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SENATE BILL 1736*
Judiciary I (Civil) Committee Substitute Adopted 6/10/08
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Short Title: Sex Offender/Register E-Mail Address.-AB

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

1 AN ACT TO ADD FELONY CHILD ABUSE TO THE LIST OF SEX OFFENDER
2 REGISTRY OFFENSES WHEN THE OFFENSE INVOLVES PROSTITUTION
3 OF A JUVENILE OR THE COMMISSION OF A SEXUAL ACT UPON A
4 JUVENILE, TO REQUIRE THAT A SEX OFFENDER REGISTER HIS OR HER
5 ELECTRONIC MAIL ADDRESS OR OTHER ONLINE IDENTIFIER IN THE
6 STATEWIDE SEX OFFENDER REGISTRY, TO ALLOW LIMITED RELEASE
7 OF ONLINE IDENTIFIER INFORMATION IN THE SEX OFFENDER
8 REGISTRY TO CERTAIN ENTITIES THAT PROVIDE ELECTRONIC MAIL
9 SERVICES AND OTHER INTERNET SERVICES FOR THE PURPOSE OF
10 SCREENING ONLINE USERS, TO DIRECT THE ADMINISTRATIVE OFFICE
11 OF THE COURTS TO DEVELOP PROCEDURES TO ENSURE TIMELY
12 NOTIFICATION OF THE DIVISION OF CRIMINAL INFORMATION AND
13 SHERIFFS OF PERSONS REQUIRED TO REGISTER WHO ARE NOT
14 SENTENCED TO ACTIVE TIME, AND TO AUTHORIZE FUNDS FOR THE
15 GOVERNOR'S CRIME COMMISSION TO USE TO AWARD AS MATCHING
16 GRANTS TO ELIGIBLE SHERIFFS' OFFICES TO ENHANCE AND SUPPORT
17 THEIR EFFORTS TO ENFORCE THE STATE'S SEX OFFENDER LAWS.

18 The General Assembly of North Carolina enacts:

19 **SECTION 1.** G.S. 14-208.6 reads as rewritten:

20 **"§ 14-208.6. Definitions.**

21 The following definitions apply in this Article:

22 (1a) "Aggravated offense" means any criminal offense that includes either
23 of the following: (i) engaging in a sexual act involving vaginal, anal,
24 or oral penetration with a victim of any age through the use of force or
25 the threat of serious violence; or (ii) engaging in a sexual act involving
26

- 1 vaginal, anal, or oral penetration with a victim who is less than 12
2 years old.
- 3 (1b) "County registry" means the information compiled by the sheriff of a
4 county in compliance with this Article.
- 5 (1c) "Division" means the Division of Criminal Information of the
6 Department of Justice.
- 7 (1d) "Electronic mail" means the transmission of information or
8 communication by the use of the Internet, a computer, a facsimile
9 machine, a pager, a cellular telephone, a video recorder, or other
10 electronic means sent to a person identified by a unique address or
11 address number and received by that person.
- 12 ~~(1d)~~(1e) "Employed" includes employment that is full-time or part-time for a
13 period of time exceeding 14 days or for an aggregate period of time
14 exceeding 30 days during any calendar year, whether financially
15 compensated, volunteered, or for the purpose of government or
16 educational benefit.
- 17 (1f) "Entity" means a business or organization that provides Internet
18 service, electronic communications service, remote computing service,
19 online service, electronic mail service, or electronic instant message or
20 chat services whether the business or organization is within or outside
21 the State.
- 22 (1g) "Instant Message" means a form of real-time text communication
23 between two or more people. The communication is conveyed via
24 computers connected over a network such as the Internet.
- 25 ~~(1e)~~(1h) "Institution of higher education" means any postsecondary public or
26 private educational institution, including any trade or professional
27 institution, college, or university.
- 28 (1i) "Internet" means the global information system that is logically linked
29 together by a globally unique address space based on the Internet
30 Protocol or its subsequent extensions; that is able to support
31 communications using the Transmission Control Protocol/Internet
32 Protocol suite, its subsequent extensions, or other Internet Protocol
33 compatible protocols; and that provides, uses, or makes accessible,
34 either publicly or privately, high-level services layered on the
35 communications and related infrastructure described in this
36 subdivision.
- 37 ~~(1f)~~(1j) "Mental abnormality" means a congenital or acquired condition of a
38 person that affects the emotional or volitional capacity of the person in
39 a manner that predisposes that person to the commission of criminal
40 sexual acts to a degree that makes the person a menace to the health
41 and safety of others.
- 42 ~~(1g)~~(1k) "Nonresident student" means a person who is not a resident of North
43 Carolina but who is enrolled in any type of school in the State on a
44 part-time or full-time basis.

1 ~~(4h)~~(11) "Nonresident worker" means a person who is not a resident of North
2 Carolina but who has employment or carries on a vocation in the State,
3 on a part-time or full-time basis, with or without compensation or
4 government or educational benefit, for more than 14 days, or for an
5 aggregate period exceeding 30 days in a calendar year.

6 ~~(4i)~~(1m) "Offense against a minor" means any of the following offenses if the
7 offense is committed against a minor, and the person committing the
8 offense is not the minor's parent: G.S. 14-39 (kidnapping), G.S. 14-41
9 (abduction of children), and G.S. 14-43.3 (felonious restraint). The
10 term also includes the following if the person convicted of the
11 following is not the minor's parent: a solicitation or conspiracy to
12 commit any of these offenses; aiding and abetting any of these
13 offenses.

14 (1n) "Online identifier" means electronic mail address, instant message
15 screen name, user ID, chat or other Internet communication name, but
16 it does not mean social security number, date of birth, or pin number.

17 (2) "Penal institution" means:

- 18 a. A detention facility operated under the jurisdiction of the
19 Division of Prisons of the Department of Correction;
20 b. A detention facility operated under the jurisdiction of another
21 state or the federal government; or
22 c. A detention facility operated by a local government in this State
23 or another state.

24 (2a) "Personality disorder" means an enduring pattern of inner experience
25 and behavior that deviates markedly from the expectations of the
26 individual's culture, is pervasive and inflexible, has an onset in
27 adolescence or early adulthood, is stable over time, and leads to
28 distress or impairment.

29 (2b) "Recidivist" means a person who has a prior conviction for an offense
30 that is described in G.S. 14-208.6(4).

31 (3) "Release" means discharged or paroled.

32 (4) "Reportable conviction" means:

- 33 a. A final conviction for an offense against a minor, a sexually
34 violent offense, or an attempt to commit any of those offenses
35 unless the conviction is for aiding and abetting. A final
36 conviction for aiding and abetting is a reportable conviction
37 only if the court sentencing the individual finds that the
38 registration of that individual under this Article furthers the
39 purposes of this Article as stated in G.S. 14-208.5.

- 40 b. A final conviction in another state of an offense, which if
41 committed in this State, is substantially similar to an offense
42 against a minor or a sexually violent offense as defined by this
43 section, or a final conviction in another state of an offense that

- 1 requires registration under the sex offender registration statutes
2 of that state.
- 3 c. A final conviction in a federal jurisdiction (including a court
4 martial) of an offense, which is substantially similar to an
5 offense against a minor or a sexually violent offense as defined
6 by this section.
- 7 d. A final conviction for a violation of G.S. 14-202(d), (e), (f), (g),
8 or (h), or a second or subsequent conviction for a violation of
9 G.S. 14-202(a), (a1), or (c), only if the court sentencing the
10 individual issues an order pursuant to G.S. 14-202(l) requiring
11 the individual to register.
- 12 (5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first
13 degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first
14 degree sexual offense), G.S. 14-27.5 (second degree sexual offense),
15 G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual
16 offense), G.S. 14-27.7 (intercourse and sexual offense with certain
17 victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person
18 who is 13-, 14-, or 15-years-old where the defendant is at least six
19 years older), G.S. 14-43.13 (subjecting or maintaining a person for
20 sexual servitude), G.S. 14-178 (incest between near relatives),
21 G.S. 14-190.6 (employing or permitting minor to assist in offenses
22 against public morality and decency), G.S. 14-190.9(a1)(felonious
23 indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of
24 a minor), G.S. 14-190.17 (second degree sexual exploitation of a
25 minor), G.S. 14-190.17A (third degree sexual exploitation of a minor),
26 G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19
27 (participating in the prostitution of a minor), G.S. 14-202.1 (taking
28 indecent liberties with children), or G.S. 14-202.3 (Solicitation of child
29 by computer to commit an unlawful sex ~~act~~-act), G.S. 14-318.4(a1)
30 (parent or caretaker commit or permit act of prostitution with or by a
31 juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act
32 upon a juvenile by parent or guardian). The term also includes the
33 following: a solicitation or conspiracy to commit any of these offenses;
34 aiding and abetting any of these offenses.
- 35 (6) "Sexually violent predator" means a person who has been convicted of
36 a sexually violent offense and who suffers from a mental abnormality
37 or personality disorder that makes the person likely to engage in
38 sexually violent offenses directed at strangers or at a person with
39 whom a relationship has been established or promoted for the primary
40 purpose of victimization.
- 41 (7) "Sheriff" means the sheriff of a county in this State.
- 42 (8) "Statewide registry" means the central registry compiled by the
43 Division in accordance with G.S. 14-208.14.

1 (9) "Student" means a person who is enrolled on a full-time or part-time
2 basis, in any postsecondary public or private educational institution,
3 including any trade or professional institution, or other institution of
4 higher education."

5 **SECTION 2.** G.S. 14-208.7(b) reads as rewritten:

6 "(b) The Division shall provide each sheriff with forms for registering persons as
7 required by this Article. The registration form shall ~~require~~:require all of the following:

8 (1) The person's full name, each alias, date of birth, sex, race, height,
9 weight, eye color, hair color, drivers license number, and home
10 ~~address~~:address.

11 (2) The type of offense for which the person was convicted, the date of
12 conviction, and the sentence ~~imposed~~:imposed.

13 (3) A current ~~photograph~~:photograph taken by the sheriff, without charge,
14 at the time of registration.

15 (4) The person's ~~fingerprints~~:fingerprints taken by the sheriff, without
16 charge, at the time of registration.

17 (5) A statement indicating whether the person is a student or expects to
18 enroll as a student within a year of registering. If the person is a
19 student or expects to enroll as a student within a year of registration,
20 then the registration form shall also require the name and address of
21 the educational institution at which the person is a student or expects
22 to enroll as a ~~student~~:and student.

23 (6) A statement indicating whether the person is employed or expects to
24 be employed at an institution of higher education within a year of
25 registering. If the person is employed or expects to be employed at an
26 institution of higher education within a year of registration, then the
27 registration form shall also require the name and address of the
28 educational institution at which the person is or expects to be
29 employed.

30 (7) Any online identifier that the person uses or intends to use.

31 ~~The sheriff shall photograph the individual at the time of registration and take~~
32 ~~fingerprints from the individual at the time of registration both of which will be kept as~~
33 ~~part of the registration form. The registrant will not be required to pay any fees for the~~
34 ~~photograph or fingerprints taken at the time of registration."~~

35 **SECTION 3.** G.S. 14-208.8(a) reads as rewritten:

36 "(a) At least 10 days, but not earlier than 30 days, before a person who will be
37 subject to registration under this Article is due to be released from a penal institution, an
38 official of the penal institution ~~shall~~:shall do all of the following:

39 (1) Inform the person of the person's duty to register under this Article and
40 require the person to sign a written statement that the person was so
41 informed or, if the person refuses to sign the statement, certify that the
42 person was so ~~informed~~:informed.

- 1 (2) Obtain the registration information required under G.S. 14-208.7(b)(1),
2 (2), (5), ~~and (6), (6), and (7)~~, as well as the address where the person
3 expects to reside upon the person's ~~release; and~~ release.
- 4 (3) Send the Division and the sheriff of the county in which the person
5 expects to reside the information collected in accordance with
6 subdivision (2) of this subsection."

7 **SECTION 4.** The catch line for G.S. 14-208.9 reads as rewritten:

8 "**§ 14-208.9. Change of address; change of academic status or educational**
9 **employment status; status; change of online identifier.**"

10 **SECTION 5.** G.S. 14-208.9 is amended by adding a new subsection to read:

11 "(e) If a person required to register changes an online identifier, or obtains a new
12 online identifier, then the person shall, within 10 days, report in person to the sheriff of
13 the county with whom the person registered to provide the new or changed online
14 identifier information to the sheriff. The sheriff shall immediately forward this
15 information to the Division."

16 **SECTION 6.** G.S. 14-208.9A(a)(3) reads as rewritten:

17 "(3) The verification form shall be signed by the person and shall indicate
18 the following:

- 19 a. ~~whether~~ Whether the person still resides at the address last
20 reported to the sheriff. If the person has a different address, then
21 the person shall indicate that fact and the new address.
- 22 b. Whether the person still uses or intends to use any online
23 identifiers last reported to the sheriff. If the person has any new
24 or different online identifiers, then the person shall provide
25 those online identifiers to the sheriff."

26 **SECTION 7.** G.S. 14-208.11(a) is amended by adding a new subdivision to
27 read:

28 "(10) Fails to inform the registering sheriff of any new or changes to existing
29 online identifiers that the person uses or intends to use."

30 **SECTION 8.** G.S. 14-208.14(a) is amended by adding a new subdivision to
31 read:

32 "(5) To maintain a system allowing an entity to access a list of online
33 identifiers of persons in the central sex offender registry."

34 **SECTION 9.** Part 2 of Article 27A of Chapter 14 of the General Statutes is
35 amended by adding a new section to read:

36 "**§ 14-208.15A. Release of online identifiers to entity; fee.**

37 (a) The Division may release registry information regarding a registered
38 offender's online identifier to an entity for the purpose of allowing the entity to
39 prescreen users or to compare the online identifier information with information held by
40 the entity as provided by this section.

41 (b) An entity desiring to prescreen its users or compare its database of registered
42 users to the list of online identifiers of persons in the statewide registry may apply to the
43 Division to access the information. An entity that complies with the criteria developed
44 by the Division regarding the release and use of the online identifier information and

1 pays the fee may screen new users or compare its database of registered users to the list
2 of online identifiers of persons in the statewide registry as frequently as the Division
3 may allow for the purpose of identifying a registered user associated with an online
4 identifier contained in the statewide registry.

5 (c) The Division may charge an entity that submits a request for the online
6 identifiers of persons in the statewide registry an annual fee of one hundred dollars
7 (\$100.00). Fees collected under this section shall be credited to the Department of
8 Justice and applied to the cost of providing this service.

9 (d) The Division shall develop criteria and adopt rules regarding the release and
10 use of online identifier information. The criteria shall include a requirement that the
11 information obtained from the statewide registry shall not be disclosed for any purpose
12 other than for prescreening its users or comparing the database of registered users of the
13 entity against the list of online identifiers of persons in the statewide registry.

14 (e) An entity that receives:

15 (1) A complaint from a user of the entity's services that a person uses its
16 service to solicit a minor by computer to commit an unlawful sex act
17 as defined in G.S. 14-202.3, or

18 (2) A report that a user may be violating G.S. 14-190.17 or
19 G.S. 14-190.17A by posting or transmitting material that contains a
20 visual representation of a minor engaged in sexual activity,

21 shall report that information and the online identifier information of the person allegedly
22 committing the offense, including whether that online identifier is included in the
23 statewide registry, to the Cyber Tip Line at the National Center for Missing and
24 Exploited Children, which shall forward that report to an appropriate law enforcement
25 official in this State. The offense is committed in the State for purposes of determining
26 jurisdiction, if the transmission that constitutes the offense either originates in the State
27 or is received in the State.

28 (f) An entity that complies with this section in good faith is immune from civil or
29 criminal liability resulting from either of the following:

30 (1) The entity's refusal to provide system service to a person on the basis
31 that the entity reasonably believed that the person was subject to
32 registration under State sex offender registry laws.

33 (2) A person's criminal or tortious acts against a minor with whom the
34 person had communicated on the entity's system."

35 **SECTION 10.** By December 1, 2008, the Administrative Office of the
36 Courts, in consultation with the North Carolina Department of Justice, the North
37 Carolina Department of Correction, and the North Carolina Sheriffs' Association shall
38 develop a procedure to ensure timely notification to the Division of Criminal
39 Information, Department of Justice, and to sheriffs regarding any person subject to
40 registration under Article 27A of Chapter 14 of the General Statutes who does not
41 receive an active term of imprisonment, as specified in G.S. 14-208.7(a).

42 **SECTION 11.(a)** Funds are authorized to be allocated to the Governor's
43 Crime Commission for award as grants to eligible sheriffs' offices to assist with the
44 enforcement of the State's sex offender laws. The grants shall be awarded specifically to

1 enhance and support law efforts by sheriffs to do the following: (i) process and conduct
2 in-person sex offender registrations, (ii) monitor compliance of sex offenders as
3 required under Article 27A of Chapter 14 of the General Statutes, and (iii) conduct
4 activities to investigate and apprehend persons who commit reportable offenses as
5 defined under Article 27A of Chapter 14 of the General Statutes. Eligible sheriffs'
6 offices are required to provide non-State matching funds equal to fifty percent (50%) of
7 the grant amount awarded under this section, one-half of which may be in in-kind
8 contributions.

9 **SECTION 11.(b)** The Commission shall establish the criteria regarding the
10 eligibility and amount of the awards for the grants described in this section. The grant
11 criteria shall include consideration of all of the following:

- 12 (1) The number of convicted sex offenders in the county of the applicant.
- 13 (2) The level of community support for the grant award.
- 14 (3) Whether the application identifies a problem that is consistent with the
15 purposes of this initiative.
- 16 (4) The applicant's development and maintenance of a process to regularly
17 exchange information and intelligence with other public safety
18 agencies.
- 19 (5) Whether the application articulates clearly the jurisdiction's goals,
20 outcomes, and objectives and describes the accountability system and
21 performance measures to determine progress towards achieving them.

22 **SECTION 11.(c)** Any grants allocated shall not revert to the General Fund
23 but shall remain with the Commission for the purposes described in this section.

24 **SECTION 11.(d)** The grant funds described by this section shall
25 supplement, and not supplant, existing funds and services provided for the tracking of
26 registered sex offenders. The grants shall be subject to established fiscal controls,
27 annual reporting, and accountability requirements specified by the Commission.

28 **SECTION 11.(e)** There is appropriated from the General Fund to the
29 Department of Crime Control and Public Safety the sum of two hundred fifty thousand
30 dollars (\$250,000) for fiscal year 2008-2009 to be allocated to the Governor's Crime
31 Commission to award as grants of up to twenty-five thousand dollars (\$25,000) each to
32 eligible sheriffs' offices to assist with the enforcement of the State's sex offender laws.

33 **SECTION 12.** Sections 10 and 12 of this act are effective when they become
34 law. Section 11 of this act becomes effective July 1, 2008. The provision in Section 1
35 of this act amending G.S. 14-208.6(5) becomes effective December 1, 2008, and applies
36 to all persons convicted on or after that date, and to all persons released from a penal
37 institution on or after that date. The remainder of this act becomes effective May 1,
38 2009, and applies to persons who are required to be registered under Article 27A of
39 Chapter 14 of the General Statutes on or after that date. The requirements related to
40 online identifiers apply to persons whose initial registration under Article 27A of
41 Chapter 14 of the General Statutes occurs on or after May 1, 2009, and to persons who
42 are registered under Article 27 of Chapter 14 of the General Statutes prior to May 1,
43 2009, and continue to be registered on May 1, 2009. However, any person registered
44 under Article 27 of Chapter 14 of the General Statutes prior to May 1, 2009, and

1 continuing to be registered on May 1, 2009, shall not be in violation of the online
2 identifier requirements if they provide the required information at the first verification
3 of information that occurs on or after May 1, 2009.