

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 29

Short Title: Sex Offender GPS/DOC Requests. (Public)

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

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

January 30, 2007

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY THE PROCEDURE FOR SATELLITE-BASED
2 MONITORING OF SEX OFFENDERS AND TO MAKE OTHER CHANGES TO
3 THE SEX OFFENDER LAWS.
4

5 The General Assembly of North Carolina enacts:

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

7 **"§ 14-208.40. Establishment of program; creation of guidelines; duties.**

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

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

21 (2) Any offender who satisfies all of the following criteria: (i) is
22 convicted of a reportable conviction as defined by G.S. 14-208.6(4),
23 (ii) is required to register under Part 2 of Article 27A of Chapter 14 of
24 the General Statutes, (iii) has committed an offense involving the

1 physical, mental, or sexual abuse of a minor, and (iv) based on the
2 Department's risk assessment program requires the highest possible
3 level of supervision and monitoring. ~~An offender in this category who
4 is ordered by the court to submit to satellite-based monitoring is
5 subject to that requirement only for the period of time ordered by the
6 court and is not subject to a requirement of lifetime satellite-based
7 monitoring.~~

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

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

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

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

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

29 **"§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

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

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

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

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

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

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

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

17 **"§ 14-208.40B. Determination of satellite-based monitoring requirement in certain**
18 **circumstances; right to hearing.**

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

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

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

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

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

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

41 **"§ 14-208.40C. Requirements of enrollment.**

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

1 (b) Any offender required to enroll in satellite-based monitoring pursuant to
2 G.S. 14-208.33A who receives an intermediate sentence shall, immediately upon
3 sentencing, report to the Division of Community Corrections for enrollment in the
4 satellite-based monitoring program, and, if necessary, shall return at any time
5 designated by that Division to receive the appropriate equipment. If the intermediate
6 sentence includes a required period of imprisonment, the offender shall not be required
7 to be enrolled in the satellite-based monitoring program during the period of
8 imprisonment.

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

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

16 **"§ 14-208.40D. Notification of certain offenders.**

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

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

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

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

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

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

1 offender is required to enroll pursuant to G.S. 14-208.34(b). The offender shall remain
2 on unsupervised probation unless the requirement that the person enroll in a
3 satellite-based monitoring program is terminated pursuant to
4 G.S. 14-208.36, G.S. 14-208.36, or the period set by the court expires."

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

6 "**§ 14-208.44. Failure to enroll; tampering with device.**

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

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

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

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

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

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

- 1 (11) At a time to be designated by his probation officer, visit with his
2 probation officer a facility maintained by the Division of Prisons.
- 3 (12) Attend and complete an abuser treatment program if (i) the court finds
4 the defendant is responsible for acts of domestic violence and (ii) there
5 is a program, approved by the Domestic Violence Commission,
6 reasonably available to the defendant, unless the court finds that such
7 would not be in the best interests of justice.

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

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

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

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

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

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

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

1 the court expressly finds that it is unlikely that the defendant's harmful
2 or abusive conduct will recur and that it would be in the minor child's
3 best interest to allow the probationer to reside in the same household
4 with a minor child.

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

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

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

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

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

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

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

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

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

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

1 **SECTION 11.** Section 2 of this act becomes effective December 1, 2007,
2 and applies to sentences entered on or after that date. Section 7 of this act becomes
3 effective December 1, 2007, and applies to offenses committed on or after that date.
4 Sections 8 and 9 of this act become effective December 1, 2007, and apply to persons
5 placed on probation on or after that date. The remainder of this act is effective when it
6 becomes law.