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Short Title: Sale of a Minor/Felony Offense.

(Public)

Sponsors:

Referred to:

May 30, 2012

A BILL TO BE ENTITLED

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; AND TO EXPAND THE LIST OF FELONIES FOR WHICH A DNA SAMPLE SHALL BE TAKEN UPON ARREST.

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 one thousand dollars (\$1,000). For each subsequent violation, a person is guilty of a Class F felony and shall pay a minimum fine of five thousand dollars (\$5,000).

(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



1 to the community and that the person shall register, then an order shall be entered requiring the  
2 person to register."

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

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

- 6 a. Inflicts or allows to be inflicted upon the juvenile a serious physical  
7 injury by other than accidental means;
- 8 b. Creates or allows to be created a substantial risk of serious physical  
9 injury to the juvenile by other than accidental means;
- 10 c. Uses or allows to be used upon the juvenile cruel or grossly  
11 inappropriate procedures or cruel or grossly inappropriate devices to  
12 modify behavior;
- 13 d. Commits, permits, or encourages the commission of a violation of  
14 the following laws by, with, or upon the juvenile: first-degree rape,  
15 as provided in G.S. 14-27.2; rape of a child by an adult offender, as  
16 provided in G.S. 14-27.2A; second degree rape as provided in  
17 G.S. 14-27.3; first-degree sexual offense, as provided in  
18 G.S. 14-27.4; sexual offense with a child by an adult offender, as  
19 provided in G.S. 14-27.4A; second degree sexual offense, as  
20 provided in G.S. 14-27.5; sexual act by a custodian, as provided in  
21 G.S. 14-27.7; unlawful sale, surrender, or purchase of a minor, as  
22 provided in G.S. 14-43.14; crime against nature, as provided in  
23 G.S. 14-177; incest, as provided in G.S. 14-178; preparation of  
24 obscene photographs, slides, or motion pictures of the juvenile, as  
25 provided in G.S. 14-190.5; employing or permitting the juvenile to  
26 assist in a violation of the obscenity laws as provided in  
27 G.S. 14-190.6; dissemination of obscene material to the juvenile as  
28 provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or  
29 disseminating material harmful to the juvenile as provided in  
30 G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual  
31 exploitation of the juvenile as provided in G.S. 14-190.16 and  
32 G.S. 14-190.17; promoting the prostitution of the juvenile as  
33 provided in G.S. 14-190.18; and taking indecent liberties with the  
34 juvenile, as provided in G.S. 14-202.1;
- 35 e. Creates or allows to be created serious emotional damage to the  
36 juvenile; serious emotional damage is evidenced by a juvenile's  
37 severe anxiety, depression, withdrawal, or aggressive behavior  
38 toward himself or others; or
- 39 f. Encourages, directs, or approves of delinquent acts involving moral  
40 turpitude committed by the juvenile."

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

42 "Reportable conviction" means:

- 43 a. A final conviction for an offense against a minor, a sexually violent  
44 offense, or an attempt to commit any of those offenses unless the  
45 conviction is for aiding and abetting. A final conviction for aiding  
46 and abetting is a reportable conviction only if the court sentencing  
47 the individual finds that the registration of that individual under this  
48 Article furthers the purposes of this Article as stated in  
49 G.S. 14-208.5.
- 50 b. A final conviction in another state of an offense, which if committed  
51 in this State, is substantially similar to an offense against a minor or a

1 sexually violent offense as defined by this section, or a final  
2 conviction in another state of an offense that requires registration  
3 under the sex offender registration statutes of that state.

4 c. A final conviction in a federal jurisdiction (including a court martial)  
5 of an offense, which is substantially similar to an offense against a  
6 minor or a sexually violent offense as defined by this section.

7 d. A final conviction for a violation of G.S. 14-202(d), (e), (f), (g), or  
8 (h), or a second or subsequent conviction for a violation of  
9 G.S. 14-202(a), (a1), or (c), only if the court sentencing the  
10 individual issues an order pursuant to G.S. 14-202(l) requiring the  
11 individual to register.

12 e. A final conviction for a violation of G.S. 14-43.14, only if the court  
13 sentencing the individual issues an order pursuant to  
14 G.S. 14-43.14(e) requiring the individual to register."

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

16 "**§ 14-322.3. Abandonment of an infant under seven days of age.**

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

21 **SECTION 5.** The North Carolina Conference of District Attorneys shall conduct a  
22 study of additional measures that may be taken to stop criminal activities that involve the sale  
23 of children. In its study, the North Carolina Conference of District Attorneys shall consider the  
24 measures taken by other states to address this type of criminal activity. The North Carolina  
25 Conference of District Attorneys shall submit a final written report of its findings and  
26 recommendations, including any additional legislative proposals, regarding this issue to the  
27 2013 General Assembly by January 30, 2013.

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

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

32 (1) The department shall disclose confidential information to any federal, State,  
33 or local government entity or its agent in order to protect a juvenile from  
34 abuse or neglect. Any confidential information disclosed to any federal,  
35 State, or local government entity or its agent under this subsection shall  
36 remain confidential with the other government entity or its agent and shall  
37 only be redisclosed for purposes directly connected with carrying out that  
38 entity's mandated responsibilities.

39 (1a) The department shall disclose confidential information regarding the identity  
40 of the reporter to any federal, State, or local government entity or its agent  
41 with a court order. The department may only disclose confidential  
42 information regarding the identity of the reporter to a federal, State, or local  
43 government entity or its agent without a court order when the entity  
44 demonstrates a need for the reporter's name to carry out the entity's  
45 mandated responsibilities.

46 (2) The information may be examined upon request by the juvenile's guardian  
47 ad litem or the juvenile, including a juvenile who has reached age 18 or been  
48 emancipated.

49 (3) A district or superior court judge of this State presiding over a civil matter in  
50 which the department of social services is not a party may order the  
51 department to release confidential information, after providing the

1 department with reasonable notice and an opportunity to be heard and then  
 2 determining that the information is relevant and necessary to the trial of the  
 3 matter before the court and unavailable from any other source. This  
 4 subdivision shall not be construed to relieve any court of its duty to conduct  
 5 hearings and make findings required under relevant federal law, before  
 6 ordering the release of any private medical or mental health information or  
 7 records related to substance abuse or HIV status or treatment. The  
 8 department of social services may surrender the requested records to the  
 9 court, for in camera review, if the surrender is necessary to make the  
 10 required determinations.

11 (4) A district or superior court judge of this State presiding over a criminal or  
 12 delinquency matter shall conduct an in camera review prior to releasing to  
 13 the defendant or juvenile any confidential records maintained by the  
 14 department of social services, except those records the defendant or juvenile  
 15 is entitled to pursuant to subdivision (2) of this subsection.

16 (5) The department may disclose confidential information to a parent, guardian,  
 17 custodian, or caretaker in accordance with G.S. 7B-700 of this Subchapter."

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

19 **"§ 131D-10.6C. Maintaining a register of ~~applicants~~ licensed foster homes by the Division**  
 20 **of Social Services.**

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

23 (1) The name, age, and address of each ~~applicant~~ foster parent.

24 ~~(2) The date of the application.~~

25 (3) The ~~applicant's~~ foster parent's supervising agency.

26 (4) ~~Any~~ The number of hours of mandated training completed by the ~~applicant~~  
 27 ~~and the dates of training~~ foster parent.

28 ~~Whether the applicant was licensed and the~~ The date of the initial licensure.

29 (6) The current licensing period.

30 (7) Any adverse licensing actions.

31 ~~(8) Any other information deemed necessary by the Division of Social Services.~~

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

39 **SECTION 8.** G.S. 15A-266.3A(f) reads as rewritten:

40 "(f) This section shall apply to a person arrested for violating any one of the following  
 41 offenses in Chapter 14 of the General Statutes:

42 (1) G.S. 14-17, First and Second Degree Murder.

43 (2) G.S. 14-18, Manslaughter.

44 (3) Any offense in Article 7A, Rape and Other Sex Offenses.

45 (4) G.S. 14-32, Felonious assault with deadly weapon with intent to kill or  
 46 inflicting serious injury; G.S. 14-32.1(e), Assault on handicapped person;  
 47 G.S. 14-32.4(a), Assault inflicting serious bodily injury; G.S. 14-34.2,  
 48 Assault with a firearm or other deadly weapon upon governmental officers  
 49 or employees, company police officers, or campus police officers;  
 50 G.S. 14-34.5, Assault with a firearm on a law enforcement, probation, or  
 51 parole officer or on a person employed at a State or local detention facility;

- 1 G.S. 14-34.6, Assault or affray on a firefighter, an emergency medical  
2 technician, medical responder, emergency department nurse, or emergency  
3 department physician; and G.S. 14-34.7, Assault inflicting serious injury on  
4 a law enforcement, probation, or parole officer or on a person employed at a  
5 State or local detention facility.
- 6 (5) Any offense in Article 10, Kidnapping and Abduction, or Article 10A,  
7 Human Trafficking.
- 8 (5a) G.S. 14-50.18, Soliciting; encouraging participation of minor.
- 9 (6) G.S. 14-51, First and second degree burglary; G.S. 14-53, Breaking out of  
10 dwelling house burglary; G.S. 14-54.1, Breaking or entering a place of  
11 religious worship; and G.S. 14-57, Burglary with explosives.
- 12 (7) Any offense in Article 15, Arson.
- 13 (8) G.S. 14-87, Armed robbery.
- 14 (8a) G.S. 14-190.7, Dissemination to minors under the age of 16 years; and  
15 G.S. 14-190.8, Dissemination to minors under the age of 13 years.
- 16 (9) Any offense which would require the person to register under the provisions  
17 of Article 27A of Chapter 14 of the General Statutes, Sex Offender and  
18 Public Protection Registration Programs.
- 19 (10) G.S. 14-196.3, Cyberstalking.
- 20 (10a) G.S. 14-208.44(a) and (b), Failure to enroll in a satellite-based monitoring  
21 program; tampering with device.
- 22 (11) G.S. 14-277.3A, Stalking.
- 23 (12) G.S. 14-315(a1), Selling or giving weapons (handguns) to minors.
- 24 (13) G.S. 14-318.4, Child abuse a felony.
- 25 (14) G.S. 14-320.1, Transporting child outside the State with intent to violate  
26 custody order.
- 27 (15) Any felony offense under G.S. 14-321.1, Prohibit babysitting service by sex  
28 offender or in the home of a sex offender.
- 29 (16) G.S. 14-322.1, Abandonment of child or children for six months."

30 **SECTION 9.** Sections 5 and 9 of this act are effective when they become law.  
31 Sections 6 and 7 of this act become effective October 1, 2012. The remainder of this act  
32 becomes effective December 1, 2012, and applies to offenses committed on or after that date.