

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS75151-SAz-3D* (12/04)

Short Title: Sex Offender GPS/DOC Requests.

(Public)

Sponsors: Senator Boseman.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCEDURE FOR SATELLITE-BASED
MONITORING OF SEX OFFENDERS AND TO MAKE OTHER CHANGES TO
THE SEX OFFENDER LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.40 reads as rewritten:

"§ 14-208.40. Establishment of program; creation of guidelines; duties.

(a) The Department of Correction shall establish a sex offender monitoring program that uses a continuous satellite-based monitoring system and shall create guidelines to govern the program. The program shall be designed to monitor two categories of offenders as follows:

(1) Any offender who is convicted of a reportable conviction as defined by G.S. 14-208.6(4) and who is required to register under Part 3 of Article 27A of Chapter 14 of the General Statutes because the defendant is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S. 14-208.6. ~~An offender in this category who is ordered by the court to submit to satellite based monitoring is subject to that requirement for the person's natural life, unless the requirement is terminated pursuant to G.S. 14-208.36.~~

(2) Any offender who satisfies all of the following criteria: (i) is convicted of a reportable conviction as defined by G.S. 14-208.6(4), (ii) is required to register under Part 2 of Article 27A of Chapter 14 of the General Statutes, (iii) has committed an offense involving the physical, mental, or sexual abuse of a minor, and (iv) based on the Department's risk assessment program requires the highest possible level of supervision and monitoring. ~~An offender in this category who~~

1 ~~is ordered by the court to submit to satellite based monitoring is~~
2 ~~subject to that requirement only for the period of time ordered by the~~
3 ~~court and is not subject to a requirement of lifetime satellite based~~
4 ~~monitoring.~~

5 (b) In developing the guidelines for the program, the Department shall require
6 that any offender who is enrolled in the satellite-based program submit to an active
7 continuous satellite-based monitoring program, unless an active program will not work
8 as provided by this section. If the Department determines that an active program will
9 not work as provided by this section, then the Department shall require that the
10 defendant submit to a passive continuous satellite-based program that works within the
11 technological or geographical limitations.

12 (c) The satellite-based monitoring program shall use a system that provides all of
13 the following:

- 14 (1) Time-correlated and continuous tracking of the geographic location of
15 the subject using a global positioning system based on satellite and
16 other location tracking technology.
17 (2) Reporting of subject's violations of prescriptive and proscriptive
18 schedule or location requirements. Frequency of reporting may range
19 from once a day (passive) to near real-time (active).

20 (d) The Department may contract with a single vendor for the hardware services
21 needed to monitor subject offenders and correlate their movements to reported crime
22 incidents. The contract may provide for services necessary to implement or facilitate
23 any of the provisions of this Part."

24 **SECTION 2.** Article 27A of Chapter 14 of the General Statutes is amended
25 by adding a new section to read:

26 "**§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

27 (a) When an offender is convicted of a reportable conviction as defined by
28 G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the
29 court any evidence that (i) the offender is a recidivist, (ii) the conviction offense was an
30 aggravated offense, or (iii) the offense involved the physical, mental, or sexual abuse of
31 a minor. The district attorney shall have no discretion to withhold any evidence required
32 to be submitted to the court pursuant to this subsection.

33 The offender shall be allowed to present to the court any evidence that the district
34 attorney's evidence is not correct.

35 (b) After receipt of the evidence from the parties, the court shall determine
36 whether the offender's conviction places the offender in one of the categories described
37 in G.S. 14-208.33(a), and if so, shall make a finding of fact of that determination,
38 specifying whether (i) the offender is a recidivist, (ii) the conviction offense was an
39 aggravated offense, or (iii) the offense involved the physical, mental, or sexual abuse of
40 a minor.

41 (c) Upon finding that the offender is a recidivist, or has committed an aggravated
42 offense, the court shall order the offender to enroll in a satellite-based monitoring
43 program for life.

1 (d) Upon finding that the offender committed an offense that involved the
2 physical, mental, or sexual abuse of a minor, the court shall order that the Department
3 do a risk assessment of the offender. The Department shall have a minimum of 30 days,
4 but not more than 60 days, to complete the risk assessment of the offender and report
5 the results to the court.

6 (e) Upon receipt of a risk assessment from the Department pursuant to subsection
7 (d) of this section, the court shall determine whether, based on the Department's risk
8 assessment, the offender requires the highest possible level of supervision and
9 monitoring. If the court determines that the offender does require the highest possible
10 level of supervision and monitoring, the court shall order the offender to enroll in a
11 satellite-based monitoring program for a period of time to be specified by the court."

12 **SECTION 3.** Article 27A of Chapter 14 of the General Statutes is amended
13 by adding a new section to read:

14 **"§ 14-208.40B. Determination of satellite-based monitoring requirement in certain**
15 **circumstances; right to hearing.**

16 (a) The Department shall make a determination to require satellite-based
17 monitoring for an offender who has been convicted of a reportable conviction as defined
18 by G.S. 14-208.6(4), and who has not had a determination by a court on whether the
19 offender shall be required to enroll in satellite-based monitoring.

20 (b) If the Department determines that the offender falls into one of the categories
21 described in G.S. 14-208.33(a), the offender shall be required to enroll in satellite-based
22 monitoring.

23 (c) After enrolling in satellite-based monitoring, the offender may file a petition
24 with the court of the county in which the offender resides. Upon the receipt of the
25 petition, the court shall hold a hearing within 10 days to determine if the offender falls
26 into one of the categories described in G.S. 14-208.33(a). The court shall hold the
27 hearing and make findings of fact pursuant to G.S. 14-208.33A.

28 If the court finds that (i) the offender is a recidivist, (ii) the conviction offense was
29 an aggravated offense, or (iii) the offense involved the physical, mental, or sexual abuse
30 of a minor, the court shall order the offender to enroll in satellite-based monitoring for
31 the appropriate period, as set forth in G.S. 14-208.33A.

32 If the court finds that the offender does not fall into one of the categories described
33 in G.S. 14-208.33(a), the offender shall be released from the satellite-based monitoring
34 program, and the Department shall remove and receive all satellite-based monitoring
35 equipment from the offender as soon as possible."

36 **SECTION 4.** Article 27A of Chapter 14 of the General Statutes is amended
37 by adding a new section to read:

38 **"§ 14-208.40C. Requirements of enrollment.**

39 (a) Any offender required to enroll in satellite-based monitoring pursuant to
40 G.S. 14-208.33A who receives an active sentence shall be enrolled and receive the
41 appropriate equipment prior to the offender's release from the Division of Prisons.

42 (b) Any offender required to enroll in satellite-based monitoring pursuant to
43 G.S. 14-208.33A who receives an intermediate sentence shall, immediately upon
44 sentencing, report to the Division of Community Corrections for enrollment in the

1 satellite-based monitoring program, and, if necessary, shall return at any time
2 designated by that Division to receive the appropriate equipment. If the intermediate
3 sentence includes a required period of imprisonment, the offender shall not be required
4 to be enrolled in the satellite-based monitoring program during the period of
5 imprisonment.

6 (c) Any offender required to enroll in satellite-based monitoring pursuant to
7 G.S. 14-208.33A who receives a community service sentence shall, immediately upon
8 sentencing, report to the Division of Community Corrections for enrollment in the
9 satellite-based monitoring program, and, if necessary, shall return at any time
10 designated by that Division to receive the appropriate equipment."

11 **SECTION 5.** Article 27A of Chapter 14 of the General Statutes is amended
12 by adding a new section to read:

13 **"§ 14-208.40D. Notification of certain offenders.**

14 Any offender subject to this Article that is not under Department supervision at the
15 time the Department determines that the offender must enroll in satellite-based
16 monitoring shall be notified by the Department of the requirement that they enroll. The
17 notification shall be sent by certified mail to the address provided by the offender
18 pursuant to G.S. 14-208.7.

19 The notification shall inform the offender of the location the offender is required to
20 appear to enroll in satellite-based monitoring and receive the appropriate equipment.
21 The notification shall state that the offender must appear on a date certain. If the
22 notification is received by the offender after the date provided in the notification, the
23 offender shall appear at the designated location within 10 days of receipt of the
24 notification.

25 For purposes of this section, receipt of notification shall be presumed to be the date
26 indicated by the certified mail receipt."

27 **SECTION 6.** G.S. 14-208.42 reads as rewritten:

28 **"§ 14-208.42. ~~Lifetime registration offenders required to submit to satellite-based~~**
29 **~~monitoring for life and~~Offenders required to continue on unsupervised**
30 **probation upon completion of sentence.~~sentence until termination of~~**
31 **satellite-based monitoring requirement.**

32 Notwithstanding any other provision of law, when the court sentences an offender
33 who is in ~~the a~~ category described by ~~G.S. 14-208.33(a)(1)~~G.S. 14-208.33(a) for a
34 reportable conviction as defined by G.S. 14-208.6(4), and orders the offender to enroll
35 in a satellite-based monitoring program, the court shall also order that the offender,
36 upon completion of the offender's sentence and any term of parole, post-release
37 supervision, intermediate punishment, or supervised probation that follows the sentence,
38 ~~continue to be enrolled in the satellite based monitoring program for the offender's life~~
39 ~~and~~ be placed on unsupervised probation and continue to be enrolled in the
40 satellite-based monitoring program (i) for life, if the offender is required to enroll
41 pursuant to G.S. 14-208.34(a), or (ii) for the period of time ordered by the court, if the
42 offender is required to enroll pursuant to G.S. 14-208.34(b). The offender shall remain
43 on unsupervised probation unless the requirement that the person enroll in a

1 satellite-based monitoring program is terminated pursuant to
2 ~~G.S. 14-208.36.~~ G.S. 14-208.36, or the period set by the court expires."

3 **SECTION 7.** G.S. 14-208.44 reads as rewritten:

4 "**§ 14-208.44. Failure to enroll; tampering with device.**

5 (a) Any person required to enroll in a satellite-based monitoring program who
6 fails to enroll shall be guilty of a Class F felony.

7 (b) Any person who intentionally tampers with, removes, ~~or~~
8 ~~vandalizes~~ vandalizes, or otherwise interferes with the proper functioning of a device
9 issued pursuant to a satellite-based monitoring program to a person duly enrolled in the
10 program shall be guilty of a Class E felony.

11 (c) For purposes of this section, 'enroll' shall mean providing any necessary
12 information to the Division, as well as appearing to receive the necessary equipment."

13 **SECTION 8.** G.S. 15A-1343(b) reads as rewritten:

14 "(b) Regular Conditions. – As regular conditions of probation, a defendant must:

- 15 (1) Commit no criminal offense in any jurisdiction.
- 16 (2) Remain within the jurisdiction of the court unless granted written
17 permission to leave by the court or his probation officer.
- 18 (3) Report as directed by the court or his probation officer to the officer at
19 reasonable times and places and in a reasonable manner, permit the
20 officer to visit him at reasonable times, answer all reasonable inquiries
21 by the officer and obtain prior approval from the officer for, and notify
22 the officer of, any change in address or employment.
- 23 (4) Satisfy child support and other family obligations as required by the
24 court. If the court requires the payment of child support, the amount of
25 the payments shall be determined as provided in G.S. 50-13.4(c).
- 26 (5) Possess no firearm, explosive device or other deadly weapon listed in
27 G.S. 14-269 without the written permission of the court.
- 28 (6) Pay a supervision fee as specified in subsection (c1).
- 29 (7) Remain gainfully and suitably employed or faithfully pursue a course
30 of study or of vocational training that will equip him for suitable
31 employment. A defendant pursuing a course of study or of vocational
32 training shall abide by all of the rules of the institution providing the
33 education or training, and the probation officer shall forward a copy of
34 the probation judgment to that institution and request to be notified of
35 any violations of institutional rules by the defendant.
- 36 (8) Notify the probation officer if he fails to obtain or retain satisfactory
37 employment.
- 38 (9) Pay the costs of court, any fine ordered by the court, and make
39 restitution or reparation as provided in subsection (d).
- 40 (10) Pay the State of North Carolina for the costs of appointed counsel,
41 public defender, or appellate defender to represent him in the case(s)
42 for which he was placed on probation.
- 43 (11) At a time to be designated by his probation officer, visit with his
44 probation officer a facility maintained by the Division of Prisons.

- 1 (12) Attend and complete an abuser treatment program if (i) the court finds
2 the defendant is responsible for acts of domestic violence and (ii) there
3 is a program, approved by the Domestic Violence Commission,
4 reasonably available to the defendant, unless the court finds that such
5 would not be in the best interests of justice.

6 A defendant shall not pay costs associated with a substance abuse monitoring
7 program or any other special condition of probation in lieu of, or prior to, the payments
8 required by this subsection.

9 In addition to these regular conditions of probation, a defendant required to serve an
10 active term of imprisonment as a condition of special probation pursuant to
11 G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of
12 probation, obey the rules and regulations of the Department of Correction governing the
13 conduct of inmates while imprisoned and report to a probation officer in the State of
14 North Carolina within 72 hours of his discharge from the active term of imprisonment.

15 Regular conditions of probation apply to each defendant placed on supervised
16 probation unless the presiding judge specifically exempts the defendant from one or
17 more of the conditions in open court and in the judgment of the court. It is not necessary
18 for the presiding judge to state each regular condition of probation in open court, but the
19 conditions must be set forth in the judgment of the court.

20 Defendants placed on unsupervised probation pursuant to G.S. 14-208.42 are subject
21 to the provisions of this subsection except the regular conditions contained in
22 subdivisions (6), (8), and (11). Defendants placed on unsupervised probation pursuant to
23 any other provision of law are subject to the provisions of this subsection, except that
24 defendants placed on unsupervised probation are not subject to the regular conditions
25 contained in subdivisions (2), (3), (6), (8), and (11)."

26 **SECTION 9.** G.S. 15A-1343(b2) reads as rewritten:

27 "(b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of
28 Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – As special
29 conditions of probation, a defendant who has been convicted of an offense which is a
30 reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical,
31 mental, or sexual abuse of a minor, must:

- 32 (1) Register as required by G.S. 14-208.7 if the offense is a reportable
33 conviction as defined by G.S. 14-208.6(4).
34 (2) Participate in such evaluation and treatment as is necessary to
35 complete a prescribed course of psychiatric, psychological, or other
36 rehabilitative treatment as ordered by the court.
37 (3) Not communicate with, be in the presence of, or found in or on the
38 premises of the victim of the offense.
39 (4) Not reside in a household with any minor child if the offense is one in
40 which there is evidence of sexual abuse of a minor.
41 (5) Not reside in a household with any minor child if the offense is one in
42 which there is evidence of physical or mental abuse of a minor, unless
43 the court expressly finds that it is unlikely that the defendant's harmful
44 or abusive conduct will recur and that it would be in the minor child's

1 best interest to allow the probationer to reside in the same household
2 with a minor child.

3 (6) Satisfy any other conditions determined by the court to be reasonably
4 related to his rehabilitation.

5 (7) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A
6 of Chapter 14 of the General Statutes, if the defendant is described by
7 G.S. 14-208.40(a)(1).

8 (8) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A
9 of Chapter 14 of the General Statutes, if the defendant is in the
10 category described by G.S. 14-208.40(a)(2), and the Department of
11 Correction, based on the Department's risk assessment program,
12 recommends that the defendant submit to the highest possible level of
13 supervision and monitoring.

14 (9) Submit at reasonable times to warrantless searches by a probation
15 officer of the probationer's person and of the probationer's vehicle and
16 premises while the probationer is present, for purposes specified by the
17 court and reasonably related to the probation supervision, but the
18 probationer may not be required to submit to any other search that
19 would otherwise be unlawful. For purposes of this subdivision,
20 warrantless searches of the probationer's computer or other electronic
21 mechanism which may contain electronic data shall be considered
22 reasonably related to the probation supervision. Whenever the
23 warrantless search consists of testing for the presence of illegal drugs,
24 the probationer may also be required to reimburse the Department of
25 Correction for the actual cost of drug screening and drug testing, if the
26 results are positive.

27 Defendants subject to the provisions of this subsection shall not be placed on
28 unsupervised probation, except as provided in G.S. 14-208.42."

29 **SECTION 10.** G.S. 14-208.16(d) reads as rewritten:

30 "(d) Changes in the ownership of or use of property within 1,000 feet of a
31 registrant's registered address that occur after a registrant establishes residency at the
32 registered address shall not form the basis for finding that an offender is in violation of
33 this section. For purposes of this subsection, a residence is established when the
34 registrant does any of the following:

35 (1) Purchases the residence or enters into a specifically enforceable
36 contract to purchase the residence.

37 (2) Enters into a written lease contract for the residence and for as long as
38 the person is lawfully entitled to remain on the premises.

39 (3) Resides with an immediate family member who established residence
40 in accordance with this subsection. For purposes of this subsection,
41 "immediate family member" means a child, sibling, ~~or parent~~parent,
42 grandparent, or legal guardian of the registrant."

43 **SECTION 11.** Section 2 of this act becomes effective December 1, 2007,
44 and applies to sentences entered on or after that date. Section 7 of this act becomes

- 1 effective December 1, 2007, and applies to offenses committed on or after that date.
- 2 Sections 8 and 9 of this act become effective December 1, 2007, and apply to persons
- 3 placed on probation on or after that date. The remainder of this act is effective when it
- 4 becomes law.