

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

2

SENATE BILL 910
Second Edition Engrossed 6/11/12

Short Title: Sale of a Child/Felony Offense. (Public)

Sponsors: Senators Atwater (Primary Sponsor) (Primary Sponsor); D. Berger, Bingham, Brock, East, and McKissick.

Referred to: Rules and Operations of the Senate.

May 30, 2012

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF UNLAWFUL SALE, SURRENDER, OR PURCHASE OF A CHILD; AND 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.

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 child.

(a) A person commits the offense of unlawful sale, surrender, or purchase of a child when that person 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 acquisition or transfer of the legal or physical custody or adoption of a minor child, except as ordered by the court or as authorized pursuant to G.S. 48-10-103.

(b) A person who violates this section is guilty of a Class D felony and shall pay a minimum fine of ten thousand dollars (\$10,000). For each subsequent violation, a person is guilty of a Class D felony and shall pay a minimum fine of fifty thousand dollars (\$50,000).

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

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

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;



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

29 **SECTION 3.** G.S. 14-208.6(5) reads as rewritten:

30 "(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree
31 rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second
32 degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex
33 offense with a child; adult offender), G.S. 14-27.5 (second degree sexual
34 offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or
35 sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain
36 victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is
37 13-, 14-, or 15-years-old where the defendant is at least six years older),
38 G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude),
39 G.S. 14-43.14 (sale, surrender, or purchase of a child), G.S. 14-178 (incest
40 between near relatives), G.S. 14-190.6 (employing or permitting minor to
41 assist in offenses against public morality and decency), G.S. 14-190.9(a1)
42 (felonious indecent exposure), G.S. 14-190.16 (first degree sexual
43 exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation
44 of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor),
45 G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19
46 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent
47 liberties with children), G.S. 14-202.3 (Solicitation of child by computer or
48 certain other electronic devices to commit an unlawful sex act),
49 G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-318.4(a1)
50 (parent or caretaker commit or permit act of prostitution with or by a
51 juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a

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

4 **SECTION 4.** G.S. 48-10-102(b) reads as rewritten:

5 "(b) ~~A~~ Unless the conduct is covered under some other provision of law providing
6 greater punishment, a person who violates this section is guilty of a Class 1 misdemeanor. For
7 each subsequent violation, a person is guilty of a Class H felony which may include a fine of
8 not more than ten thousand dollars (\$10,000)."

9 **SECTION 5.** The North Carolina Conference of District Attorneys shall conduct a
10 study of additional measures that may be taken to stop criminal activities that involve the sale
11 of children. In its study, the North Carolina Conference of District Attorneys shall consider the
12 measures taken by other states to address this type of criminal activity. The North Carolina
13 Conference of District Attorneys shall submit a final written report of its findings and
14 recommendations, including any additional legislative proposals, regarding this issue to the
15 2013 General Assembly by January 30, 2013.

16 **SECTION 6.** Section 5 and Section 6 of this act become effective July 1, 2012.
17 The remainder of this act becomes effective December 1, 2012, and applies to offenses
18 committed on or after that date.