



NORTH CAROLINA COMMUNITY COLLEGE SYSTEM

Dr. R. Scott Ralls, President

November 13, 2008

IMPORTANT INFORMATION

MEMORANDUM

TO: Members of the State Board of Community Colleges
Community College Presidents
Student Development Administrators
Registrars
Other Interested Parties

FROM: Q. Shanté Martin, General Counsel

**RE: SEX OFFENDERS ON COMMUNITY COLLEGE CAMPUSES
 JESSICA LUNSFORD ACT - Session Law 2008-117, House Bill 933**

The General Assembly of North Carolina has amended Article 27A of Chapter 14 of the North Carolina General Statutes, to add a section entitled "Sex offender unlawfully on premises." The new section number is N.C.G.S. § 14-208.18. This amendment is known as the Jessica Lunsford Act and becomes effective December 1, 2008.

I. Legal analysis

With respect to community colleges, the Jessica Lunsford Act prohibits certain types of sex offenders from "knowingly" being "at any place" where minors gather for "regularly scheduled educational . . . programs" or "on the premises" of any childcare facility on campus. Sex offenders covered under the Jessica Lunsford Act include those convicted of first-degree rape, second-degree rape, first-degree sexual offense, second degree sexual offense, sexual battery, statutory rape, or sexual offense of a person who is 13, 14, or 15 years old. This means that sex offenders covered under the Act would be in violation of the law if they are knowingly "at any place" where minors on community college campuses gather for education programs or are knowingly on the premises of a child care facility.

North Carolina law defines a minor as "any person who has not reached the age of 18 years." N.C.G.S. § 48A-2 (2007). Therefore, pursuant to the Jessica Lunsford Act, covered sex offenders cannot be "at any place" where *any* person under the age of 18 years gathers for educational programs or be on the premises of any child care facilities on our community college campuses.

What constitutes “at any place?” The legislation does not define the phrase, “at any place.” For community college campuses, the most restrictive interpretation of “at any place” for covered sex offenders is that covered sex offenders would be in violation of the law if they were on community college campuses at all since minors gather for regularly scheduled educational programs on community college campuses. However, other sections of the same Article 27A requires covered sex offenders to report to the sheriff’s office with whom he or she is registered if he or she enrolls as a student or becomes employed in an institution of higher education. *See* N.C.G.S. §§ 14-208.9(c) and (d) (2007). These sections indicate that it may not be the General Assembly’s intent to prohibit sex offenders from being students or employees on college campuses. Nonetheless, the language included in the Jessica Lunsford Act has the effect of excluding covered sex offenders from community college campuses.

II. General Counsel’s Recommendation

In light of this explicit, broad prohibition imposed upon certain sex offenders, several people within the community college system have asked, “What are we supposed to do about the Jessica Lunsford Act?” First, it is important to understand that the law is a criminal statute, and the burden of compliance with the law is unequivocally placed solely upon the covered sex offender. Second, the law places no burden on the community college to take any action against a sex offender in violation of this law. **Thus, I recommend that community college officials take no affirmative acts to identify or otherwise initiate any direct actions against any sex offender that may be in violation of the Jessica Lunsford Act.**

Since the Jessica Lunsford Act is a criminal statute, I recommend that community college officials treat a violation of the Jessica Lunsford Act like they treat any other violation of a criminal law. If community college officials notify law enforcement when they become aware of a possible criminal violation, then they should follow the same practice if they become aware of a possible criminal violation of the Jessica Lunsford Act. If community college officials do not seek out potential violations of the law, then I recommend that they do not seek out potential violations of the Jessica Lunsford Act. **If students or professors who are covered sex offenders inquire about their ability to attend classes or to come to community college campuses, I recommend that you direct them to their local sheriff’s office for guidance since the local sheriff is responsible for enforcing violations of this law.**

For your convenience, a copy of the Session Law is attached. Should you have any questions or concerns regarding the Jessica Lunsford Act, please feel free to contact me at marjms@nccommunitycolleges.edu.

CC 08-239
E-mail and Paper copies

Attachment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2008-117
HOUSE BILL 933

AN ACT TO PROVIDE THAT CERTAIN CRIMINAL OFFENSES OF RAPE OR SEXUAL OFFENSE COMMITTED AGAINST A CHILD ARE CLASS B1 FELONIES AND THE OFFENDER SHALL NOT RECEIVE ACTIVE PUNISHMENT OF LESS THAN THREE HUNDRED MONTHS FOLLOWED BY LIFETIME SATELLITE-BASED MONITORING OR THE POSSIBILITY OF LIFE IMPRISONMENT WITHOUT PAROLE, TO INCREASE THE CRIMINAL PENALTIES FOR SEXUAL EXPLOITATION OF A MINOR AND PROMOTING PROSTITUTION OF A MINOR, TO AMEND THE SEX OFFENDER REGISTRATION REQUIREMENTS TO BE MORE STRINGENT, TO REQUIRE COMMUNITY NOTIFICATION REGARDING THE PRESENCE OF A SEXUALLY VIOLENT PREDATOR OR REPEAT SEX OFFENDER, TO AMEND THE LAW REGARDING BAIL FOR VIOLATIONS OF PROBATION AND POST-RELEASE SUPERVISION, TO CREATE A NEW CRIMINAL OFFENSE THAT MAKES IT UNLAWFUL FOR A SEX OFFENDER TO BE ON CERTAIN PREMISES, TO ADDRESS EDUCATION AND HEALTH OF JUVENILES SUBJECT TO RESTRICTIONS, AND TO REQUIRE SEX OFFENDER REGISTRIES CHECKS OF SCHOOL CONTRACTUAL PERSONNEL BEFORE ALLOWING THEM TO HAVE DIRECT INTERACTION WITH STUDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-27.2A. Rape of a child; adult offender.

(a) A person is guilty of rape of a child if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is a child under the age of 13 years.

(b) A person convicted of violating this section is guilty of a Class B1 felony and shall be sentenced pursuant to Article 81B of Chapter 15A of the General Statutes, except that in no case shall the person receive an active punishment of less than 300 months, and except as provided in subsection (c) of this section. Following the termination of active punishment, the person shall be enrolled in satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

(c) Notwithstanding the provisions of Article 81B of Chapter 15A of the General Statutes, the court may sentence the defendant to active punishment for a term of months greater than that authorized pursuant to G.S. 15A-1340.17, up to and including life imprisonment without parole, if the court finds that the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree, or scope beyond that normally committed in such crimes, or considered in basic aggravation of these crimes, so as to require a sentence to active punishment in excess of that authorized pursuant to G.S. 15A-1340.17. If the court sentences the defendant pursuant to this subsection, it shall make findings of fact supporting its decision, to include matters it considered as egregious aggravation. Egregious aggravation can include further consideration of existing aggravating factors where the conduct of the defendant falls outside the

heartland of cases even the aggravating factors were designed to cover. Egregious aggravation may also be considered based on the extraordinarily young age of the victim, or the depraved torture or mutilation of the victim, or extraordinary physical pain inflicted on the victim.

(d) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes.

(e) The offense under G.S. 14-27.2(a)(1) is a lesser included offense of the offense in this section."

SECTION 2. Article 7A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-27.4A. Sexual offense with a child; adult offender.

(a) A person is guilty of sexual offense with a child if the person is at least 18 years of age and engages in a sexual act with a victim who is a child under the age of 13 years.

(b) A person convicted of violating this section is guilty of a Class B1 felony and shall be sentenced pursuant to Article 81B of Chapter 15A of the General Statutes, except that in no case shall the person receive an active punishment of less than 300 months, and except as provided in subsection (c) of this section. Following the termination of active punishment, the person shall be enrolled in satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

(c) Notwithstanding the provisions of Article 81B of Chapter 15A of the General Statutes, the court may sentence the defendant to active punishment for a term of months greater than that authorized pursuant to G.S. 15A-1340.17, up to and including life imprisonment without parole, if the court finds that the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree, or scope beyond that normally committed in such crimes, or considered in basic aggravation of these crimes, so as to require a sentence to active punishment in excess of that authorized pursuant to G.S. 15A-1340.17. If the court sentences the defendant pursuant to this subsection, it shall make findings of fact supporting its decision, to include matters it considered as egregious aggravation. Egregious aggravation can include further consideration of existing aggravating factors where the conduct of the defendant falls outside the heartland of cases even the aggravating factors were designed to cover. Egregious aggravation may also be considered based on the extraordinarily young age of the victim, or the depraved torture or mutilation of the victim, or extraordinary physical pain inflicted on the victim.

(d) The offense under G.S. 14-27.4(a)(1) is a lesser included offense of the offense in this section."

SECTION 3. G.S. 14-190.16 reads as rewritten:

"§ 14-190.16. First degree sexual exploitation of a minor.

(a) Offense. – A person commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he:

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

SECTION 4. G.S. 14-190.17 reads as rewritten:

"§ 14-190.17. Second degree sexual exploitation of a minor.

(a) Offense. – A person commits the offense of second degree sexual exploitation of a minor if, knowing the character or content of the material, he:

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

SECTION 5. G.S. 14-190.17A reads as rewritten:

"§ 14-190.17A. Third degree sexual exploitation of a minor.

(a) Offense. – A person commits the offense of third degree sexual exploitation of a minor if, knowing the character or content of the material, he possesses material that contains a visual representation of a minor engaging in sexual activity.

...
(d) Punishment and Sentencing. – Violation of this section is a ~~Class I felony~~-Class H felony."

SECTION 6. G.S. 14-190.18 reads as rewritten:

"§ 14-190.18. Promoting prostitution of a minor.

(a) Offense. – A person commits the offense of promoting prostitution of a minor if he knowingly:

- (1) Entices, forces, encourages, or otherwise facilitates a minor to participate in prostitution; or
- (2) Supervises, supports, advises, or protects the prostitution of or by a minor.

(b) Mistake of Age. – Mistake of age is not a defense to a prosecution under this section.

(c) Punishment and Sentencing. – Violation of this section is a ~~Class D felony~~-Class C felony."

SECTION 6.1. G.S. 14-208.6(5) reads as rewritten:

"(5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex offense with a child; adult offender), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1)(felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), or G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 7. G.S. 14-208.6A reads as rewritten:

"§ 14-208.6A. Lifetime registration requirements for criminal offenders.

It is the objective of the General Assembly to establish a ~~10 year~~-30-year registration requirement for persons convicted of certain offenses against minors or sexually violent ~~offenses~~-offenses with an opportunity for those persons to petition in superior court to shorten their registration time period after 10 years of registration. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for recidivists, persons who commit aggravated offenses, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

...."

SECTION 8. G.S. 14-208.7 reads as rewritten:

"§ 14-208.7. Registration.

(a) A person who is a State resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides. If the person moves to North Carolina from outside this State, the person shall register within ~~40 days~~ three business days of establishing residence in this State, or whenever the person has been present in the State for 15 days, whichever comes first. If the person is a current resident of North Carolina, the person shall register:

- (1) Within ~~40 days~~ three business days of release from a penal institution or arrival in a county to live outside a penal institution; or
- (2) Immediately upon conviction for a reportable offense where an active term of imprisonment was not imposed.

Registration shall be maintained for a period of at least ~~10 years~~ 30 years following the date of initial county ~~registration~~ registration unless the person, after 10 years of registration, successfully petitions the superior court to shorten his or her registration time period under G.S. 14-208.12A.

...."

SECTION 9. G.S. 14-208.9 reads as rewritten:

"§ 14-208.9. Change of address; change of academic status or educational employment status.

(a) If a person required to register changes address, the person shall report in person and provide written notice of the new address not later than ~~the tenth day~~ the third business day after the change to the sheriff of the county with whom the person had last registered. If the person moves to another county, the person shall also report in person to the sheriff of the new county and provide written notice of the person's address not later than the tenth day after the change of address. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. When the Division receives notice from a sheriff that a person required to register is moving to another county in the State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) If a person required to register intends to move to another state, the person shall report in person to the sheriff of the county of current residence at least ~~40 days~~ three business days before the date the person intends to leave this State to establish residence in another state or jurisdiction. The person shall provide to the sheriff a written notification that includes all of the following information: the address, municipality, county, and state of intended residence.

- (1) If it appears to the sheriff that the record photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, then the sheriff shall take a photograph of the offender to update the registration.
- (2) The sheriff shall inform the person that the person must comply with the registration requirements in the new state of residence. The sheriff shall also immediately forward the information included in the notification to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's notification and new address.

(b1) A person who indicates his or her intent to reside in another state or jurisdiction and later decides to remain in this State shall, within ~~40 days~~ three business days after the date upon which the person indicated he or she would leave this State, report in person to the sheriff's office to which the person reported the intended change of residence, of his or her intent to remain in this State. If the sheriff is notified by the sexual offender that he or she intends to remain in this State, the sheriff shall promptly report this information to the Division.

(c) If a person required to register changes his or her academic status either by enrolling as a student or by terminating enrollment as a student, then the person shall, within ~~40 days~~ three business days, report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status. The

written notice shall include the name and address of the institution of higher education at which the student is or was enrolled. The sheriff shall immediately forward this information to the Division.

(d) If a person required to register changes his or her employment status either by obtaining employment at an institution of higher education or by terminating employment at an institution of higher education, then the person shall, within ~~10 days~~three business days, report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the person is or was employed. The sheriff shall immediately forward this information to the Division."

SECTION 10. G.S. 14-208.9A reads as rewritten:

"§ 14-208.9A. Verification of registration information.

(a) The information in the county registry shall be verified semiannually for each registrant as follows:

- (1) Every year on the anniversary of a person's initial registration date, and again six months after that date, the Division shall mail a nonforwardable verification form to the last reported address of the person.
- (2) The person shall return the verification form in person to the sheriff within ~~10 days~~three business days after the receipt of the form.
- (3) The verification form shall be signed by the person and shall indicate whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.
- (3a) If it appears to the sheriff that the record photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, then the sheriff shall take a photograph of the offender to include with the verification form.
- (4) If the person fails to return the verification form in person to the sheriff within ~~10 days~~three business days after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the person fails to report in person and provide the written verification as provided by this section, the sheriff shall make a reasonable attempt to verify that the person is residing at the registered address. If the person cannot be found at the registered address and has failed to report a change of address, the person is subject to the penalties provided in G.S. 14-208.11, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address.

(b) **Additional Verification May Be Required.** – During the period that an offender is required to be registered under this Article, the sheriff is authorized to attempt to verify that the offender continues to reside at the address last registered by the offender.

(c) **Additional Photograph May Be Required.** – If it appears to the sheriff that the current photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, upon in-person notice from the sheriff, the sex offender shall allow the sheriff to take another photograph of the sex offender at the time of the sheriff's request. If requested by the sheriff, the sex offender shall appear in person at the sheriff's office during normal business hours within ~~72 hours~~three business days of being requested to do so and shall allow the sheriff to take another photograph of the sex offender. A person who willfully fails to comply with this subsection is guilty of a Class 1 misdemeanor."

SECTION 11. G.S. 14-208.12A reads as rewritten:

"§ 14-208.12A. Request for termination of registration requirement.

(a) ~~A Ten years from the date of initial county registration, a person required to register under this Part may petition the superior court in the district where the person resides to terminate the 30-year registration requirement 10 years from the date of initial county registration if the person has not been convicted of a subsequent offense requiring registration under this Article.~~

....
SECTION 12. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-208.18. Sex offender unlawfully on premises.

(a) It shall be unlawful for any person required to register under this Article, if the offense requiring registration is described in subsection (b) of this section, to knowingly be at any of the following locations:

- (1) On the premises of any place intended primarily for the use, care, or supervision of minors, including, but not limited to, schools, children's museums, child care centers, nurseries, and playgrounds.
- (2) Within 300 feet of any location intended primarily for the use, care, or supervision of minors when the place is located on premises that are not intended primarily for the use, care, or supervision of minors, including, but not limited to, places described in subdivision (1) of this subsection that are located in malls, shopping centers, or other property open to the general public.
- (3) At any place where minors gather for regularly scheduled educational, recreational, or social programs.

(b) Notwithstanding any provision of this section, a person subject to subsection (a) of this section who is the parent or guardian of a minor may take the minor to any location that can provide emergency medical care treatment if the minor is in need of emergency medical care.

(c) Subsection (a) of this section is applicable only to persons required to register under this Article who have committed any of the following offenses:

- (1) Any offense in Article 7A of this Chapter.
- (2) Any offense where the victim of the offense was under the age of 16 years at the time of the offense.

(d) A person subject to subsection (a) of this section who is a parent or guardian of a student enrolled in a school may be present on school property if all of the following conditions are met:

- (1) The parent or guardian is on school property for the purpose for one of the following:
 - a. To attend a conference at the school with school personnel to discuss the academic or social progress of the parents' or guardians' child; or
 - b. The presence of the parent or guardian has been requested by the principal or his or her designee for any other reason relating to the welfare or transportation of the child.
- (2) The parent or guardian complies with all of the following:
 - a. Notice: The parent or guardian shall notify the principal of the school of the parents' or guardians' registration under this Article and of his or her presence at the school unless the parent or guardian has permission to be present from the superintendent or the local board of education, or the principal has granted ongoing permission for regular visits of a routine nature. If permission is granted by the superintendent or the local board of education, the superintendent or chairman of the local board of education shall inform the principal of the school where the parents' or guardians' will be present. Notification includes the nature of the parents' or guardians' visit and the

hours when the parent or guardian will be present at the school. The parent or guardian is responsible for notifying the principal's office upon arrival and upon departure. Any permission granted under this sub-subdivision shall be in writing.

b. Supervision: At all times that a parent or guardian is on school property, the parent or guardian shall remain under the direct supervision of school personnel. A parent or guardian shall not be on school property even if the parent or guardian has ongoing permission for regular visits of a routine nature if no school personnel are reasonably available to supervise the parent or guardian on that occasion.

(e) A person subject to subsection (a) of this section who is eligible to vote may be present at a location described in subsection (a) used as a voting place as defined by G.S. 163-165 only for the purposes of voting and shall not be outside the voting enclosure other than for the purpose of entering and exiting the voting place. If the voting place is a school, then the person subject to subsection (a) shall notify the principal of the school that he or she is registered under this Article.

(f) A person subject to subsection (a) of this section who is eligible under G.S. 115C-378 to attend public school may be present on school property if permitted by the local board of education pursuant to G.S. 115C-391(d)(2).

(g) A juvenile subject to subsection (a) of this section may be present at a location described in that subsection if the juvenile is at the location to receive medical treatment or mental health services and remains under the direct supervision of an employee of the treating institution at all times.

(h) A violation of this section is a Class H felony."

SECTION 12.1. G.S. 115C-391(d) reads as rewritten:

"§ 115C-391. Corporal punishment, suspension, or expulsion of pupils.

(d) Notwithstanding G.S. 115C-378, G.S. 115C-378:

(1) A local board of education may, upon recommendation of the principal and superintendent, expel any student 14 years of age or older whose behavior indicates that the student's continued presence in school constitutes a clear threat to the safety of other students or employees. The local board of education's decision to expel a student under this section shall be based on clear and convincing evidence. Prior to ordering the expulsion of a student pursuant to this ~~subsection~~ subdivision, the local board of education shall consider whether there is an alternative program offered by the local school administrative unit that may provide education services for the student who is subject to expulsion. At any time after the first July 1 that is at least six months after the board's decision to expel a student under this subsection, a student may request the local board of education to reconsider that decision. If the student demonstrates to the satisfaction of the local board of education that the student's presence in school no longer constitutes a threat to the safety of other students or employees, the board shall readmit the student to a school in that local school administrative unit on a date the board considers appropriate.

(2) A local board of education may expel any student subject to G.S. 14-208.18. The local board of education's decision to expel a student under this subdivision shall be based on clear and convincing evidence. Prior to ordering the expulsion of a student pursuant to this subdivision, the local board of education shall consider whether there is an alternative program that may be offered by the local school administrative unit to provide educational services. As provided by G.S. 14-208.18(f), if the local board of education determines that a

student shall be provided educational services on school property, the student must be under the supervision of school personnel at all times."

SECTION 12.2. G.S. 14-208.29 reads as rewritten:

"§ 14-208.29. **Registration information is not public record; access to registration information available only to law enforcement ~~ageneies~~agencies and local boards of education.**

(a) Notwithstanding any other provision of law, the information regarding a juvenile required to register under this Part is not public record and is not available for public inspection.

(b) The registration information of a juvenile adjudicated delinquent and required to register under this Part shall be maintained separately by the sheriff and released only to law enforcement ~~ageneies~~agencies and local boards of education. Registry information for any juvenile enrolled in the local school administrative unit shall be forwarded to the local board of education. Under no circumstances shall the registration of a juvenile adjudicated delinquent be included in the county or statewide registries, or be made available to the public via internet."

SECTION 13. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-208.25A. **Community and public notification.**

The licensee for each licensed day care center and the principal of each elementary school, middle school, and high school shall register with the North Carolina Sex Offender and Public Protection Registry to receive e-mail notification when a registered sex offender moves within a one-mile radius of the licensed day care center or school."

SECTION 14. G.S. 14-208.27 reads as rewritten:

"§ 14-208.27. **Change of address.**

If a juvenile who is adjudicated delinquent and required to register changes address, the juvenile court counselor for the juvenile shall provide written notice of the new address not later than ~~the tenth day~~the third business day after the change to the sheriff of the county with whom the juvenile had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the juvenile moves to another county in this State, the Division shall inform the sheriff of the new county of the juvenile's new residence."

SECTION 15. G.S. 14-208.28(2) reads as rewritten:

"§ 14-208.28. **Verification of registration information.**

...
(2) The juvenile court counselor for the juvenile shall return the verification form to the sheriff within ~~10 days~~three business days after the receipt of the form.

....
SECTION 16. G.S. 14-208.40(a) reads as rewritten:

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

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

- (1) Any offender who is convicted of a reportable conviction as defined by G.S. 14-208.6(4) and who is required to register under Part 3 of Article 27A of Chapter 14 of the General Statutes because the defendant is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S. 14-208.6.
- (2) Any offender who satisfies all of the following criteria: (i) is convicted of a reportable conviction as defined by G.S. 14-208.6(4), (ii) is required to register under Part 2 of Article 27A of Chapter 14 of the General Statutes, (iii) has committed an offense involving the physical,

mental, or sexual abuse of a minor, and (iv) based on the Department's risk assessment program requires the highest possible level of supervision and monitoring.

- (3) Any offender who is convicted of G.S. 14-27.2A or G.S. 14-27.4A, who shall be enrolled in the satellite-based monitoring program for the offender's natural life upon termination of the offender's active punishment."

SECTION 16.1. G.S. 14-208.40A reads as rewritten:

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

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, ~~or (iv)~~ (iv) the conviction offense was a violation of G.S. 14-27.2A or G.S. 14-27.4A, or (v) the offense involved the physical, mental, or sexual abuse of a minor. The district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection.

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

(b) After receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a), and if so, shall make a finding of fact of that determination, specifying whether (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, ~~or (iv)~~ (iv) the conviction offense was a violation of G.S. 14-27.2A or G.S. 14-27.4A, or (v) the offense involved the physical, mental, or sexual abuse of a minor.

(c) If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, ~~or has committed an aggravated offense,~~ or was convicted of G.S. 14-27.2A or G.S. 14-27.4A, the court shall order the offender to enroll in a satellite-based monitoring program for life.

(d) If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated offense, offense or a violation of G.S. 14-27.2A or G.S. 14-27.4A and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court.

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

SECTION 16.2. G.S. 14-208.40B(c) reads as rewritten:

"(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, ~~or (iii)~~ the conviction offense was an aggravated offense, or (iv) the conviction offense was a violation of G.S. 14-27.2A or G.S. 14-27.4A, the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated offense or a violation of G.S. 14-27.2A or G.S. 14-27.4A, and the offender is not a recidivist, the

court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court. The Department may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Department, the court shall determine whether, based on the Department's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 17. G.S. 14-208.41 is amended by adding a new subsection to read:

"(c) Any person described by G.S. 14-208.40(a)(3), upon completion of active punishment, shall enroll in a satellite-based monitoring program with the Division of Community Corrections office in the county where the person resides. The person shall enroll in the satellite-based monitoring program for the entire period of post-release supervision and shall remain enrolled in the satellite-based monitoring program for the person's life, unless the requirement to enroll in the satellite-based monitoring program is terminated pursuant to G.S. 14-208.43."

SECTION 18. G.S. 14-208.43(a) reads as rewritten:

"(a) An offender described by G.S. ~~14-208.40(a)(1)~~ 14-208.40(a)(1) or G.S. 14-208.40(a)(3) who is required to submit to satellite-based monitoring for the offender's life may file a request for termination of monitoring requirement with the Post-Release Supervision and Parole Commission. The request to terminate the satellite-based monitoring requirement and to terminate the accompanying requirement of unsupervised probation may not be submitted until at least one year after the offender: (i) has served his or her sentence for the offense for which the satellite-based monitoring requirement was imposed, and (ii) has also completed any period of probation, parole, or post-release supervision imposed as part of the sentence."

SECTION 19. G.S. 15A-1345(b) reads as rewritten:

"(b) Bail Following Arrest for Probation Violation. – If at any time during the period of probation the probationer is arrested for a violation of any of the conditions of probation, he must be taken without unnecessary delay before a judicial official to have conditions of release pending a revocation hearing set in the same manner as provided in G.S. 15A-534. If the probationer has been convicted of an offense at any time that requires registration under Article 27A of Chapter 14 of the General Statutes or an offense that would have required registration but for the effective date of the law establishing the Sex Offender and Public Protection Registration Program, the court must make a finding that the probationer is not a danger to the public prior to release with or without bail."

SECTION 20. G.S. 15A-1368.6 is amended by adding a new subsection to read:

"(b1) Bail Following Arrest for Violation of Post-Release Supervision if Releasee Is a Sex Offender. – Notwithstanding subsection (b) of this section, if the releasee has been convicted of an offense that requires registration under Article 27A of Chapter 14 of the General Statutes and is arrested for a violation in accordance with this section, the releasee shall be detained without bond until the preliminary hearing is conducted."

SECTION 21. Part 6 of Article 22 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-332.1. Sex offender registries checks for certain contractual personnel.

(a) For purposes of this section, the term 'contractual personnel' includes any individual or entity under contract with the local board of education whose contractual job involves direct interaction with students as part of the job. For purposes of this

section, the term 'contractual personnel' does not include any person covered under G.S. 115C-332.

(b) Each local board of education shall require, as a term of any contract the local board of education enters, that employers of a person who is contractual personnel conduct an annual check of that person on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. As a term of any contract, a local board of education shall prohibit any contractual personnel listed on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry from having direct interaction with students."

SECTION 21.1. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 21.2. The Department of Justice shall study the guidelines issued by the United States Attorney for the federal Sex Offender Registration and Notification Act (SORNA) to determine whether North Carolina is in compliance with those guidelines. The Department of Justice shall identify any areas in which the State fails to comply with SORNA and the action required for compliance. The Attorney General, or his designee, shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by December 1, 2008, regarding the status of the State's compliance with SORNA and recommend any actions or State legislation that may be required to satisfy the SORNA guidelines.

SECTION 22. Section 21.2 is effective when it becomes law. The maintenance of the registration period of 30 years required by G.S. 14-208.7, as amended by Section 8 of this act, applies to registrations made on or after December 1, 2008. The remainder of this act becomes effective December 1, 2008, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 18th day of July, 2008.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 2:20 p.m. this 28th day of July, 2008