

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 53

Judiciary II/Election Laws Committee Substitute Adopted 4/12/95

Short Title: Sex Offender Registration

(Public)

Sponsors:

Referred to:

January 26, 1995

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE REGISTRATION OF PERSONS CONVICTED OF CERTAIN CRIMINAL SEXUAL OFFENSES.

The General Assembly of North Carolina enacts:

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

**"ARTICLE 27A.**

**"SEXUAL OFFENDER REGISTRATION PROGRAM.**

**"§ 14-208.5. Purpose.**

The General Assembly recognizes that sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is of paramount governmental interest. The General Assembly recognizes that the efforts of both citizens and local law enforcement officers to protect their communities are often futile because of a lack of information. Further, the General Assembly recognizes that the ability of local law enforcement officers to conduct investigations and quickly apprehend offenders who commit sex offenses is impaired by the lack of information available to law enforcement 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.