

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 402*

Short Title: Modernizing Sexual Assault Laws. (Public)

Sponsors: Senators Garrett, Marcus, and Searcy (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 1, 2019

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF THE TERM "CARETAKER" USED IN THE JUVENILE CODE TO INCLUDE AN ADULT IN A DATING OR ROMANTIC RELATIONSHIP WITH THE PARENT, GUARDIAN, OR CUSTODIAN OF THE JUVENILE; TO AMEND G.S. 14-401.11 TO ALSO PROHIBIT THE KNOWING DISTRIBUTION OF A BEVERAGE THAT CONTAINS ANY SUBSTANCE THAT COULD BE INJURIOUS TO A PERSON'S HEALTH; TO AMEND THE DEFINITION FOR THE TERM "MENTALLY INCAPACITATED" USED IN ARTICLE 7B OF CHAPTER 14 OF THE GENERAL STATUTES; AND TO MODERNIZE THE LANGUAGE USED IN CERTAIN SEX OFFENSES.

The General Assembly of North Carolina enacts:

CLARIFY DEFINITION OF THE TERM "CARETAKER" USED IN THE JUVENILE CODE

SECTION 1. G.S. 7B-101(3) reads as rewritten:

"(3) Caretaker. – Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a ~~stepparent, stepparent; foster parent, parent;~~ an adult member of the juvenile's household, household; an adult relative entrusted with the juvenile's care, which includes an adult in a dating or romantic relationship with the parent, guardian, or custodian of the juvenile; a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a ~~department, department;~~ any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational ~~facility, facility;~~ or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only."

AMEND G.S. 14-401.11 TO PROHIBIT THE KNOWING DISTRIBUTION OF A BEVERAGE THAT CONTAINS ANY SUBSTANCE THAT COULD BE INJURIOUS TO A PERSON'S HEALTH

SECTION 2. G.S. 14-401.11 reads as rewritten:



1 **"§ 14-401.11. Distribution of certain food at ~~Halloween and all other times~~ or beverage**
 2 **prohibited.**

3 (a) It shall be unlawful for any person to knowingly distribute, sell, give away or
 4 otherwise cause to be placed in a position of human ~~accessibility~~, accessibility or ingestion, any
 5 ~~food~~ food, beverage, or other eatable or drinkable substance which that person knows to
 6 ~~contain~~ contain any of the following:

- 7 (1) Any noxious or deleterious substance, material or article which might be
 8 injurious to a person's health or might cause a person any physical ~~discomfort,~~
 9 ~~or~~ discomfort.
 10 (2) Any controlled substance included in any schedule of the Controlled
 11 Substances ~~Act, or~~ Act.
 12 (3) Any poisonous chemical or compound or any foreign substance such as, but
 13 not limited to, razor blades, pins, and ground glass, which might cause death,
 14 serious physical injury or serious physical pain and discomfort.

15 (b) Penalties.

- 16 (1) Any person violating the provisions of G.S. 14-401.11(a)(1):
 17 a. Where the actual or possible effect on a person eating or drinking the
 18 ~~food~~ food, beverage, or other substance was or would be limited to
 19 mild physical discomfort without any lasting effect, shall be guilty of
 20 a Class I felony.
 21 b. Where the actual or possible effect on a person eating or drinking the
 22 ~~food~~ food, beverage, or other substance was or would be greater than
 23 mild physical discomfort without any lasting effect, shall be punished
 24 as a Class H felon.
 25 (2) Any person violating the provisions of G.S. 14-401.11(a)(2) shall be punished
 26 as a Class F felon.
 27 (3) Any person violating the provisions of G.S. 14-401.11(a)(3) shall be punished
 28 as a Class C felon."
 29

30 **AMEND DEFINITION FOR THE TERM "MENTALLY INCAPACITATED" USED IN**
 31 **ARTICLE 7B OF CHAPTER 14 OF THE GENERAL STATUTES**

32 **SECTION 3.** G.S. 14-27.20(2) reads as rewritten:

- 33 "(2) Mentally incapacitated. – A victim who due to (i) any ~~act~~ act, whether
 34 ~~committed upon the victim by a perpetrator or the victim~~ or (ii) a poisonous
 35 or controlled substance provided to the victim without the knowledge or
 36 consent of the ~~victim~~ victim, is rendered substantially incapable of either
 37 appraising the nature of his or her conduct, or resisting the act of vaginal
 38 intercourse or a sexual act."
 39

40 **MODERNIZING THE LANGUAGE USED IN CERTAIN SEX OFFENSES**

41 **SECTION 4.(a)** G.S. 14-27.21 reads as rewritten:

42 **"§ 14-27.21. First-degree ~~forcible~~ rape.**

43 (a) A person is guilty of first-degree ~~forcible~~ rape if the person engages in vaginal
 44 intercourse with another person by force and against the will of the other person, and does any
 45 of the following:

- 46 (1) Uses, threatens to use, or displays a dangerous or deadly weapon or an article
 47 which the other person reasonably believes to be a dangerous or deadly
 48 weapon.
 49 (2) Inflicts serious personal injury upon the victim or another person.
 50 (3) The person commits the offense aided and abetted by one or more other
 51 persons.

1"

2 **SECTION 4.(b)** G.S. 14-27.22 reads as rewritten:

3 **"§ 14-27.22. Second-degree ~~forcible~~rape.**

4 (a) A person is guilty of second-degree ~~forcible~~rape if the person engages in vaginal
5 intercourse with another person:

6 (1) By force and against the will of the other person; or

7 (2) Who has a mental disability or who is mentally incapacitated or physically
8 helpless, and the person performing the act knows or should reasonably know
9 the other person has a mental disability or is mentally incapacitated or
10 physically helpless.

11"

12 **SECTION 4.(c)** G.S. 14-27.26 reads as rewritten:

13 **"§ 14-27.26. First-degree ~~forcible~~sexual offense.**

14 (a) A person is guilty of a first degree ~~forcible~~sexual offense if the person engages in a
15 sexual act with another person by force and against the will of the other person, and does any of
16 the following:

17 (1) Uses, threatens to use, or displays a dangerous or deadly weapon or an article
18 which the other person reasonably believes to be a dangerous or deadly
19 weapon.

20 (2) Inflicts serious personal injury upon the victim or another person.

21 (3) The person commits the offense aided and abetted by one or more other
22 persons.

23"

24 **SECTION 4.(d)** G.S. 14-27.27 reads as rewritten:

25 **"§ 14-27.27. Second-degree ~~forcible~~sexual offense.**

26 (a) A person is guilty of second degree ~~forcible~~sexual offense if the person engages in a
27 sexual act with another person:

28 (1) By force and against the will of the other person; or

29 (2) Who has a mental disability or who is mentally incapacitated or physically
30 helpless, and the person performing the act knows or should reasonably know
31 that the other person has a mental disability or is mentally incapacitated or
32 physically helpless.

33"

34 **SECTION 4.(e)** G.S. 7B-101(1)d. reads as rewritten:

35 "d. Commits, permits, or encourages the commission of a violation of the
36 following laws by, with, or upon the juvenile: first-degree ~~forcible~~
37 rape, as provided in G.S. 14-27.21; second-degree ~~forcible~~rape as
38 provided in G.S. 14-27.22; statutory rape of a child by an adult as
39 provided in G.S. 14-27.23; first-degree statutory rape as provided in
40 G.S. 14-27.24; first-degree ~~forcible~~sex offense as provided in
41 G.S. 14-27.26; second-degree ~~forcible~~sex offense as provided in
42 G.S. 14-27.27; statutory sexual offense with a child by an adult as
43 provided in G.S. 14-27.28; first-degree statutory sexual offense as
44 provided in G.S. 14-27.29; sexual activity by a substitute parent or
45 custodian as provided in G.S. 14-27.31; sexual activity with a student
46 as provided in G.S. 14-27.32; unlawful sale, surrender, or purchase of
47 a minor, as provided in G.S. 14-43.14; crime against nature, as
48 provided in G.S. 14-177; incest, as provided in G.S. 14-178;
49 preparation of obscene photographs, slides, or motion pictures of the
50 juvenile, as provided in G.S. 14-190.5; employing or permitting the
51 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. 14-205.3(b); and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;"

SECTION 4.(f) G.S. 7B-1602(a) reads as rewritten:

"(a) When a juvenile is committed to the Division for placement in a youth development center for an offense that would be first degree murder pursuant to G.S. 14-17, first-degree ~~forcible~~rape pursuant to G.S. 14-27.21, first-degree statutory rape pursuant to G.S. 14-27.24, first-degree ~~forcible~~sexual offense pursuant to G.S. 14-27.26, or first-degree statutory sexual offense pursuant to G.S. 14-27.29 if committed by an adult, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 21 years, whichever occurs first."

SECTION 4.(g) G.S. 7B-2509 reads as rewritten:

"§ 7B-2509. Registration of certain delinquent juveniles.

In any case in which a juvenile, who was at least 11 years of age at the time of the offense, is adjudicated delinquent for committing a violation of G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.21 (first-degree ~~forcible~~rape), G.S. 14-27.22 (second-degree ~~forcible~~rape), G.S. 14-27.24 (first-degree statutory rape), G.S. 14-27.26 (first-degree ~~forcible~~sexual offense), G.S. 14-27.27 (second-degree ~~forcible~~sexual offense), or G.S. 14-27.29 (first-degree statutory sexual offense), the judge, upon a finding that the juvenile is a danger to the community, may order that the juvenile register in accordance with Part 4 of Article 27A of Chapter 14 of the General Statutes."

SECTION 4.(h) G.S. 7B-2513 reads as rewritten:

"§ 7B-2513. Commitment of delinquent juvenile to Division.

...

(1) The twenty-first birthday of the juvenile if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree ~~forcible~~rape pursuant to G.S. 14-27.21, first-degree statutory rape pursuant to G.S. 14-27.24, first-degree ~~forcible~~sexual offense pursuant to G.S. 14-27.26, or first-degree statutory sexual offense pursuant to G.S. 14-27.29 if committed by an adult;

...

(a1) For an offense the juvenile committed prior to reaching the age of 16 years, the term shall not exceed:

(1) The twenty-first birthday of the juvenile if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree ~~forcible~~rape pursuant to G.S. 14-27.21, first-degree statutory rape pursuant to G.S. 14-27.24, first-degree ~~forcible~~sexual offense pursuant to G.S. 14-27.26, or first-degree statutory sexual offense pursuant to G.S. 14-27.29 if committed by an adult;

...."

SECTION 4.(i) G.S. 7B-2514(c)(2) reads as rewritten:

"(2) The juvenile's twenty-first birthday if the juvenile has been committed to the Division for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree ~~forcible~~rape pursuant to G.S. 14-27.21, first-degree statutory rape pursuant to G.S. 14-27.24, first-degree ~~forcible~~sexual offense

1 pursuant to G.S. 14-27.26, or first-degree statutory sexual offense pursuant to
2 G.S. 14-27.29 if committed by an adult."

3 **SECTION 4.(j)** G.S. 7B-2516(c)(1) reads as rewritten:

4 "(1) The juvenile's twenty-first birthday if the juvenile has been committed to the
5 Division for an offense that would be first-degree murder pursuant to
6 G.S. 14-17, first-degree ~~forcible~~-rape pursuant to G.S. 14-27.21, first-degree
7 statutory rape pursuant to G.S. 14-27.24, first-degree ~~forcible~~-sexual offense
8 pursuant to G.S. 14-27.26, or first-degree statutory sexual offense pursuant to
9 G.S. 14-27.29 if committed by an adult."

10 **SECTION 4.(k)** G.S. 7B-2600(c) reads as rewritten:

11 "(c) In any case where the court finds the juvenile to be delinquent or undisciplined, the
12 jurisdiction of the court to modify any order or disposition made in the case shall continue (i)
13 during the minority of the juvenile, (ii) until the juvenile reaches the age of 19 years if the juvenile
14 has been adjudicated delinquent and committed to the Division for an offense that would be a
15 Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in
16 G.S. 7B-1602(a), (iii) until the juvenile reaches the age of 21 years if the juvenile has been
17 adjudicated delinquent and committed for an offense that would be first-degree murder pursuant
18 to G.S. 14-17, first-degree ~~forcible~~-rape pursuant to G.S. 14-27.21, first-degree statutory rape
19 pursuant to G.S. 14-27.24, first-degree ~~forcible~~-sexual offense pursuant to G.S. 14-27.26, or
20 first-degree statutory sexual offense pursuant to G.S. 14-27.29 if committed by an adult, or (iv)
21 until terminated by order of the court."

22 **SECTION 4.(l)** G.S. 14-208.6(5) reads as rewritten:

23 "(5) Sexually violent offense. – A violation of former G.S. 14-27.6 (attempted rape
24 or sexual offense), G.S. 14-27.21 (first-degree ~~forcible~~-rape), G.S. 14-27.22
25 (second-degree ~~forcible~~-rape), G.S. 14-27.23 (statutory rape of a child by an
26 adult), G.S. 14-27.24 (first-degree statutory rape), G.S. 14-27.25(a) (statutory
27 rape of a person who is 15 years of age or younger and where the defendant is
28 at least six years older), G.S. 14-27.26 (first-degree ~~forcible~~-sexual offense),
29 G.S. 14-27.27 (second-degree ~~forcible~~-sexual offense), G.S. 14-27.28
30 (statutory sexual offense with a child by an adult), G.S. 14-27.29 (first-degree
31 statutory sexual offense), G.S. 14-27.30(a) (statutory sexual offense with a
32 person who is 15 years of age or younger and where the defendant is at least
33 six years older), G.S. 14-27.31 (sexual activity by a substitute parent or
34 custodian), G.S. 14-27.32 (sexual activity with a student), G.S. 14-27.33
35 (sexual battery), G.S. 14-43.11 (human trafficking) if (i) the offense is
36 committed against a minor who is less than 18 years of age or (ii) the offense
37 is committed against any person with the intent that they be held in sexual
38 servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual
39 servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6
40 (employing or permitting minor to assist in offenses against public morality
41 and decency), G.S. 14-190.9(a1) (felonious indecent exposure),
42 G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17
43 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree
44 sexual exploitation of a minor), G.S. 14-202.1 (taking indecent liberties with
45 children), G.S. 14-202.3 (Solicitation of child by computer or certain other
46 electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking
47 indecent liberties with a student), G.S. 14-205.2(c) or (d) (patronizing a
48 prostitute who is a minor or has a mental disability), G.S. 14-205.3(b)
49 (promoting prostitution of a minor or a person who has a mental disability),
50 G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution
51 with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual

1 act upon a juvenile by parent or guardian). The term also includes the
2 following: a solicitation or conspiracy to commit any of these offenses; aiding
3 and abetting any of these offenses."

4 **SECTION 4.(m)** G.S. 14-208.26(a) reads as rewritten:

5 "(a) When a juvenile is adjudicated delinquent for a violation of former G.S. 14-27.6
6 (attempted rape or sexual offense), G.S. 14-27.21 (first-degree ~~forcible~~rape), G.S. 14-27.22
7 (second-degree ~~forcible~~rape), G.S. 14-27.24 (first-degree statutory rape), G.S. 14-27.26
8 (first-degree ~~forcible~~sexual offense), G.S. 14-27.27 (second-degree ~~forcible~~sexual offense), or
9 G.S. 14-27.29 (first-degree statutory sexual offense), and the juvenile was at least eleven years
10 of age at the time of the commission of the offense, the court shall consider whether the juvenile
11 is a danger to the community. If the court finds that the juvenile is a danger to the community,
12 then the court shall consider whether the juvenile should be required to register with the county
13 sheriff in accordance with this Part. The determination as to whether the juvenile is a danger to
14 the community and whether the juvenile shall be ordered to register shall be made by the
15 presiding judge at the dispositional hearing. If the judge rules that the juvenile is a danger to the
16 community and that the juvenile shall register, then an order shall be entered requiring the
17 juvenile to register. The court's findings regarding whether the juvenile is a danger to the
18 community and whether the juvenile shall register shall be entered into the court record. No
19 juvenile may be required to register under this Part unless the court first finds that the juvenile is
20 a danger to the community."

21 **SECTION 4.(n)** G.S. 90-171.38(b) reads as rewritten:

22 "(b) Any individual, organization, association, corporation, or institution may establish a
23 program for the purpose of training or educating any registered nurse licensed under
24 G.S. 90-171.30, 90-171.32, or 90-171.33 in the skills, procedures, and techniques necessary to
25 conduct examinations for the purpose of collecting evidence from the victims of first-degree
26 ~~forcible~~rape as defined in G.S. 14-27.21, second-degree ~~forcible~~rape as defined in
27 G.S. 14-27.22, statutory rape of a child by an adult as defined in G.S. 14-27.23, first-degree
28 statutory rape as defined in G.S. 14-27.24, statutory rape of a person who is 15 years of age or
29 younger as defined in G.S. 14-27.25, first-degree ~~forcible~~sexual offense as defined in
30 G.S. 14-27.26, second-degree ~~forcible~~sexual offense as defined in G.S. 14-27.27, statutory
31 sexual offense with a child by an adult as defined in G.S. 14-27.28, first-degree statutory sexual
32 offense as defined in G.S. 14-27.29, statutory sexual offense with a person who is 15 years of
33 age or younger as defined in G.S. 14-27.30, attempted first-degree or second-degree ~~forcible~~
34 rape, attempted first-degree statutory rape, attempted first-degree or second-degree ~~forcible~~
35 sexual offense, or attempted first-degree statutory sexual offense. The Board, pursuant to
36 G.S. 90-171.23(b)(14), shall establish, revise, or repeal standards for any such program. Any
37 individual, organization, association, corporation, or institution which desires to establish a
38 program under this subsection shall apply to the Board and submit satisfactory evidence that it
39 will meet the standards prescribed by the Board."

40 **SECTION 4.(o)** G.S. 143B-1200(i)(3) reads as rewritten:

41 "(3) Sexual assault. – Any of the following crimes:

- 42 a. First-degree ~~forcible~~rape as defined in G.S. 14-27.21.
- 43 b. Second-degree ~~forcible~~rape as defined in G.S. 14-27.22.
- 44 c. First-degree statutory rape as defined in G.S. 14-27.24.
- 45 d. Statutory rape of a person who is 15 years of age or younger as defined
46 in G.S. 14-27.25.
- 47 e. First-degree ~~forcible~~sexual offense as defined in G.S. 14-27.26.
- 48 f. Second-degree ~~forcible~~sexual offense as defined in G.S. 14-27.27.
- 49 g. First-degree statutory sexual offense as defined in G.S. 14-27.29.
- 50 h. Statutory sexual offense with a person who is 15 years of age or
51 younger as defined in G.S. 14-27.30."

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SAVINGS CLAUSE

SECTION 5. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

EFFECTIVE DATE

SECTION 6. This act becomes effective December 1, 2019, and applies to offenses committed on or after that date.