

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 53

Short Title: Sex Offender Registration.

(Public)

Sponsors: Senators Odom; Speed, Dannelly, Hoyle, Rand, Plyler, and Plexico.

Referred to: Judiciary II/Election Laws.

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  
6 by adding a new Article to read:

7  
8 **"ARTICLE 27A.**  
9 **"SEXUAL OFFENDER REGISTRATION PROGRAM.**

10  
11 **"§ 14-208.5. Purpose.**

12 The General Assembly recognizes that sex offenders often pose a high risk of  
13 engaging in sex offenses even after being released from incarceration or commitment  
14 and that protection of the public from sex offenders is of paramount governmental  
15 interest. Further, the General Assembly recognizes that local law enforcement officers'  
16 efforts to protect their communities, conduct investigations, and quickly apprehend  
17 offenders who commit sex offenses are impaired by the lack of information available to  
18 law enforcement agencies about convicted sex offenders who live within the agency's  
19 jurisdiction. Persons found to have committed a sex offense have a reduced expectation  
20 of privacy because of the public's interest in public safety and in the effective operation  
21 of government. Release of information about sex offenders to law enforcement  
22 agencies, and under limited circumstances to authorized requesters, will further the  
23 governmental interests of public safety so long as the information released is rationally  
24 related to the furtherance of those goals.

1 Therefore, it is the purpose of this Article to assist local law enforcement agencies'  
2 efforts to protect their communities by requiring sex offenders to register with local law  
3 enforcement agencies and to require the exchange of relevant information about sex  
4 offenders among law enforcement agencies and to authorize the release of necessary  
5 and relevant information about sex offenders to authorized requesters as provided in this  
6 Article.

7 **"§ 14-208.6. Definitions.**

8 The following definitions apply in this Article:

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

37 **"§ 14-208.7. Registration.**

38 (a) A person who has a reportable conviction shall register with the sheriff of the  
39 county where the person resides or intends to reside for more than 10 days. If the  
40 person moves to North Carolina from outside this State, the person shall register within  
41 10 days of establishing residence in this State. If the person is a current resident of  
42 North Carolina, the person shall register:

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

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

3           (b) The Division shall provide each sheriff with forms for registering persons as  
4 required by this Article. The registration form shall require:

5           (1) The person's full name, each alias, date of birth, sex, race, height,  
6 weight, eye color, hair color, social security number, drivers license  
7 number, and home address;

8           (2) The type of offense for which the person was convicted, the date of  
9 conviction, and the sentence imposed;

10          (3) A current photograph; and

11          (4) Any other information required by the Division, including fingerprints  
12 or other corroborative information.

13          (c) Not later than the third day after a person registers, the sheriff with whom the  
14 person registered shall send the registration information to the Division in a manner  
15 determined by the Division. The sheriff shall retain the original registration form and  
16 other information collected.

17 **"§ 14-208.8. Prerelease notification.**

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

21           (1) Inform the person of the person's duty to register under this Article and  
22 require the person to sign a written statement that the person was so  
23 informed or, if the person refuses to sign the statement, certify that the  
24 person was so informed;

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

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

31          (b) If a person who is subject to registration under this Article receives probation,  
32 suspended sentence, or only a fine, the court pronouncing sentence shall conduct the  
33 prerelease notification specified in subsection (a) of this section on the day of  
34 sentencing.

35 **"§ 14-208.9. Change of address.**

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

42          (b) Each person required to register pursuant to this statute shall on each  
43 anniversary of the person's initial registration date during the period in which the person  
44 is required to register, return to the sheriff's department in the county in which he

1 resides, an address verification form prepared and mailed to them by the sheriffs  
2 department. This form shall be signed and returned to the sheriff's department within 10  
3 days of its receipt by the person required to register under this statute.

4 **"§ 14-208.10. Failure to register.**

5 A person required by this Article to register who fails to register shall be guilty of a  
6 Class I felony for a first offense of violation of this Article, and a Class H felony for a  
7 subsequent conviction of a violation of this Article. Proof of the conviction requiring  
8 registration and absence of a record of registration shall be prima facie evidence of a  
9 violation of this section.

10 **"§ 14-208.11. File With Police Information Network.**

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

13 **"§ 14-208.12. Community notification.**

14 After registration of an individual required to do so pursuant to the provisions of this  
15 statute, the sheriff of the county where the registration occurs shall notify the  
16 community of the registrants presence in accordance with orders issued pursuant to G.S.  
17 15A-1334(f)."

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

19 **"§ 114-10. Division of Criminal Statistics.**

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

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

36 (2) To collect, correlate, and maintain access to information that will assist  
37 in the performance of duties required in the administration of criminal  
38 justice throughout the State. This information may include, but is not  
39 limited to, motor vehicle registration, drivers' licenses, wanted and  
40 missing persons, stolen property, warrants, stolen vehicles, firearms  
41 registration, sexual offender registration as provided under Article 27A  
42 of Chapter 14, drugs, drug users and parole and probation histories. In  
43 performing this function, the Division may arrange to use information  
44 available in other agencies and units of State, local and federal

1 government, but shall provide security measures to insure that such  
2 information shall be made available only to those whose duties,  
3 relating to the administration of justice, require such information.

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

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

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

13 Sec. 3. G.S. 15A-1343 reads as rewritten:

14 **§ 15A-1343. Conditions of probation.**

15 (a) In General. – The court may impose conditions of probation reasonably  
16 necessary to insure that the defendant will lead a law-abiding life or to assist him to do  
17 so.

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

19 (1) Commit no criminal offense in any jurisdiction.

20 (2) Remain within the jurisdiction of the court unless granted written  
21 permission to leave by the court or his probation officer.

22 (3) Report as directed by the court or his probation officer to the officer at  
23 reasonable times and places and in a reasonable manner, permit the  
24 officer to visit him at reasonable times, answer all reasonable inquiries  
25 by the officer and obtain prior approval from the officer for, and notify  
26 the officer of, any change in address or employment.

27 (4) Satisfy child support and other family obligations as required by the  
28 court. If the court requires the payment of child support, the amount of  
29 the payments shall be determined as provided in G.S. 50-13.4(c).

30 (5) Possess no firearm, explosive device or other deadly weapon listed in  
31 G.S. 14-269 without the written permission of the court.

32 (6) Pay a supervision fee as specified in subsection (c1).

33 (7) Remain gainfully and suitably employed or faithfully pursue a course  
34 of study or of vocational training that will equip him for suitable  
35 employment. A defendant pursuing a course of study or of vocational  
36 training shall abide by all of the rules of the institution providing the  
37 education or training, and the probation officer shall forward a copy of  
38 the probation judgment to that institution and request to be notified of  
39 any violations of institutional rules by the defendant.

40 (8) Notify the probation officer if he fails to obtain or retain satisfactory  
41 employment.

42 (9) Pay the costs of court, any fine ordered by the court, and make  
43 restitution or reparation as provided in subsection (d).

1 (10) Pay the State of North Carolina for the costs of appointed counsel,  
2 public defender, or appellate defender to represent him in the case(s)  
3 for which he was placed on probation.

4 (11) At a time to be designated by his probation officer, visit with his  
5 probation officer a facility maintained by the Division of Prisons.

6 In addition to these regular conditions of probation, a defendant required to serve an  
7 active term of imprisonment as a condition of special probation pursuant to G.S. 15A-  
8 1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey  
9 the rules and regulations of the Department of Correction governing the conduct of  
10 inmates while imprisoned and report to a probation officer in the State of North  
11 Carolina within 72 hours of his discharge from the active term of imprisonment.

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

17 Defendants placed on unsupervised probation are subject to the provisions of this  
18 subsection, except that defendants placed on unsupervised probation are not subject to  
19 the regular conditions contained in subdivisions (2), (3), (6), (8), and (11).

20 (b1) Special Conditions. – In addition to the regular conditions of probation  
21 specified in subsection (b), the court may, as a condition of probation, require that  
22 during the probation the defendant comply with one or more of the following special  
23 conditions:

24 (1) Undergo available medical or psychiatric treatment and remain in a  
25 specified institution if required for that purpose.

26 (2) Attend or reside in a facility providing rehabilitation, counseling,  
27 treatment, social skills, or employment training, instruction, recreation,  
28 or residence for persons on probation.

29 (2a) Submit to a period of imprisonment in a facility for youthful offenders  
30 for a minimum of 90 days or a maximum of 120 days under special  
31 probation, reference G.S. 15A-1351(a) or G.S. 15A-1344(e), and abide  
32 by all rules and regulations as provided in conjunction with the  
33 Intensive Motivational Program of Alternative Correctional Treatment  
34 (IMPACT), which provides an atmosphere for learning personal  
35 confidence, personal responsibility, self-respect, and respect for  
36 attitudes and value systems.

37 (3) Submit to imprisonment required for special probation under G.S.  
38 15A-1351(a) or G.S. 15A-1344(e).

39 (3a) Remain in one or more specified places for a specified period or  
40 periods each day, and wear a device that permits the defendant's  
41 compliance with the condition to be monitored electronically.

42 (3b) Submit to supervision by officers assigned to the Intensive Probation  
43 Program established pursuant to G.S. 143B-262(c), and abide by the  
44 rules adopted for that Program.

- 1 (4) Surrender his driver's license to the clerk of superior court, and not  
2 operate a motor vehicle for a period specified by the court.
- 3 (5) Compensate the Department of Environment, Health, and Natural  
4 Resources or the North Carolina Wildlife Resources Commission, as  
5 the case may be, for the replacement costs of any marine and estuarine  
6 resources or any wildlife resources which were taken, injured,  
7 removed, harmfully altered, damaged or destroyed as a result of a  
8 criminal offense of which the defendant was convicted. If any  
9 investigation is required by officers or agents of the Department of  
10 Environment, Health, and Natural Resources or the Wildlife Resources  
11 Commission in determining the extent of the destruction of resources  
12 involved, the court may include compensation of the agency for  
13 investigative costs as a condition of probation. This subdivision does  
14 not apply in any case governed by G.S. 143-215.3(a)(7).
- 15 (6) Perform community or reparation service and pay any fee required by  
16 law or ordered by the court for participation in the community or  
17 reparation service program.
- 18 (7) Submit at reasonable times to warrantless searches by a probation  
19 officer of his person and of his vehicle and premises while he is  
20 present, for purposes specified by the court and reasonably related to  
21 his probation supervision, but the probationer may not be required to  
22 submit to any other search that would otherwise be unlawful.  
23 Whenever the warrantless search consists of testing for the presence of  
24 illegal drugs, the probationer may also be required to reimburse the  
25 Department of Correction for the actual cost of drug screening and  
26 drug testing, if the results are positive.
- 27 (8) Not use, possess, or control any illegal drug or controlled substance  
28 unless it has been prescribed for him by a licensed physician and is in  
29 the original container with the prescription number affixed on it; not  
30 knowingly associate with any known or previously convicted users,  
31 possessors or sellers of any such illegal drugs or controlled substances;  
32 and not knowingly be present at or frequent any place where such  
33 illegal drugs or controlled substances are sold, kept, or used.
- 34 (8a) Purchase the least expensive annual statewide license or combination  
35 of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3,  
36 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to  
37 engage lawfully in the specific activity or activities in which the  
38 defendant was engaged and which constitute the basis of the offense or  
39 offenses of which he was convicted.
- 40 (9) If the offense is one in which there is evidence of physical, mental or  
41 sexual abuse of a minor, the court should encourage the minor and the  
42 minor's parents or custodians to participate in rehabilitative treatment  
43 and may order the defendant to pay the cost of such treatment.

1           (9a) If the defendant is required to register in accordance with Article 27A  
2           of Chapter 14 of the General Statutes, the court may require a posting  
3           of a sign by the defendant at his residence warning others that the  
4           defendant has been determined to be a sex offender.

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

7           (c) Statement of Conditions. – A defendant released on supervised probation  
8           must be given a written statement explicitly setting forth the conditions on which he is  
9           being released. If any modification of the terms of that probation is subsequently made,  
10          he must be given a written statement setting forth the modifications.

11          (c1) Supervision Fee. – Any person placed on supervised probation pursuant to  
12          subsection (a) shall pay a supervision fee of twenty dollars (\$20.00) per month, unless  
13          exempted by the court. The court may exempt a person from paying the fee only for  
14          good cause and upon written motion of the person placed on supervised probation. No  
15          person shall be required to pay more than one supervision fee per month. The court  
16          may require that the fee be paid in advance or in a lump sum or sums, and a probation  
17          officer may require payment by such methods if he is authorized by subsection (g) to  
18          determine the payment schedule. Supervision fees must be paid to the clerk of court for  
19          the county in which the judgment was entered or the deferred prosecution agreement  
20          was filed. Fees collected under this subsection shall be transmitted to the State for  
21          deposit into the State's General Fund.

22          (d) Restitution as a Condition of Probation. – As a condition of probation, a  
23          defendant may be required to make restitution or reparation to an aggrieved party or  
24          parties who shall be named by the court for the damage or loss caused by the defendant  
25          arising out of the offense or offenses committed by the defendant. When restitution or  
26          reparation is a condition imposed, the court shall take into consideration the resources of  
27          the defendant, including all real and personal property owned by the defendant and the  
28          income derived from such property, his ability to earn, his obligation to support  
29          dependents, and such other matters as shall pertain to his ability to make restitution or  
30          reparation, but the court is not required to make findings of fact or conclusions of law  
31          on these matters when the sentence is imposed. The amount must be limited to that  
32          supported by the record, and the court may order partial restitution or reparation when it  
33          appears that the damage or loss caused by the offense or offenses is greater than that  
34          which the defendant is able to pay. An order providing for restitution or reparation shall  
35          in no way abridge the right of any aggrieved party to bring a civil action against the  
36          defendant for money damages arising out of the offense or offenses committed by the  
37          defendant, but any amount paid by the defendant under the terms of an order as  
38          provided herein shall be credited against any judgment rendered against the defendant in  
39          such civil action. As used herein, 'restitution' shall mean (i) compensation for damage  
40          or loss as could ordinarily be recovered by an aggrieved party in a civil action, and (ii)  
41          reimbursement to the State for the total amount of a judgment authorized by G.S. 7A-  
42          455(b). As used herein, 'reparation' shall include but not be limited to the performing of  
43          community services, volunteer work, or doing such other acts or things as shall aid the  
44          defendant in his rehabilitation. As used herein 'aggrieved party' includes individuals,

1 firms, corporations, associations, other organizations, and government agencies,  
2 whether federal, State or local, including the Crime Victims Compensation Fund  
3 established by G.S. 15B-23. Provided, that no government agency shall benefit by way  
4 of restitution except for particular damage or loss to it over and above its normal  
5 operating costs and except that the State may receive restitution for the total amount of a  
6 judgment authorized by G.S. 7A-455(b). A government agency may benefit by way of  
7 reparation even though the agency was not a party to the crime provided that when  
8 reparation is ordered, community service work shall be rendered only after approval has  
9 been granted by the owner or person in charge of the property or premises where the  
10 work will be done. Provided further, that no third party shall benefit by way of  
11 restitution or reparation as a result of the liability of that third party to pay indemnity to  
12 an aggrieved party for the damage or loss caused by the defendant, but the liability of a  
13 third party to pay indemnity to an aggrieved party or any payment of indemnity actually  
14 made by a third party to an aggrieved party does not prohibit or limit in any way the  
15 power of the court to require the defendant to make complete and full restitution or  
16 reparation to the aggrieved party for the total amount of the damage or loss caused by  
17 the defendant. Restitution or reparation measures are ancillary remedies to promote  
18 rehabilitation of criminal offenders, to provide for compensation to victims of crime,  
19 and to reimburse the Crime Victims Compensation Fund established by G.S. 15B-23,  
20 and shall not be construed to be a fine or other punishment as provided for in the  
21 Constitution and laws of this State.

22 (e) Costs of Court and Appointed Counsel. – Unless the court finds there are  
23 extenuating circumstances, any person placed upon supervised or unsupervised  
24 probation under the terms set forth by the court shall, as a condition of probation, be  
25 required to pay all court costs and costs for appointed counsel or public defender in the  
26 case in which he was convicted. The court shall determine the amount due and the  
27 method of payment.

28 (f) Repealed by Session Laws 1983, ch. 561, s. 5.

29 (g) Probation Officer May Determine Payment Schedules. – If a person placed on  
30 supervised probation is required as a condition of that probation to pay any moneys to  
31 the clerk of superior court, the court may delegate to a probation officer the  
32 responsibility to determine the payment schedule. The court may also authorize the  
33 probation officer to transfer the person to unsupervised probation after all the moneys  
34 are paid to the clerk. If the probation officer transfers a person to unsupervised  
35 probation, he must notify the clerk of that action."

36 Sec. 4. G.S. 15A-1334 is amended by adding a new subsection to read:

37 "(f) The Court shall in all cases where a defendant is convicted of an offense  
38 which requires registration pursuant to the provisions of G.S. 14-208.5 make findings of  
39 fact to determine the degree of risk of re-offense by the defendant upon release from  
40 custody. Relevant factors to be considered shall include, but not be limited to:

41 (1) Conditions of release that minimize risk of re-offense, including, but  
42 not limited to, whether the offender is under supervision of probation  
43 or parole; receiving counseling, therapy, or treatment; or residing in a  
44 home situation that provides guidance and supervision;

- 1           (2) Physical conditions that minimize risk of re-offense, including, but not  
2           limited to, advanced age or debilitating illness;  
3           (3) Criminal history factors indicative of high risk of re-offense,  
4           including:  
5           a. Whether the offender's conduct was found to be characterized  
6           by repetitive and compulsive behavior;  
7           b. Whether the offender served the maximum term; and  
8           c. Whether the offender committed the sex offense against a child;  
9           (4) Other criminal history factors to be considered in determining risk,  
10           including:  
11           a. The relationship between the offender and the victim;  
12           b. Whether the offense involved the use of a weapon, violence, or  
13           infliction of serious bodily injury; and  
14           c. The number, date, and nature of prior offenses;  
15           (5) Whether psychological or psychiatric profiles indicate a risk of  
16           recidivism;  
17           (6) The offender's response to treatment;  
18           (7) Recent behavior, including behavior while confined or while under  
19           supervision in the community as well as behavior in the community  
20           following service of sentence; and  
21           (8) Recent threats against persons or expressions of intent to commit  
22           additional crimes.

23           The court shall classify the risk of re-offense as either low, moderate, or high. If the  
24           risk of re-offense is low, no reporting action other than compliance with the registration  
25           provisions of G.S. 14-208.5 shall be ordered. If the risk of re-offense is moderate, the  
26           court shall order that upon the defendant's release from custody the sheriff of the county  
27           where the offender has registered pursuant to the provisions of G.S. 14-208.5 shall  
28           notify organizations in the county including schools and religious and youth  
29           organizations in accordance with guidelines to be established by the Administrative  
30           Office of the Courts. If the risk of re-offense is high, then the court shall order that  
31           upon the defendant's release from custody the sheriff of the county where the offender  
32           has registered pursuant to the provisions of G.S. 14-208.5 shall notify the public in  
33           accordance with guidelines to be established by the Administrative Office of the Courts.

34           The Administrative Office of the Courts guidelines established pursuant to this  
35           section shall provide for the manner in which records of notification provided pursuant  
36           to this section shall be maintained and disclosed."

37           Sec. 5. This act is effective upon ratification, except that registration referred  
38 to under Section 1 of this act becomes effective July 1, 1996. This act applies to all  
39 persons convicted before, on, or after ratification.