

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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HOUSE BILL 28*

Short Title: Up Penalties/Sex Offenses With Child Victim. (Public)

Sponsors: Representatives Ray, Goforth, Spear (Primary Sponsors); Alexander, Allen, Almond, Barnhart, Blust, Brown, Cleveland, Cole, Coleman, Cunningham, Current, Faison, Farmer-Butterfield, Folwell, Frye, Gillespie, Hilton, Howard, Hurley, Johnson, Justus, Kiser, Langdon, Lewis, McGee, McLawhorn, Mobley, Moore, Parmon, Pate, Rapp, Setzer, Starnes, Steen, Tarleton, Thomas, Tillis, Underhill, Walend, R. Warren, Wiley, Wilkins, and Wray.

Referred to: Rules, Calendar, and Operations of the House.

January 30, 2007

A BILL TO BE ENTITLED

1
2 AN ACT TO AMEND CERTAIN CHILD PORNOGRAPHY LAWS BY AMENDING
3 THE DEFINITION OF SEXUAL ACTIVITY AND EXPANDING THE SCOPE
4 OF CERTAIN PORNOGRAPHY LAWS, INCREASING THE PENALTY FOR
5 FIRST, SECOND, AND THIRD DEGREE SEXUAL EXPLOITATION OF A
6 MINOR, INCREASING THE PENALTY FOR SOLICITATION OF A CHILD BY
7 COMPUTER TO COMMIT AN UNLAWFUL SEX ACT, AND INCREASING
8 THE PENALTY FOR A SECOND OR SUBSEQUENT OFFENSE OF TAKING
9 INDECENT LIBERTIES WITH CHILDREN.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** G.S. 14-190.13(5) reads as rewritten:

12 "(5) Sexual Activity. – Any of the following acts:

- 13 a. Masturbation, whether done alone or with another human or an
14 animal.
- 15 b. Vaginal, anal, or oral intercourse, whether done with another
16 human or with an animal.
- 17 c. Touching, in an act of apparent sexual stimulation or sexual
18 abuse, of the clothed or unclothed genitals, pubic area, or
19 buttocks of another person or the clothed or unclothed breasts
20 of a human female.
- 21 d. An act or condition that depicts torture, physical restraint by
22 being fettered or bound, or flagellation of or by a person clad in
23 undergarments or in revealing or bizarre costume.

- 1 e. Excretory functions; provided, however, that this
2 sub-subdivision shall not apply to G.S. 14-190.17A.
- 3 f. The insertion of any part of a person's body, other than the male
4 sexual organ, or of any object into another person's anus or
5 vagina, except when done as part of a recognized medical
6 procedure.
- 7 g. The lascivious exhibition of the genitals or pubic area of any
8 person."

9 **SECTION 2.** G.S. 14-190.15 reads as rewritten:

10 **"§ 14-190.15. Disseminating harmful material to minors; exhibiting harmful**
11 **performances to minors.**

12 (a) Disseminating Harmful Material. – A ~~person~~defendant commits the offense
13 of disseminating harmful material to minors if, with or without consideration and
14 knowing the character or content of the material, ~~he~~the defendant:

- 15 (1) Sells, furnishes, presents, or distributes to a ~~minor~~minor, or a person
16 the defendant believes to be a minor, material that is harmful to
17 minors; or
- 18 (2) Allows a ~~minor~~minor, or a person the defendant believes to be a
19 minor, to review or peruse material that is harmful to minors.

20 (b) Exhibiting Harmful Performance. – A ~~person~~defendant commits the offense
21 of exhibiting a harmful performance to a minor if, with or without consideration and
22 knowing the character or content of the performance, ~~he~~the defendant allows a ~~minor~~
23 minor, or a person the defendant believes to be a minor, to view a live performance that
24 is harmful to minors.

25 (c) Defenses. – Except as provided in subdivision (3), a mistake of age is not a
26 defense to a prosecution under this section. It is an affirmative defense to a prosecution
27 under this section that:

- 28 (1) The defendant was a parent or legal guardian of the minor.
- 29 (2) The defendant was a school, church, museum, public library,
30 governmental agency, medical clinic, or hospital carrying out its
31 legitimate function; or an employee or agent of such an organization
32 acting in that capacity and carrying out a legitimate duty of his
33 employment.
- 34 (3) Before disseminating or exhibiting the harmful material or
35 performance, the defendant requested and received a driver's license,
36 student identification card, or other official governmental or
37 educational identification card or paper indicating that the minor to
38 whom the material or performance was disseminated or exhibited was
39 at least 18 years old, and the defendant reasonably believed the minor
40 was at least 18 years old.
- 41 (4) The dissemination was made with the prior consent of a parent or
42 guardian of the recipient.

43 (d) Punishment. – Violation of this section is a Class 1 misdemeanor."

44 **SECTION 3.** G.S. 14-190.16(d) reads as rewritten:

1 "(d) Punishment and Sentencing. – Violation of this section is a ~~Class D~~
2 ~~felony.~~Class C felony."

3 **SECTION 4.** G.S. 14-190.17(d) reads as rewritten:

4 "(d) Punishment and Sentencing. – Violation of this section is a ~~Class F~~
5 ~~felony.~~Class D felony."

6 **SECTION 5.** G.S. 14-190.17A(d) reads as rewritten:

7 "(d) Punishment and Sentencing. – Violation of this section is a ~~Class I~~
8 ~~felony.~~Class E felony."

9 **SECTION 6.** G.S. 14-202.3(c) reads as rewritten:

10 "(c) Punishment. – A violation of this section is a ~~Class H felony.~~Class E felony."

11 **SECTION 7.** G.S. 14-202.1 reads as rewritten:

12 "**§ 14-202.1. Taking indecent liberties with children.**

13 (a) A person is guilty of taking indecent liberties with children if, being 16 years
14 of age or more and at least five years older than the child in question, he either:

- 15 (1) Willfully takes or attempts to take any immoral, improper, or indecent
16 liberties with any child of either sex under the age of 16 years for the
17 purpose of arousing or gratifying sexual desire; or
18 (2) Willfully commits or attempts to commit any lewd or lascivious act
19 upon or with the body or any part or member of the body of any child
20 of either sex under the age of 16 years.

21 (b) Taking indecent liberties with children is punishable as ~~a Class F~~
22 ~~felony.~~follows:

- 23 (1) For a first offense under this section, the person is guilty of a Class F
24 felony.
25 (2) For a second or subsequent offense under this section, the person is
26 guilty of a Class E felony.

27 (c) In all cases where a person is charged under this section with a second or
28 subsequent offense, the record of a prior conviction under this section shall be
29 admissible in evidence, but only for the purpose of proving that the person has been
30 convicted of taking indecent liberties with children in violation of this section. A prior
31 conviction may be proved by stipulation of the parties or by the original or a certified
32 copy of the court record of the prior conviction. The original or certified copy of the
33 court record, bearing the same name as that by which the defendant is charged, shall be
34 prima facie evidence that the defendant named therein is the same as the defendant
35 before the court, and shall be prima facie evidence of the facts set out therein."

36 **SECTION 8.** This act becomes effective December 1, 2007, and applies to
37 offenses committed on or after that date.