

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

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**SENATE BILL 2063  
Judiciary I (Civil) Committee Substitute Adopted 6/24/08**

Short Title: Jessica's Law/GPS Monitoring.

(Public)

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Sponsors:

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Referred to:

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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 MAKE IT  
6 UNLAWFUL TO TAMPER WITH A DEVICE, TO CLARIFY THE PURPOSE  
7 AND APPLICATION OF THE SATELLITE-BASED MONITORING LAWS FOR  
8 SEX OFFENDERS, TO AMEND THE FEE CHARGED FOR ENROLLMENT  
9 INTO THE MONITORING PROGRAM, AND TO DIRECT THE STATE  
10 DEPARTMENT OF JUSTICE TO REPORT ON ANY NECESSARY CHANGES  
11 TO THE STATE SEX OFFENDER REGISTRATION LAWS FOR COMPLIANCE  
12 WITH THE FEDERAL SEX OFFENDER REGISTRATION AND  
13 NOTIFICATION ACT.

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

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

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

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

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

28 The General Assembly of North Carolina enacts:

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

1 **"§ 14-202.1. Taking indecent liberties with children.**

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

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

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

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

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

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

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

20 The court, after hearing any evidence presented by the parties, shall make findings on  
21 whether the circumstances described in subdivision (1) or (2) of this subsection  
22 occurred in the case.

23 (d) If the court makes findings under subsection (c) of this section, then the judge  
24 shall indicate on the form reflecting the judgment that the offense qualifies as a  
25 G.S. 14-202.1(c) offense. The clerk of court shall ensure that the official record of the  
26 defendant's conviction includes the court's determination so that any inquiry into the  
27 defendant's criminal record will reflect that the offense involved an act or acts described  
28 in subsection (c) of this section by an adult against a child under 13 years of age."

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

30 **"§ 14-208.5. Purpose.**

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

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

1 interests of public safety so long as the information released is rationally related to the  
2 furtherance of those goals.

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

12 Technological solutions now exist to provide improved supervision and behavioral  
13 control of serious offenders and violent sex offenders once they have completed active  
14 sentences. These solutions can now also provide law enforcement and correctional  
15 professionals with significant new tools for electronic correlation of the constantly  
16 updated geographic location of supervised serious offenders and violent sexual  
17 offenders following their release, with the geographic location of reported crimes, both  
18 to possibly link released offenders to crimes or to possibly exclude released offenders  
19 from ongoing criminal investigations. Continuous 24 hours a day, seven days a week  
20 electronic monitoring of those convicted of serious and violent sexual offenses is a  
21 valuable and reasonable requirement for those convicts who are required by law to  
22 register as sex offenders. The satellite-based monitoring program is civil and not  
23 punitive in nature, and is primarily designed as a means of assuring, as much as  
24 possible, public protection.

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 a court finds, under  
2                   either G.S. 14-208.40A or G.S. 14-208.40B, that the factual  
3                   circumstances of the offense meet the requirements under  
4                   G.S. 14-202.1(c)(1) or (c)(2)."

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

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

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

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

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

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

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

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

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

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

1 (e) Application. – Notwithstanding any other provision of law, the satellite-based  
2 monitoring program and requirements, as provided in this section, and throughout this  
3 Part of Article 27A of the General Statutes, are retroactive and apply to the following  
4 persons, regardless of the date of their offense or conviction:

5 (1) Any person sentenced to intermediate punishment on or after August  
6 16, 2006.

7 (2) Any person released from prison by parole or post-release supervision  
8 on or after August 16, 2006.

9 (3) Any person who completed his or her sentence on or after August 16,  
10 2006, who is not on post-release supervision or parole."

11 **SECTION 5.** G.S. 14-208.40A reads as rewritten:

12 "**§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

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

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

22 (b) After receipt of the evidence from the parties, the court shall determine  
23 whether the offender's conviction places the offender in one of the categories described  
24 in G.S. 14-208.40(a) or not, and ~~if so~~, shall make a finding of fact of that ~~determination,~~  
25 determination. The court shall specify specifying whether (i) the offender has been  
26 classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a  
27 recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the offense  
28 involved ~~the physical, mental, or sexual abuse of a minor~~.

29 (c) If the court finds that the offender has been classified as a sexually violent  
30 predator, is a recidivist, or has committed an aggravated offense, the court shall order  
31 the offender to enroll in a satellite-based monitoring program for life.

32 (d) If the court finds that the offender committed an offense that involved ~~the~~  
33 ~~physical, mental, or sexual abuse of a minor~~, that offense is not an aggravated offense,  
34 and the offender is not a recidivist, the court shall order that the Department do a risk  
35 assessment of the offender. The Department shall have a minimum of 30 days, but not  
36 more than 60 days, to complete the risk assessment of the offender and report the results  
37 to the court.

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

1           **SECTION 6.** G.S. 14-208.40B reads as rewritten:

2   "**§ 14-208.40B. Determination of satellite-based monitoring requirement in certain**  
3   **circumstances.**

4       (a) When an offender ~~is convicted of~~ has a conviction for an offense that is a  
5   reportable conviction as defined by G.S. 14-208.6(4), and there has been no  
6   determination by a court on whether the offender shall be required to enroll in  
7   satellite-based monitoring, because the court did not make an enrollment determination  
8   at the time of sentencing as provided by law, or the sentencing occurred prior to the  
9   effective date of any law providing for an enrollment determination at time of  
10 sentencing, the Department shall make an initial determination on whether the offender  
11 falls into one of the categories described in G.S. 14-208.40(a).

12       (b) If the Department determines that the offender falls into one of the categories  
13 described in G.S. 14-208.40(a), the district attorney, representing the Department,  
14 ~~Department~~ shall schedule a hearing in the superior court of ~~for~~ the county in which the  
15 offender resides. The Department shall notify the offender of the Department's  
16 determination and the date of the scheduled hearing by certified mail sent to the address  
17 provided by the offender pursuant to G.S. 14-208.7. The hearing shall be scheduled no  
18 sooner than 15 days from the date the notification is mailed. Receipt of notification shall  
19 be presumed to be the date indicated by the certified mail receipt.

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

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

27       If the court finds that the offender committed an offense that involved ~~the physical,~~  
28 ~~mental, or sexual abuse of a~~ minor, that offense is not an aggravated offense, and the  
29 offender is not a recidivist, the court shall order that the Department do a risk  
30 assessment of the offender. The Department shall have a minimum of 30 days, but not  
31 more than 60 days, to complete the risk assessment of the offender and report the results  
32 to the court. The Department may use a risk assessment of the offender done within six  
33 months of the date of the hearing.

34       Upon receipt of a risk assessment from the Department, the court shall determine  
35 whether, based on the Department's risk assessment, the offender requires ~~the highest~~  
36 ~~possible level of supervision and monitoring.~~ enrollment in the program. If so, the court  
37 ~~determines that the offender does require the highest possible level of supervision and~~  
38 ~~monitoring,~~ the court shall order the offender to enroll in a satellite-based monitoring  
39 program for a period of time to be specified by the court. (2007-213, s. 3; 2007-484, s.  
40 42(b))."

41           **SECTION 7.** G.S. 14-208.45 reads as rewritten:

42   "**§ 14-208.45. Fees.**

43       (a) Except as provided in subsections (b) and (b1) of this section, each person  
44 required to enroll pursuant to this Part shall pay a one-time fee of ~~ninety dollars~~

1 ~~(\$90.00)~~ ninety-five dollars (\$95.00). The fee shall be payable to the clerk of superior  
2 court, and the fees shall be remitted quarterly to the Department of Correction. This fee  
3 is intended to offset only the costs associated with the time-correlated tracking of the  
4 geographic location of subjects using the location tracking crime correlation system.

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

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

17 **SECTION 8.** Article 30 of Chapter 14 of the General Statutes is amended by  
18 adding a new section to read:

19 **"§ 14-221.3. Removing, tampering, or interfering with device; penalty.**

20 Unless a person's conduct is covered under some other provision of law providing  
21 greater punishment, any person who knowingly and without lawful authority removes,  
22 tampers with, or interferes with the operation of any device that (i) had been ordered by  
23 a court to be placed upon the person as a result of a criminal trial, proceeding, or other  
24 hearing, or (ii) had been placed upon the person as a condition of probation, parole, or  
25 by court-delegated authority, shall be guilty of a Class A1 misdemeanor."

26 **SECTION 9.** The Department of Justice shall study the guidelines issued by  
27 the U.S. Attorney for the federal Sex Offender Registration and Notification Act  
28 (SORNA) to determine whether North Carolina is in compliance with those guidelines.  
29 The Department of Justice shall identify any areas in which the State fails to comply  
30 with SORNA and the action required for compliance. The Attorney General, or his  
31 designee, shall report to the Joint Legislative Corrections, Crime Control, and Juvenile  
32 Justice Oversight Committee by December 1, 2008, regarding the status of the State's  
33 compliance with SORNA and recommend any actions or State legislation that may be  
34 required to satisfy the SORNA guidelines.

35 **SECTION 10.** Prosecutions for offenses committed before the effective date  
36 of this act are not abated or affected by this act, and the statutes that would be applicable  
37 but for this act remain applicable to those prosecutions.

38 **SECTION 11.** If any provision of this act or its application is held invalid,  
39 the invalidity does not affect other provisions or applications of this act that can be  
40 given effect without the invalid provisions or application, and to this end the provisions  
41 of this act are severable.

42 **SECTION 12.** The new provisions set forth in Section 1, G.S. 14-202.1(c),  
43 and G.S. 14-202.1(d) are effective for sentencing hearings commencing on or after  
44 December 1, 2008. On or after December 1, 2008, pursuant to G.S. 14-208.40B and the

1 retroactivity provisions in Section 4 of this act, persons who were sentenced for  
2 violating G.S. 14-202.1 prior to December 1, 2008, are subject to a hearing to determine  
3 if the offense qualifies as an aggravated offense. Section 8 of this act becomes effective  
4 December 1, 2008, and applies to offenses committed on or after that date. The  
5 remainder of this act is effective when it becomes law.