

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1398\*  
Judiciary I Committee Substitute Adopted 7/1/94

Short Title: Sex Offender Registration/Funds.

(Public)

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Sponsors:

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Referred to: Appropriation.

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May 25, 1994

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE THE REGISTRATION OF PERSONS CONVICTED OF  
3 CERTAIN CRIMINAL SEXUAL OFFENSES AND TO APPROPRIATE FUNDS  
4 TO IMPLEMENT THIS ACT.

5 The General Assembly of North Carolina enacts:

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

8 **"ARTICLE 27A.**

9 **"SEXUAL OFFENDER REGISTRATION PROGRAM.**

10 **"§ 14-208.5. Purpose.**

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

22 Therefore, it is the purpose of this Article to assist local law enforcement agencies'  
23 efforts to protect their communities by requiring certain sex offenders to register with

1 local law enforcement agencies, and to require the exchange of relevant information  
2 about sex offenders among law enforcement agencies, and to authorize the access to  
3 necessary and relevant information about sex offenders to authorized employers and  
4 organizations as provided in this Article.

5 **"§ 14-208.6. Definitions.**

6 The following definitions apply in this Article:

7 (1) 'Division' means the Division of Criminal Statistics of the Department  
8 of Justice.

9 (2) 'Penal institution' means a detention facility operated under the  
10 jurisdiction of the Division of Prisons of the Department of Correction,  
11 or a county jail.

12 (3) 'Released' means discharged, paroled, or placed on probation.

13 (4) 'Reportable conviction' means:

14 a. A final conviction for violation of G.S. 14-27.2 (first degree  
15 rape), 14-27.3 (second degree rape), 14-27.4 (first degree sexual  
16 offense), 14-27.5 (second degree sexual offense), 14-27.6  
17 (attempted rape or sexual offense), 14-27.7 (intercourse and  
18 sexual offense with certain victims), 14-178 (incest between  
19 near relatives), 14-190.6 (employing or permitting minor to  
20 assist in offenses against public morality and decency), 14-  
21 190.16 (first degree sexual exploitation of a minor), 14-190.17  
22 (second degree sexual exploitation of a minor), 14-190.17A  
23 (third degree sexual exploitation of a minor), 14-190.18  
24 (promoting prostitution of a minor), 14-190.19 (participating in  
25 prostitution of a minor), or 14-202.1 (taking indecent liberties  
26 with children); or

27 b. A final conviction in another state of an offense, which if  
28 committed in this State, would have been a sex offense as  
29 defined by the sections of the General Statutes set forth in  
30 paragraph a. of this subdivision.

31 (5) 'Sheriff' means the sheriff of a county in this State.

32 **"§ 14-208.7. Registration.**

33 (a) A person who has a reportable conviction pursuant to G.S. 14-208.6, who  
34 has been ordered to register as a sex offender pursuant to the procedure set out in G.S.  
35 14-208.8, shall be required to maintain registration with the sheriff of the county where  
36 the person resides for the period determined by the Court. Persons who have been  
37 ordered to register pursuant to G.S.14-208.8 shall register:

38 (1) Immediately upon entry of the order of the Court determining that the  
39 person shall register; or

40 (2) Within 10 days of release from a penal institution.

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

- 1           (1)   The person's full name, each alias, date of birth, sex, race, height,  
2           weight, eye color, hair color, social security number, drivers license  
3           number, and home address;  
4           (2)   The type of offense for which the person was convicted, the date of  
5           conviction, and the sentence imposed;  
6           (3)   The sheriff shall photograph and take fingerprints from the individual  
7           at the time of the registration both of which will be kept as part of the  
8           registration form. The registrant will not be required to pay any fee for  
9           the photograph or fingerprints taken at the time of registration.

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

14       **"§ 14-208.8. Procedure for requiring registration.**

15       (a)   When a person has been convicted of a reportable conviction as defined by  
16       G.S. 14-208.7(4)a., the Court will conduct a hearing at the time of sentencing to  
17       determine whether or not that person shall be required to register as a sex offender and  
18       if so, for what period of time that person will be required to register. At such hearing  
19       the State and the defendant will have the opportunity to present evidence and arguments  
20       as to whether or not the person should be required to register and if so, for what period  
21       of time.

22       (b)   When it comes to the attention of the District Attorney for a judicial district  
23       of North Carolina that a person from out-of-state has moved into that judicial district  
24       who has a reportable conviction from another state, the District Attorney shall make a  
25       motion in the superior court of that judicial district that a hearing be held to determine  
26       whether or not that person should be required to register and if so, for what period of  
27       time. Such motion shall state the offense of which the person has been convicted, the  
28       date of the conviction, the jurisdiction from which the conviction originates, and to what  
29       reportable conviction in G.S. 14-208.6(4)a. it is comparable. If the Court finds that the  
30       offense is comparable to a reportable conviction enumerated in G.S. 14-208.6(4)a., and  
31       that the person was released from a penal institution or convicted on or after March 1,  
32       1995, the Court shall set a date for a hearing to determine whether or not the person  
33       shall be required to register as a sex offender in North Carolina and if so, for what time  
34       period. The Court shall direct the District Attorney to serve notice of the hearing no  
35       later than 10 days prior to the hearing date on the person who is the subject of the  
36       hearing, informing the person of the date, time, and place of the hearing, and of the right  
37       to be present, present evidence, and be heard.

38       (c)   In determining whether or not a person shall be required to register, the Court  
39       shall consider the following:

- 40           (1)   The nature of the offense.  
41           (2)   The age and condition of the victim.  
42           (3)   Any violence involved in the commission of the offense if such  
43           violence did not constitute evidence necessary to prove an element of  
44           the offense.

- 1           (4) Whether the defendant has entered and is currently involved in a  
2 treatment program.
- 3           (5) Whether the defendant has a good treatment prognosis, and a workable  
4 treatment plan is available.
- 5           (6) The relationship of the defendant to the victim, if any, and whether  
6 that relationship had any likely bearing on the offense being  
7 committed.
- 8           (7) The lack of any prior sexual offenses by the defendant, or history of  
9 prior offenses of a sexual nature.
- 10          (8) The age of the defendant.
- 11          (9) Any other factors reasonably related to the purpose of the sex offender  
12 registration program.

13          (d) If the Court determines that a person shall be required to register as a sex  
14 offender, the Court shall then determine the duration of the time period that the person  
15 shall be required to register consistent with what is reasonably necessary to accomplish  
16 the purpose of the sex offender registration program. The Court shall consider the  
17 factors enumerated in G.S. 14-208.8(c) in making this determination.

18          (e) The Court shall make findings of fact and conclusions of law in support of its  
19 determination that a person shall be required to register and in support of the time  
20 period that the person shall be required to register. These findings shall become a part  
21 of the judgement in the case.

22 **"§ 14-208.9. Prerelease notification.**

23           (a) At least 10 days, but not earlier than 30 days, before a person who will be  
24 subject to registration under this Article is due to be released from a penal institution,  
25 the administrative head of the penal institution, or his or her designee, shall:

- 26           (1) Inform the person of the person's duty to register under this Article and  
27 require the person to sign a written statement that the person was so  
28 informed or, if the person refuses to sign the statement, certify that the  
29 person was so informed;
- 30           (2) Obtain the registration information required under G.S. 14-208.7 (b)(1)  
31 and (2), as well as the address where the person expects to reside upon  
32 the person's release; and
- 33           (3) Send the Division and the sheriff of the county in which the person  
34 expects to reside the information collected in accordance with  
35 subdivision (2) of this subsection.

36 **"§ 14-208.10. Change of address.**

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

43 **"§ 14-208.11. Access to registration information.**

1 (a) The information required for registration under this Article is not a matter of  
2 public record except for use by a law enforcement officer or agency.

3 (b) Entities set forth in G.S. 114-19.2 and G.S. 114-19.3, and any employers or  
4 volunteer groups who are hiring or accepting persons as volunteers who will be working  
5 with minors, the elderly, or incapacitated persons are authorized to obtain information  
6 as to the existence or nonexistence of a person's status as a registrant by requesting the  
7 person seeking the job or volunteer position sign a release of information form which  
8 will be provided by the Division. The release of information form will require the  
9 person to give name, address, date of birth, social security number, and drivers license  
10 number. The employer or organization requesting the information will then mail the  
11 release to the Division, along with information identifying the employer or organization  
12 making the request which shall include the name of the employer or organization  
13 making the request, the nature of the employment the person is seeking, and the purpose  
14 for which the request is being made.

15 (c) The Division shall respond to requests for release of information under this  
16 section by providing the requesting employer or organization with a certified letter or  
17 facsimile stating that the person is not registered or that the person is a registered sex  
18 offender. The certified letter or facsimile from the Division shall state any offenses in  
19 the registry of which the individual has been convicted, the date of the conviction(s) and  
20 the sentence received therefore. The registration information which is provided will  
21 further state that the inquiry is a search based on name only and that other persons may  
22 exist who have the same name, that the information includes data relating to persons  
23 released from prison or convicted on or after March 1, 1995, and that the employer or  
24 organization should not rely solely on this information in making any decision.

25 (d) When an authorized organization or employer has requested that information  
26 be provided by the Division regarding the person's status as a registered sex offender,  
27 upon its receipt by the employer or organization, this information shall be kept  
28 confidential and shall not be redisseminated. Redissemination of registration  
29 information shall give rise to a civil cause of action.

30 **"§ 14-208.12. Failure to register.**

31 A person required by this Article to register who fails to register shall be guilty of a  
32 Class 3 misdemeanor for a first offense in violation of this Article. A second or  
33 subsequent violation of this Article shall be a Class I felony.

34 **"§ 14-208.13. Exemption.**

35 A person who has a reportable conviction may petition the superior court in the  
36 county where the person resides or intends to reside for an exemption from this Article.  
37 The person shall serve a copy of the petition on the district attorney. If the person  
38 shows for good cause, by clear and convincing evidence, that continued registration will  
39 not serve the purposes of this Article, the court shall grant the exemption.

40 When a registered person presents the sheriff with a certified copy of the Court  
41 Order showing that an exemption has been granted, the sheriff shall remove any  
42 information from his records that was obtained pursuant to this Article. The sheriff  
43 shall then notify the Division of the exemption by sending a copy of the exemption to  
44 the Division within three days and the Division shall remove any information from its

1 files obtained pursuant to this Article. The Division shall notify the registered person of  
2 the exemption by letter telling the registrant that exemption has been accomplished.

3 **"§ 14-208.14. File with Police Information Network.**

4 (a) The Division shall include the registration information in the Police  
5 Information Network as set forth in G.S. 114-10.1.

6 (b) The Division shall maintain the registration information permanently even  
7 after the registrant's reporting requirement expires."

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

9 **"§ 114-10. Division of Criminal Statistics.**

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

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

26 (2) To collect, correlate, and maintain access to information that will assist  
27 in the performance of duties required in the administration of criminal  
28 justice throughout the State. This information may include, but is not  
29 limited to, motor vehicle registration, drivers' licenses, wanted and  
30 missing persons, stolen property, warrants, stolen vehicles, firearms  
31 registration, sexual offender registration as provided under Article 27A  
32 of Chapter 14, drugs, drug users and parole and probation histories. In  
33 performing this function, the Division may arrange to use information  
34 available in other agencies and units of State, local and federal  
35 government, but shall provide security measures to insure that such  
36 information shall be made available only to those whose duties,  
37 relating to the administration of justice, require such information.

38 (3) To make scientific study, analysis and comparison from the  
39 information so collected and correlated with similar information  
40 gathered by federal agencies, and to provide the Governor and the  
41 General Assembly with the information so collected biennially, or  
42 more often if required by the Governor.

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

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

3           (6) To promulgate rules and regulations for the administration of this  
4           Article."

5           Sec. 3. There is appropriated from the General Fund to the Department of  
6 Justice for the 1994-95 fiscal year the sum of thirty-two thousand eight hundred ten  
7 dollars (\$32,810) to implement the provisions of this act.

8           Sec. 4. This act becomes effective March 1, 1995. This act applies to all  
9 persons convicted on, or after March 1, 1995, and to all persons released from a penal  
10 institution on or after March 1, 1995.