

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 132

Short Title: Protect Children From Sexual Predators Act. (Public)

Sponsors: Senators Dalton, Snow, Boseman; Apodaca, Brunstetter, Cowell, Dorsett, Goodall, Goss, Hagan, Jones, Queen, Stevens, Tillman, and Weinstein.

Referred to: Judiciary II (Criminal).

February 14, 2007

A BILL TO BE ENTITLED

1
2 AN ACT TO EXPAND THE SCOPE OF CERTAIN PORNOGRAPHY LAWS BY
3 AMENDING THE DEFINITION OF SEXUAL ACTIVITY; TO INCREASE THE
4 PENALTY FOR FIRST, SECOND, AND THIRD DEGREE SEXUAL
5 EXPLOITATION OF A MINOR; TO PROVIDE THAT IT SHALL BE ILLEGAL
6 FOR THE OWNER OR OPERATOR OF A SOCIAL NETWORKING WEB SITE
7 TO ALLOW A MINOR USING A PROTECTED COMPUTER TO CREATE OR
8 MAINTAIN A PROFILE WEB PAGE ON A SOCIAL NETWORKING WEB SITE
9 WITHOUT THE PERMISSION OF THE MINOR'S PARENT OR GUARDIAN
10 AND WITHOUT PROVIDING SUCH PARENT OR GUARDIAN ACCESS TO
11 SUCH PROFILE WEB PAGE AND TO PROVIDE FOR PENALTIES; TO
12 PROVIDE THAT A FILM PROCESSOR, PHOTO FINISHER, OR COMPUTER
13 TECHNICIAN WHO, IN THE COURSE OF WORK, ENCOUNTERS AN IMAGE
14 OF A MINOR ENGAGING IN SEXUAL ACTIVITY MUST REPORT THE
15 NAME OF THE CUSTOMER REQUESTING THE WORK TO THE
16 APPROPRIATE AUTHORITIES; TO INCREASE THE PENALTY FOR
17 CERTAIN OFFENSES OF SOLICITATION OF CHILD BY COMPUTER TO
18 COMMIT AN UNLAWFUL SEX ACT; TO MAKE IT A FELONY TO LIE TO A
19 SWORN SBI AGENT CONDUCTING AN OFFICIAL INVESTIGATION; TO
20 PROVIDE THAT AN INVESTIGATIVE GRAND JURY MAY INVESTIGATE
21 CERTAIN ALLEGED CRIMES IN ADDITION TO THOSE RELATING TO
22 CONTROLLED SUBSTANCES AND TO AMEND THE PROCEDURE FOR
23 CONVENING AN INVESTIGATIVE GRAND JURY.

24 The General Assembly of North Carolina enacts:

25 **SECTION 1.** G.S. 14-190.13 reads as rewritten:

26 "**§ 14-190.13. Definitions for certain offenses concerning minors.**

27 The following definitions apply to G.S. 14-190.14, displaying material harmful to
28 minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or

1 performances; G.S. 14-190.16, first degree sexual exploitation of a minor;
2 G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third
3 degree sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a
4 minor; ~~and~~ G.S. 14-190.19, participating in prostitution of a ~~minor~~ minor, and
5 G.S. 14-190.25, film, digital image, video processor or photo finisher or computer
6 technician to report digital image, video or film or computer images containing pictures
7 of a minor engaging in sexual activity.

- 8 (1) Harmful to Minors. – That quality of any material or performance that
9 depicts sexually explicit nudity or sexual activity and that, taken as a
10 whole, has the following characteristics:
11 a. The average adult person applying contemporary community
12 standards would find that the material or performance has a
13 predominant tendency to appeal to a prurient interest of minors
14 in sex; and
15 b. The average adult person applying contemporary community
16 standards would find that the depiction of sexually explicit
17 nudity or sexual activity in the material or performance is
18 patently offensive to prevailing standards in the adult
19 community concerning what is suitable for minors; and
20 c. The material or performance lacks serious literary, artistic,
21 political, or scientific value for minors.
22 (2) Material. – Pictures, drawings, video recordings, films or other visual
23 depictions or representations but not material consisting entirely of
24 written words.
25 (3) Minor. – An individual who is less than 18 years old and is not
26 married or judicially emancipated.
27 (4) Prostitution. – Engaging or offering to engage in sexual activity with
28 or for another in exchange for anything of value.
29 (5) Sexual Activity. – Any of the following acts:
30 a. Masturbation, whether done alone or with another human or an
31 animal.
32 b. Vaginal, anal, or oral intercourse, whether done with another
33 human or with an animal.
34 c. Touching, in an act of apparent sexual stimulation or sexual
35 abuse, of the clothed or unclothed genitals, pubic area, or
36 buttocks of another person or the clothed or unclothed breasts
37 of a human female.
38 d. An act or condition that depicts torture, physical restraint by
39 being fettered or bound, or flagellation of or by a person clad in
40 undergarments or in revealing or bizarre costume.
41 e. Excretory functions; provided, however, that this
42 sub-subdivision shall not apply to G.S. 14-190.17A.
43 f. The insertion of any part of a person's body, other than the male
44 sexual organ, or of any object into another person's anus or

1 vagina, except when done as part of a recognized medical
2 procedure.

3 g. The lascivious exhibition of the genitals or pubic area of any
4 person.

5 (6) Sexually Explicit Nudity. – The showing of:

6 a. Uncovered, or less than opaquely covered, human genitals,
7 pubic area, or buttocks, or the nipple or any portion of the
8 areola of the human female breast, except as provided in
9 G.S. 14-190.9(b); or

10 b. Covered human male genitals in a discernibly turgid state."

11 **SECTION 2.** G.S. 14-190.16(d) reads as rewritten:

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

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

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

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

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

20 **SECTION 5.** Article 26 of Chapter 14 of the General Statutes is amended by
21 adding a new section to read:

22 "§ 14-190.25. Film, digital image, video processor or photo finisher or computer
23 technician to report digital image, video or film or computer images
24 containing pictures of a minor engaging in sexual activity.

25 (a) Any retail or wholesale film, digital image or video processor or photo
26 finisher who is requested to develop film, digital image or video and any computer
27 technician working with a computer who views an image of a minor or a person who
28 appears to be a minor who is engaging in sexual activity shall report the name and
29 address of the individual requesting the development of the film, or the owner or person
30 in possession of the computer to the Cyber Tip Line at the National Center for Missing
31 and Exploited Children and to the appropriate law enforcement official in the county or
32 municipality in which the image or film was submitted. Any person complying with this
33 section in good faith shall be immune from any civil or criminal liability that might
34 otherwise be incurred as a result of the report.

35 (b) Any person who knowingly fails to report as required by this section is guilty
36 of an infraction punishable by a fine of two hundred fifty dollars (\$250.00)."

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

38 "(c) Punishment. – A violation of this section is a ~~Class H felony.~~punishable as
39 follows:

40 (1) A violation is a Class H felony except as provided by subdivision (2)
41 of this subsection.

42 (2) If either the defendant or the person for whom the defendant was
43 arranging the meeting in violation of this section actually appears at
44 the meeting location, then the violation is a Class E felony."

1 **SECTION 7.** G.S. 14-225 reads as rewritten:

2 "**§ 14-225. False reports to law enforcement agencies or officers.**

3 (a) For purposes of this section, the term "official inquiry" means the pursuit of
4 an investigative matter by a sworn agent of the State Bureau of Investigation pursuant to
5 a statutorily authorized request from the Governor or the Attorney General, assistance
6 rendered in accordance with G.S. 114-14, or an investigation being conducted as a
7 matter of original jurisdiction conferred upon the State Bureau of Investigation by North
8 Carolina law.

9 (b) Any person who shall willfully make or cause to be made to a law
10 enforcement agency or officer any false, misleading or unfounded report, for the
11 purpose of interfering with the operation of a law enforcement agency, or to hinder or
12 obstruct any law enforcement officer in the performance of his duty, shall be guilty of a
13 Class 2 misdemeanor.

14 (c) In response to an official inquiry by a sworn agent of the State Bureau of
15 Investigation, any person who shall willfully do any of the following is guilty of a Class
16 H felony:

17 (1) Falsify or conceal by any trick, scheme, or device a material fact.

18 (2) Make any materially false, fictitious, or fraudulent statement or
19 representation.

20 (3) Use any false writing or document knowing the writing or document to
21 contain any materially false, fictitious, or fraudulent statement or
22 entry."

23 **SECTION 8.** Article 26 of Chapter 14 of the General Statutes is amended by
24 adding a new section to read:

25 "**§ 14-318.5. Requiring parental permission for minors to access social networking**

26 **Web sites.**

27 (a) Definitions. – The following definitions apply in this section:

28 (1) Internet. – 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 (2) Person. – A sole proprietor, partnership, corporation, limited liability
38 company, trust, joint venture, or other legally cognizable entity.

39 (3) Protected computer. – Any computer that, at the time of an alleged
40 violation of any provision of this section involving that computer, was
41 located within the geographic boundaries of the State of North
42 Carolina.

43 (4) Social networking Web site. – A Web site on the Internet that contains
44 profile web pages of the members of the Web site containing the name

1 or nickname of the member, photographs placed on the profile web
2 page by the member, and other personal information about the
3 member; contains links to other profile web pages on the social
4 networking Web site of friends or associates of the member that can be
5 accessed by other members or visitors to the Web site; and provides
6 members of or visitors to the social networking Web site the ability to
7 leave messages or comments on the profile web page that are visible to
8 all or some visitors to the profile web page and may also include a
9 form of electronic mail for members of the social networking Web
10 site.

11 (b) Offense. – It is unlawful for the owner or operator of a social networking
12 Web site to allow a minor using a protected computer to become a member or to create
13 or maintain a profile web page on a social networking Web site without the permission
14 of the minor's parent or guardian and without providing the parent or guardian access to
15 the profile web page at all times. The identity of the parent or guardian shall be verified
16 by comparing the personal information provided by the parent or guardian against
17 information found in databases containing information aggregated about individuals.

18 (c) Penalties. – Any person violating this section shall be punished as follows:

19 (1) On the first offense, a person is guilty of a Class 3 misdemeanor.

20 (2) On the second or subsequent offense, a person is guilty of a Class 1
21 misdemeanor."

22 **SECTION 9.(a)** Chapter 15A of the General Statutes is amended by adding
23 a new section to read:

24 **"§ 15A-632. Investigative grand jury.**

25 (a) Allegations Subject to Investigation. – An investigative grand jury may be
26 convened in accordance with this section to investigate an allegation regarding the
27 commission of or conspiracy to commit any of the following:

28 (1) The misdemeanor or felony offense of obstruction of justice (Common
29 law offense).

30 (2) A violation of G.S. 14-17 (Murder) or G.S. 14-18 (Manslaughter).

31 (3) A violation of G.S. 14-90 (Embezzlement of property received by
32 virtue of office or employment), G.S. 14-100 (Obtaining property by
33 false pretenses), G.S. 14-118.4 (Extortion), or G.S. 14-119 (Forgery of
34 notes, checks, and other securities; counterfeiting of instruments).

35 (4) A violation of G.S. 14-190.6 through G.S. 14-190.8 or G.S. 14-190.14
36 through G.S. 14-190.19 (Relating to the dissemination of certain
37 materials to minors, the use of a minor for obscene purposes, sexual
38 exploitation of a minor, and the promotion of or participation in
39 prostitution of a minor).

40 (5) A violation of G.S. 14-209 (Perjury) or G.S. 14-210 (Subornation of
41 perjury).

42 (6) A violation of Article 29, 30, or 30A of Chapter 14 of the General
43 Statutes (Relating to bribery, obstructing justice, and secret listening),
44 G.S. 14-228 (Buying and selling of offices), G.S. 14-230 (Failing to

1 discharge duties), G.S. 14-234 (Public officers or employees benefiting
2 from public contracts), or G.S. 14-234.1 (Misuse of confidential
3 information).

4 (7) A violation of G.S. 14-254 (Malfeasance of corporation officers and
5 agents).

6 (8) A violation of Article 37 of Chapter 14 of the General Statutes
7 (Relating to lotteries, gaming, bingo, and raffles).

8 (9) A violation of G.S. 90-95(h) or G.S. 90-95.1 (Relating to controlled
9 substances and continuing criminal enterprises).

10 (10) A violation of Article 20, 22, or 22A of Chapter 163 of the General
11 Statutes (Relating to absentee ballots, corrupt practices and other
12 offenses against the elective franchise, and regulation of contributions
13 and expenditures in political campaigns).

14 (b) Appointment of Permanent Three-Judge Panel to Determine Whether to
15 Convene Investigative Grand Jury. – Beginning December 1, 2007, and every two years
16 thereafter, the Chief Justice shall appoint a permanent panel of three superior court
17 judges to determine whether to order an investigative grand jury convened under this
18 section. The panel of judges shall be appointed to serve for a term of two years. The
19 Chief Justice shall fill any vacancy that occurs on the panel before the two-year term
20 ends.

21 (c) Procedure for Determining Whether to Convene Investigative Grand Jury. –
22 A written petition for convening of an investigative grand jury under this section may be
23 filed by the district attorney, the district attorney's designated assistant, or a special
24 prosecutor requested pursuant to G.S. 114-11.6 with the Clerk of the North Carolina
25 Supreme Court. The petition shall be forwarded to the Chief Justice who shall refer the
26 petition to the panel of three judges established under subsection (b) of this section to
27 determine whether to order the grand jury convened. An investigative grand jury under
28 this section may be convened if the three-judge panel determines all of the following:

29 (1) The petition alleges the commission of or a conspiracy to commit any
30 of the offenses listed in subsection (a) of this section, any part of
31 which violation or conspiracy occurred in the county where the
32 proposed investigative grand jury sits or will sit, and that persons
33 named in the petition have knowledge related to the identity of the
34 perpetrators of those crimes but will not divulge that knowledge
35 voluntarily or that such persons request that they be allowed to testify
36 before the grand jury.

37 (2) The affidavit sets forth facts that establish probable cause to believe
38 that the crimes specified in the petition have been committed and
39 reasonable grounds to suspect that the persons named in the petition
40 have knowledge related to the identity of the perpetrators of those
41 crimes.

42 The affidavit shall be based upon personal knowledge or, if the source of the
43 information and basis for the belief are stated, upon information and belief. The panel's
44 order convening the grand jury as an investigative grand jury shall direct the grand jury

1 to investigate the crimes and persons named in the petition, and shall be filed with the
2 Clerk of the North Carolina Supreme Court. A grand jury so convened retains all
3 powers, duties, and responsibilities of a grand jury under this Article. The contents of
4 the petition and the affidavit shall not be disclosed.

5 A grand jury authorized by this section may be convened from an existing grand jury
6 or grand juries authorized by G.S. 15A-622(b) or may be convened as an additional
7 grand jury to an existing grand jury or grand juries. Notwithstanding G.S. 15A-622(b),
8 grand jurors impaneled pursuant to this section shall serve for a period of 12 months,
9 and, if an additional grand jury is convened, 18 persons shall be selected to constitute
10 that grand jury. At any time for cause shown, the presiding superior court judge may
11 excuse a juror temporarily or permanently, and in the latter event the court may impanel
12 another person in place of the juror excused.

13 (d) Investigative Grand Jury Proceedings and Operations. – If an investigative
14 grand jury is convened pursuant to this section, notwithstanding G.S. 15A-623(d), a
15 prosecutor shall be present to examine witnesses, and a court reporter shall be present
16 and record the examination of witnesses. The record shall be transcribed. If the
17 prosecutor determines that it is necessary to compel testimony from the witness, the
18 prosecutor may grant use immunity to the witness. The grant of use immunity shall be
19 given to the witness in writing by the prosecutor and shall be signed by the prosecutor.
20 The written grant of use immunity shall also be read into the record by the prosecutor
21 and shall include an explanation of use immunity as provided in G.S. 15A-1051. A
22 witness shall have the right to leave the grand jury room to consult with the witness's
23 counsel at reasonable intervals and for a reasonable period of time upon the request of
24 the witness. Notwithstanding G.S. 15A-623(e), the record of the examination of
25 witnesses shall be made available to the examining prosecutor, and the prosecutor may
26 disclose contents of the record to other investigative or law enforcement officers, the
27 witness or the witness's attorney to the extent that the disclosure is appropriate to the
28 proper performance of the prosecutor's official duties. The record of the examination of
29 a witness may be used in a trial to the extent that it is relevant and otherwise admissible.
30 Further disclosure of grand jury proceedings convened pursuant to this section may be
31 made upon written order of a superior court judge if the judge determines disclosure is
32 essential:

- 33 (1) To prosecute a witness who appeared before the grand jury for
34 contempt or perjury; or
- 35 (2) To protect a defendant's constitutional rights or statutory rights to
36 discovery pursuant to G.S. 15A-903.

37 Upon the convening of the investigative grand jury pursuant to this section, the
38 district attorney shall subpoena the witnesses. The subpoena shall be served by the
39 investigative grand jury officer, who shall be appointed by the court. The name of the
40 person subpoenaed and the issuance and service of the subpoena shall not be disclosed,
41 except that a witness so subpoenaed may divulge that information. The presiding
42 superior court judge shall hear any matter concerning the investigative grand jury in
43 camera to the extent necessary to prevent disclosure of its existence. The court reporter
44 for the investigative grand jury shall be present and record and transcribe the in camera

1 proceeding. The transcription of any in camera proceeding and a copy of all subpoenas
2 and other process shall be returned to the Chief Justice or to such member of the
3 three-judge panel as the Chief Justice may designate, to be filed with the Clerk of the
4 North Carolina Supreme Court. The subpoena shall otherwise be subject to the
5 provisions of G.S. 15A-801 and Article 43 of Chapter 15A of the General Statutes.
6 When an investigative grand jury has completed its investigation of the crimes alleged
7 in the petition, the investigative functions of the grand jury shall be dissolved and such
8 investigation shall cease. The District Attorney shall file a notice of dissolution of the
9 investigative functions of the grand jury with the Clerk of the North Carolina Supreme
10 Court."

11 **SECTION 9.(b)** G.S. 15A-622(h) is repealed.

12 **SECTION 9.(c)** G.S. 15A-623(h) is repealed.

13 **SECTION 10.** This act becomes effective December 1, 2007, and applies to
14 offenses committed on or after that date.