follows:

25 (1) To collect and correlate information in criminal law administration,
26 including crimes committed, arrests made, dispositions on preliminary
27 hearings, prosecutions, convictions, acquittals, punishment, appeals,
28 together with the age, race, and sex of the offender, and such other
29 information concerning crime and criminals as may appear significant
30 or helpful. To correlate such information with the operations of agencies
31 and institutions charged with the supervision of offenders on probation,
32 in penal and correctional institutions, on parole and pardon, so as to
33 show the volume, variety and tendencies of crime and criminals and the
34 workings of successive links in the machinery set up for the
35 administration of the criminal law in connection with the arrests, trial,
36 punishment, probation, prison parole and pardon of all criminals in
37 North Carolina.

38 (2) To collect, correlate, and maintain access to information that will assist
39 in the performance of duties required in the administration of criminal
40 justice throughout the State. This information may include, but is not
41 limited to, motor vehicle registration, drivers' licenses, wanted and
42 missing persons, stolen property, warrants, stolen vehicles, firearms
43 registration, sexual offender registration as provided under Article 27A

1 of Chapter 14, drugs, drug users and parole and probation histories. In
2 performing this function, the Division may arrange to use information
3 available in other agencies and units of State, local and federal
4 government, but shall provide security measures to insure that such
5 information shall be made available only to those whose duties, relating
6 to the administration of justice, require such information.

7 (3) To make scientific study, analysis and comparison from the information
8 so collected and correlated with similar information gathered by federal
9 agencies, and to provide the Governor and the General Assembly with
10 the information so collected biennially, or more often if required by the
11 Governor.

12 (4) To perform all the duties heretofore imposed by law upon the Attorney
13 General with respect to criminal statistics.

14 (5) To perform such other duties as may be from time to time prescribed by
15 the Attorney General.

16 (6) To promulgate rules for the administration of this Article."

17 Sec. 3. G.S. 15A-1334 is amended by adding a new subsection to read:

18 "(f) Determination of Degree of Risk of a Repeated Offense by Convicted Sex
19 Offender. – The court shall, in cases where a defendant is convicted of an offense which
20 requires registration pursuant to the provisions of G.S. 14-208.7 and is given a sentence
21 that does not exceed three years active imprisonment, make findings of fact to determine
22 the degree of risk of a repeated offense by the defendant upon release from custody.
23 Relevant factors to be considered shall include, but not be limited to:

24 (1) Conditions of release that minimize risk of a repeated offense,
25 including, but not limited to, whether the offender is under supervision
26 of probation or parole; receiving counseling, therapy, or treatment; or
27 residing in a home situation that provides guidance and supervision;

28 (2) Physical conditions that minimize risk of a repeated offense, including,
29 but not limited to, advanced age or debilitating illness;

30 (3) Criminal history factors indicative of high risk of a repeated offense,
31 including:

32 a. Whether the offender's conduct was found to be characterized by
33 repetitive and compulsive behavior;

34 b. Whether the offender served the maximum term; and

35 c. Whether the offender committed the sex offense against a child;

36 (4) Other criminal history factors to be considered in determining risk,
37 including:

38 a. The relationship between the offender and the victim;

39 b. Whether the offense involved the use of a weapon, violence, or
40 infliction of serious bodily injury; and

41 c. The number, date, and nature of prior offenses;

42 (5) Whether psychological or psychiatric profiles indicate a risk of
43 recidivism;

- 1 (6) The offender's response to treatment;
2 (7) Recent behavior, including behavior while confined or while under
3 supervision in the community, as well as behavior in the community
4 following service of sentence; and
5 (8) Recent threats against persons or expressions of intent to commit
6 additional crimes.

7 The court shall classify the risk of a repeated offense as low, moderate, or high. If an
8 active term of imprisonment is not imposed, the court shall notify the sheriff of the
9 county where the defendant intends to reside of the defendant's classification with regard
10 to the potential risk of a repeated offense."

11 Sec. 4. G.S. 15A-1368.2 is amended by adding a new subsection to read:

12 "(e1) If a prisoner is a sex offender who was sentenced to active time for a period of
13 three or more years and the crime for which the prisoner was convicted requires
14 registration under G.S. 14-208.7, the Commission shall make findings of fact to
15 determine the degree of risk of a repeated offense by the prisoner upon release from
16 custody. Relevant factors to be considered shall include those listed in G.S. 15A-1334(f).
17 The Commission shall classify the risk of a repeated offense as low, moderate, or high.
18 The Commission shall notify the sheriff of the county where the prisoner intends to reside
19 of the prisoner's release and the prisoner's classification with regard to the potential risk
20 of a repeated offense."

21 Sec. 5. G.S. 15A-1371 is amended by adding a new subsection to read:

22 "(k) Before releasing on parole a prisoner who was sentenced to active time for a
23 period of three or more years for a crime that requires registration under G.S. 14-208.7,
24 the Post-Release Supervision and Parole Commission shall make findings of fact to
25 determine the degree of risk of a repeated offense by the prisoner upon release from
26 custody. Relevant factors to be considered shall include those listed in G.S. 15A-1334(f).
27 The Commission shall classify the risk of a repeated offense as low, moderate, or high.
28 The Commission shall notify the sheriff of the county where the prisoner intends to reside
29 of the prisoner's release and the prisoner's classification with regard to the potential risk
30 of a repeated offense."

31 Sec. 6. This act is effective upon ratification, except that registration referred
32 to under Section 1 of this act becomes effective January 1, 1996. This act applies to all
33 persons convicted before, on, or after ratification. This act shall be known as the "Amy
34 Jackson Law".