

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

**SESSION LAW 2012-153
SENATE BILL 910**

AN ACT TO CREATE THE CRIMINAL OFFENSE OF UNLAWFUL SALE, SURRENDER, OR PURCHASE OF A MINOR; TO REQUIRE THE NORTH CAROLINA CONFERENCE OF DISTRICT ATTORNEYS TO CONDUCT A STUDY TO DETERMINE WHAT OTHER MEASURES MAY BE NEEDED TO STOP THIS TYPE OF CRIMINAL ACTIVITY; TO CLARIFY WHEN, TO WHOM, AND UNDER WHAT CIRCUMSTANCES THE IDENTITY OF A PERSON REPORTING CHILD ABUSE OR NEGLECT MAY BE RELEASED; TO CLARIFY WHAT INFORMATION THE DIVISION OF SOCIAL SERVICES IS REQUIRED TO MAINTAIN IN THE FOSTER CARE REGISTRY AND UNDER WHAT CIRCUMSTANCES INFORMATION IN THE REGISTRY MAY BE WITHHELD.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-43.14. Unlawful sale, surrender, or purchase of a minor.

(a) A person commits the offense of unlawful sale, surrender, or purchase of a minor when that person, acting with willful or reckless disregard for the life or safety of a minor, participates in any of the following: the acceptance, solicitation, offer, payment, or transfer of any compensation, in money, property, or other thing of value, at any time, by any person in connection with the unlawful acquisition or transfer of the physical custody of a minor, except as ordered by the court. This section does not apply to actions that are ordered by a court, authorized by statute, or otherwise lawful.

(b) A person who violates this section is guilty of a Class F felony and shall pay a minimum fine of five thousand dollars (\$5,000). For each subsequent violation, a person is guilty of a Class F felony and shall pay a minimum fine of ten thousand dollars (\$10,000).

(c) A minor whose parent, guardian, or custodian has sold or attempted to sell a minor in violation of this Article is an abused juvenile as defined by G.S. 7B-101(1). The court may place the minor in the custody of the Department of Social Services or with such other person as is in the best interest of the minor.

(d) A violation of this section is a lesser included offense of G.S. 14-43.11.

(e) When a person is convicted of a violation of this section, the sentencing court shall consider whether the person is a danger to the community and whether requiring the person to register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of that Article as stated in G.S. 14-208.5. If the sentencing court rules that the person is a danger to the community and that the person shall register, then an order shall be entered requiring the person to register."

SECTION 2. G.S. 7B-101(1) reads as rewritten:

"(1) Abused juveniles. – Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

- a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
- b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
- c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;



- d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; rape of a child by an adult offender, as provided in G.S. 14-27.2A; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; sexual offense with a child by an adult offender, as provided in G.S. 14-27.4A; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;
- e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or
- f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile."

SECTION 3. G.S. 14-208.6(4) reads as rewritten:

"(4) 'Reportable conviction' means:

- a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.
- b. A final conviction in another state of an offense, which if committed in this State, is substantially similar to an offense against a minor or a sexually violent offense as defined by this section, or a final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state.
- c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.
- d. A final conviction for a violation of G.S. 14-202(d), (e), (f), (g), or (h), or a second or subsequent conviction for a violation of G.S. 14-202(a), (a1), or (c), only if the court sentencing the individual issues an order pursuant to G.S. 14-202(l) requiring the individual to register.
- e. A final conviction for a violation of G.S. 14-43.14, only if the court sentencing the individual issues an order pursuant to G.S. 14-43.14(e) requiring the individual to register."

SECTION 4. G.S. 14-322.3 reads as rewritten:

"§ 14-322.3. Abandonment of an infant under seven days of age.

When a parent abandons an infant less than seven days of age by voluntarily delivering the infant as provided in G.S. 7B-500(b) or G.S. 7B-500(d) and does not express an intent to return for the infant, that parent shall not be prosecuted under ~~G.S. 14-322~~ G.S. 14-322.1, G.S. 14-322, 14-322.1, or 14-43.14."

SECTION 5. The North Carolina Conference of District Attorneys shall conduct a study of additional measures that may be taken to stop criminal activities that involve the sale of children. In its study, the North Carolina Conference of District Attorneys shall consider the measures taken by other states to address this type of criminal activity. The North Carolina Conference of District Attorneys shall submit a final written report of its findings and recommendations, including any additional legislative proposals, regarding this issue to the 2013 General Assembly by January 30, 2013.

SECTION 6. G.S. 7B-302(a1) reads as rewritten:

"(a1) All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department, except ~~that~~ under the following circumstances:

- (1) The department shall disclose confidential information to any federal, State, or local government entity or its agent in order to protect a juvenile from abuse or neglect. Any confidential information disclosed to any federal, State, or local government entity or its agent under this subsection shall remain confidential with the other government entity or its agent and shall only be redisclosed for purposes directly connected with carrying out that entity's mandated responsibilities.
- (1a) The department shall disclose confidential information regarding the identity of the reporter to any federal, State, or local government entity or its agent with a court order. The department may only disclose confidential information regarding the identity of the reporter to a federal, State, or local government entity or its agent without a court order when the entity demonstrates a need for the reporter's name to carry out the entity's mandated responsibilities.
- (2) The information may be examined upon request by the juvenile's guardian ad litem or the juvenile, including a juvenile who has reached age 18 or been emancipated.
- (3) A district or superior court judge of this State presiding over a civil matter in which the department of social services is not a party may order the department to release confidential information, after providing the department with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the trial of the matter before the court and unavailable from any other source. This subdivision shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law, before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The department of social services may surrender the requested records to the court, for in camera review, if the surrender is necessary to make the required determinations.
- (4) A district or superior court judge of this State presiding over a criminal or delinquency matter shall conduct an in camera review prior to releasing to the defendant or juvenile any confidential records maintained by the department of social services, except those records the defendant or juvenile is entitled to pursuant to subdivision (2) of this subsection.
- (5) The department may disclose confidential information to a parent, guardian, custodian, or caretaker in accordance with G.S. 7B-700 of this Subchapter."

SECTION 7. G.S. 131D-10.6C reads as rewritten:

"§ 131D-10.6C. Maintaining a register of ~~applicants~~ licensed foster homes by the Division of Social Services.

(a) The Division of Social Services shall keep a register of all licensed family foster and therapeutic foster home applicants ~~homes~~. The register shall contain the following information:

- (1) The name, age, and address of each ~~applicant~~ foster parent.
- (2) ~~The date of the application.~~
- (3) The ~~applicant's~~ foster parent's supervising agency.
- (4) ~~Any~~ The number of hours of mandated training completed by the applicant and the dates of training ~~foster parent~~.
- (5) ~~Whether the applicant was licensed and the~~ The date of the initial licensure.

- (6) The current licensing period.
- (7) Any adverse licensing actions.
- (8) ~~Any other information deemed necessary by the Division of Social Services.~~

(b) The register shall be a public record under Chapter 132 of the General Statutes. However, the Division, without penalty, may withhold any specific information about a foster parent to the extent the release of the information would likely pose a threat to the health or safety of the foster parent or a foster child. A person who is denied access to information under this section may seek a court order compelling disclosure or copying in accordance with G.S. 132-9(a). Information not specified in subsection (a) of this section shall be considered confidential and not subject to disclosure."

SECTION 8. Section 5 and 8 of this act are effective when they become law. Sections 6 and 7 of this act become effective October 1, 2012. The remainder of this act becomes effective December 1, 2012, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 3rd day of July, 2012.

s/ Bill Rabon
Presiding Officer of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 4:09 p.m. this 12th day of July, 2012