

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 2063

Short Title: Jessica's Law/GPS Monitoring. (Public)

Sponsors: Senators Hoyle; Albertson, Allran, Atwater, Berger of Rockingham, Bingham, Boseman, Brock, Dalton, Garrou, Goss, Hunt, Jacumin, Jenkins, McKissick, Preston, Purcell, Queen, Smith, Snow, Soles, Stevens, Swindell, and Tillman.

Referred to: Judiciary I (Civil).

May 28, 2008

A BILL TO BE ENTITLED

1
2 AN ACT TO MODEL NORTH CAROLINA'S SATELLITE-BASED MONITORING
3 LAWS AFTER THE STATE OF FLORIDA'S "JESSICA'S LAW" IMPOSING
4 LIFETIME SATELLITE-BASED MONITORING ON OFFENDERS WHO HAVE
5 TAKEN INDECENT LIBERTIES WITH CHILDREN, TO CLARIFY THE
6 PURPOSE AND APPLICATION OF THE SATELLITE-BASED MONITORING
7 LAWS FOR SEX OFFENDERS, TO AMEND THE FEE CHARGED FOR
8 ENROLLMENT INTO THE MONITORING PROGRAM, AND TO DIRECT THE
9 STATE DEPARTMENT OF JUSTICE TO REPORT ON ANY NECESSARY
10 CHANGES TO THE STATE SEX OFFENDER REGISTRATION LAWS FOR
11 COMPLIANCE WITH THE FEDERAL SEX OFFENDER REGISTRATION AND
12 NOTIFICATION ACT.

13 Whereas, nine-year-old Jessica Lunsford was assaulted and murdered by a
14 convicted sex offender in Florida; and

15 Whereas, the State of Florida enacted legislation designed to monitor and
16 track persons convicted of indecent liberties against minors; and

17 Whereas, the State of Florida included in its legislation a provision that when
18 persons convicted of molesting children are released from active confinement, they will
19 be monitored and tracked to help ensure the safety of the public; and

20 Whereas, the monitoring included the use of the latest technology available,
21 designed to use satellites to verify the location of persons convicted of serious and
22 violent sex offenses; and

23 Whereas, this State should also utilize the latest technology in monitoring
24 persons who have been convicted in this State of serious and violent sexual assaults
25 against minors or who have moved into this State after committing these types of
26 offenses against minors in other states; Now, therefore,

1 The General Assembly of North Carolina enacts:

2 **SECTION 1.** G.S. 14-202.1 reads as rewritten:

3 "**§ 14-202.1. Taking indecent liberties with children.**

4 (a) A person is guilty of taking indecent liberties with children if, being 16 years
5 of age or more and at least five years older than the child in question, he either:

6 (1) Willfully takes or attempts to take any immoral, improper, or indecent
7 liberties with any child of either sex under the age of 16 years for the
8 purpose of arousing or gratifying sexual desire; or

9 (2) Willfully commits or attempts to commit any lewd or lascivious act
10 upon or with the body or any part or member of the body of any child
11 of either sex under the age of 16 years.

12 (b) Taking indecent liberties with children is punishable as a Class F felony.

13 (c) When an offender is convicted of an offense under this section, during the
14 sentencing phase, the district attorney shall present to the court any evidence that the
15 defendant is 18 years of age or older and that the defendant, during the offense,

16 (1) Intentionally touched, in a lewd or lascivious manner, the breasts,
17 genitals, genital area, or buttocks, or the clothing covering them, of the
18 victim, a person less than 13 years of age at the time of the offense, or

19 (2) Forced or enticed the victim, a person under 13 years of age, to so
20 touch the perpetrator in the manner and places described in subdivision
21 (1) of this subsection.

22 The district attorney shall have no discretion to withhold any evidence required to be
23 presented to the court pursuant to this subsection. The court, after hearing any evidence
24 presented by the parties, shall make findings on whether the circumstances described in
25 subdivision (1) or (2) of this subsection occurred in the case.

26 (d) If the court makes findings under subsection (c) of this section, then the judge
27 shall indicate on the form reflecting the judgment that the offense qualifies as a
28 G.S. 14-202.1(c) offense. The clerk of court shall ensure that the official record of the
29 defendant's conviction includes the court's determination so that any inquiry into the
30 defendant's criminal record will reflect that the offense involved indecent liberties
31 against a child under 13 years of age."

32 **SECTION 2.** G.S. 14-208.5 reads as rewritten:

33 "**§ 14-208.5. Purpose.**

34 The General Assembly recognizes that sex offenders often pose a high risk of
35 engaging in sex offenses even after being released from incarceration or commitment
36 and that protection of the public from sex offenders is of paramount governmental
37 interest.

38 The General Assembly also recognizes that persons who commit certain other types
39 of offenses against minors, such as kidnapping, pose significant and unacceptable
40 threats to the public safety and welfare of the children in this State and that the
41 protection of those children is of great governmental interest. Further, the General
42 Assembly recognizes that law enforcement officers' efforts to protect communities,
43 conduct investigations, and quickly apprehend offenders who commit sex offenses or
44 certain offenses against minors are impaired by the lack of information available to law

1 enforcement agencies about convicted offenders who live within the agency's
2 jurisdiction. Release of information about these offenders will further the governmental
3 interests of public safety so long as the information released is rationally related to the
4 furtherance of those goals.

5 The enactment of the sex offender monitoring program in Part 5 of this Article is
6 designed to utilize the latest technological solutions to monitor and track serious and
7 violent sex offenders. The use of a continuous satellite-based monitoring system will
8 provide this State with a more efficient and accurate method of monitoring these serious
9 and predatory criminals. United States Department of Justice statistics reveal that,
10 compared to non-sex offenders released from State prisons, released sex offenders were
11 four times more likely to be rearrested for a sex crime. Intensive supervision of serious
12 offenders and violent sex offenders is a crucial element to both the rehabilitation of the
13 released convict and the safety of the surrounding community.

14 Technological solutions now exist to provide improved supervision and behavioral
15 control of serious offenders and violent sex offenders once they have completed active
16 sentences. These solutions can now also provide law enforcement and correctional
17 professionals with significant new tools for electronic correlation of the constantly
18 updated geographic location of supervised serious offenders and violent sexual
19 offenders following their release, with the geographic location of reported crimes, both
20 to possibly link released offenders to crimes or to possibly exclude released offenders
21 from ongoing criminal investigations. Continuous 24 hours a day, seven (7) days a week
22 electronic monitoring of those convicted of serious and violent sexual offenses is a
23 valuable and reasonable requirement for those convicts who are required by law to
24 register as sex offenders.

25 Therefore, it is the purpose of this Article to assist law enforcement agencies' efforts
26 to protect communities by requiring persons who are convicted of sex offenses or of
27 certain other offenses committed against minors to register with law enforcement
28 agencies, to require the exchange of relevant information about those offenders among
29 law enforcement agencies, and to authorize the access to necessary and relevant
30 information about those offenders to others as provided in this Article. It is also the
31 purpose of this Article to ensure, through the use of available technology, that there is
32 improved supervision and behavioral control of offenders who have been convicted of
33 serious and violent offenses."

34 **SECTION 3.** G.S. 14-208.6(1a) reads as rewritten:

35 **"§ 14-208.6. Definitions.**

36 The following definitions apply in this Article:

37 (1a) "Aggravated offense" means

- 38 a. ~~any~~ Any criminal offense that includes either of the following:
39 engaging in a sexual act involving vaginal, anal, or oral
40 penetration with a victim of any age through the use of force or
41 the threat of serious violence; or (ii) engaging in a sexual act
42 involving vaginal, anal, or oral penetration with a victim who is
43 less than ~~12 years old~~ 13 years old.

1 b. A conviction under G.S. 14-202.1, where the court found that
2 the factual circumstances of the offense met the requirements
3 under G.S. 14-201.1(c)(1) or (c)(2)."

4 **SECTION 4.** G.S. 14-208.40 reads as rewritten:

5 **"§ 14-208.40. Establishment of program; creation of guidelines; ~~duties-duties;~~**
6 **application.**

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

11 (1) Any offender who ~~is~~has been convicted of a reportable conviction as
12 defined by G.S. 14-208.6(4) and who is required to register under Part
13 3 of Article 27A of Chapter 14 of the General Statutes because the
14 defendant is classified as a sexually violent predator, is a recidivist, or
15 was convicted of an aggravated offense as those terms are defined in
16 G.S. 14-208.6.

17 (2) Any offender who satisfies all of the following criteria: (i) ~~is~~has been
18 convicted of a reportable conviction as defined by G.S. 14-208.6(4),
19 (ii) is required to register under Part 2 of Article 27A of Chapter 14 of
20 the General Statutes, (iii) has committed an offense involving the
21 physical, mental, or sexual abuse of a minor, and (iv) based on the
22 Department's risk assessment program requires the highest possible
23 level of supervision and monitoring.

24 (b) In developing the guidelines for the program, the Department shall require
25 that any offender who is enrolled in the satellite-based program submit to an active
26 continuous satellite-based monitoring program, unless an active program will not work
27 as provided by this section. If the Department determines that an active program will
28 not work as provided by this section, then the Department shall require that the
29 defendant submit to a passive continuous satellite-based program that works within the
30 technological or geographical limitations.

31 (c) The satellite-based monitoring program shall use a system that provides all of
32 the following:

33 (1) Time-correlated and continuous tracking of the geographic location of
34 the subject using a global positioning system based on satellite and
35 other location tracking technology.

36 (2) Reporting of subject's violations of prescriptive and proscriptive
37 schedule or location requirements. Frequency of reporting may range
38 from once a day (passive) to near real-time (active).

39 (d) The Department may contract with a single vendor for the hardware services
40 needed to monitor subject offenders and correlate their movements to reported crime
41 incidents. The contract may provide for services necessary to implement or facilitate
42 any of the provisions of this Part.

43 (e) Application. Notwithstanding any other provision of law, the satellite-based
44 monitoring program and requirements, as provided in G.S. 14-208.40, and throughout

1 this Part of Article 27A of the General Statutes, are retroactive and apply to the
2 following persons, regardless of the date of their offense or conviction:

- 3 (1) Any person released from prison by parole or post-release supervision
4 on or after August 16, 2006.
5 (2) Any person sentenced to intermediate punishment on or after August
6 16, 2006.
7 (3) Any person who completed his or her sentence on or after August 16,
8 2006, who is not on post-release supervision or parole."

9 **SECTION 5.** G.S. 14-208.40B(a) reads as rewritten:

10 "**§ 14-208.40B. Determination of satellite-based monitoring requirement in certain**
11 **circumstances.**

12 (a) When an offender ~~is convicted of~~ has a conviction for an offense that is a
13 reportable conviction as defined by G.S. 14-208.6(4), and there has been no
14 determination by a court on whether the offender shall be required to enroll in
15 satellite-based monitoring, because the court did not make an enrollment determination
16 at the time of sentencing as provided in G.S. 14-208.40A, or the sentencing occurred
17 prior to the effective date of G.S. 14-208.40A, the Department shall make an initial
18 determination on whether the offender falls into one of the categories described in
19 G.S. 14-208.40(a)."

20 **SECTION 6.** G.S. 14-208.45 reads as rewritten:

21 "**§ 14-208.45. Fees.**

22 (a) Except as provided in subsections (b) and (b1) of this section, each person
23 required to enroll pursuant to this Part shall pay a one-time fee of ~~ninety dollars~~
24 ~~(\$90.00).~~ ninety-five dollars (\$95.00). The fee shall be payable to the clerk of superior
25 court, and the fees shall be remitted quarterly to the Department of Correction. This fee
26 is intended to offset only the costs associated with the time-correlated tracking of the
27 geographic location of subjects using the location tracking crime correlation system.

28 (b) When a court determines a person is required to enroll pursuant to
29 G.S. 14-208.40A or G.S. 14-208.40B, the court may exempt a person from paying the
30 fee required by subsection (a) of this section only for good cause and upon motion of
31 the person required to enroll in satellite-based monitoring. The court may require that
32 the fee be paid in advance or in a lump sum or sums, and a probation officer may
33 require payment by those methods.

34 (c) When a person is required to enroll based on a determination by the
35 Department pursuant to G.S. 14-208.40B, the Department shall have the authority to
36 exempt the person from paying the fee only for good cause and upon request of the
37 person required to enroll in satellite-based monitoring. The Department may require that
38 the fee be paid in advance or in a lump sum or sums, and a probation officer may
39 require payment by those methods."

40 **SECTION 7.** The Department of Justice shall study the guidelines issued by
41 the U.S. Attorney for the federal Sex Offender Registration and Notification Act
42 (SORNA) to determine whether North Carolina is in compliance with those guidelines.
43 The Department of Justice shall identify any areas in which the State fails to comply
44 with SORNA and the action required for compliance. The Attorney General, or his

1 designee, shall report to the Joint Legislative Corrections, Crime Control, and Juvenile
2 Justice Oversight Committee by December 1, 2008, regarding the status of the State's
3 compliance with SORNA and recommend any actions or State legislation that may be
4 required to satisfy the SORNA guidelines.

5 **SECTION 8.** This act is effective when it becomes law.