

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 29
Committee Substitute Favorable 4/16/07

Short Title: Sex Offender GPS/DOC Requests.

(Public)

Sponsors:

Referred to:

January 30, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCEDURE FOR SATELLITE-BASED
MONITORING OF SEX OFFENDERS AND TO MAKE OTHER CHANGES TO
THE SEX OFFENDER LAWS.

The General Assembly of North Carolina enacts:

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

"§ 14-208.40. Establishment of program; creation of guidelines; duties.

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

(1) Any offender who is convicted of a reportable conviction as defined by G.S. 14-208.6(4) and who is required to register under Part 3 of Article 27A of Chapter 14 of the General Statutes because the defendant is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S. 14-208.6. ~~An offender in this category who is ordered by the court to submit to satellite based monitoring is subject to that requirement for the person's natural life, unless the requirement is terminated pursuant to G.S. 14-208.36.~~

(2) Any offender who satisfies all of the following criteria: (i) is convicted of a reportable conviction as defined by G.S. 14-208.6(4), (ii) is required to register under Part 2 of Article 27A of Chapter 14 of the General Statutes, (iii) has committed an offense involving the physical, mental, or sexual abuse of a minor, and (iv) based on the Department's risk assessment program requires the highest possible level of supervision and monitoring. ~~An offender in this category who is ordered by the court to submit to satellite based monitoring is subject to that requirement only for the period of time ordered by the~~

1 court and is not subject to a requirement of lifetime satellite-based
2 monitoring.

3 (b) In developing the guidelines for the program, the Department shall require
4 that any offender who is enrolled in the satellite-based program submit to an active
5 continuous satellite-based monitoring program, unless an active program will not work
6 as provided by this section. If the Department determines that an active program will
7 not work as provided by this section, then the Department shall require that the
8 defendant submit to a passive continuous satellite-based program that works within the
9 technological or geographical limitations.

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

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

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

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

22 **SECTION 2.** Article 27A of Chapter 14 of the General Statutes is amended
23 by adding a new section to read:

24 **"§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

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

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

34 (b) After receipt of the evidence from the parties, the court shall determine
35 whether the offender's conviction places the offender in one of the categories described
36 in G.S. 14-208.40(a), and if so, shall make a finding of fact of that determination,
37 specifying whether (i) the offender has been classified as a sexually violent predator
38 pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense
39 was an aggravated offense, or (iv) the offense involved the physical, mental, or sexual
40 abuse of a minor.

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

1 (d) If the court finds that the offender committed an offense that involved the
2 physical, mental, or sexual abuse of a minor, that offense is not an aggravated offense,
3 and the offender is not a recidivist, the court shall order that the Department do a risk
4 assessment of the offender. The Department shall have a minimum of 30 days, but not
5 more than 60 days, to complete the risk assessment of the offender and report the results
6 to the court.

7 (e) Upon receipt of a risk assessment from the Department pursuant to subsection
8 (d) of this section, the court shall determine whether, based on the Department's risk
9 assessment, the offender requires the highest possible level of supervision and
10 monitoring. If the court determines that the offender does require the highest possible
11 level of supervision and monitoring, the court shall order the offender to enroll in a
12 satellite-based monitoring program for a period of time to be specified by the court."

13 **SECTION 3.** Article 27A of Chapter 14 of the General Statutes is amended
14 by adding a new section to read:

15 **"§ 14-208.40B. Determination of satellite-based monitoring requirement in certain**
16 **circumstances.**

17 (a) When an offender is convicted of a reportable conviction as defined by
18 G.S. 14-208.6(4), and there has been no determination by a court on whether the
19 offender shall be required to enroll in satellite-based monitoring, the Department shall
20 make an initial determination on whether the offender falls into one of the categories
21 described in G.S. 14-208.40(a).

22 (b) If the Department determines that the offender falls into one of the categories
23 described in G.S. 14-208.40(a), the Department shall schedule a hearing in the court of
24 the county in which the offender resides. The Department shall notify the offender of
25 the Department's determination and the date of the scheduled hearing by certified mail
26 sent to the address provided by the offender pursuant to G.S. 14-208.7. The hearing
27 shall be scheduled no sooner than 15 days from the date the notification is mailed.
28 Receipt of notification shall be presumed to be the date indicated by the certified mail
29 receipt.

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

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

37 If the court finds that the offender committed an offense that involved the physical,
38 mental, or sexual abuse of a minor, that offense is not an aggravated offense, and the
39 offender is not a recidivist, the court shall order that the Department do a risk
40 assessment of the offender. The Department shall have a minimum of 30 days, but not
41 more than 60 days, to complete the risk assessment of the offender and report the results
42 to the court. The Department may use a risk assessment of the offender done within six
43 months of the date of the hearing.

1 Upon receipt of a risk assessment from the Department, the court shall determine
2 whether, based on the Department's risk assessment, the offender requires the highest
3 possible level of supervision and monitoring. If the court determines that the offender
4 does require the highest possible level of supervision and monitoring, the court shall
5 order the offender to enroll in a satellite-based monitoring program for a period of time
6 to be specified by the court."

7 **SECTION 4.** Article 27A of Chapter 14 of the General Statutes is amended
8 by adding a new section to read:

9 **"§ 14-208.40C. Requirements of enrollment.**

10 (a) Any offender required to enroll in satellite-based monitoring pursuant to
11 G.S. 14-208.40A or G.S. 14-208.40B who receives an active sentence shall be enrolled
12 and receive the appropriate equipment immediately upon the offender's release from the
13 Division of Prisons.

14 (b) Any offender required to enroll in satellite-based monitoring pursuant to
15 G.S. 14-208.40A or G.S. 14-208.40B who receives an intermediate punishment shall,
16 immediately upon sentencing, report to the Division of Community Corrections for
17 enrollment in the satellite-based monitoring program, and, if necessary, shall return at
18 any time designated by that Division to receive the appropriate equipment. If the
19 intermediate sentence includes a required period of imprisonment, the offender shall not
20 be required to be enrolled in the satellite-based monitoring program during the period of
21 imprisonment.

22 (c) Any offender required to enroll in satellite-based monitoring pursuant to
23 G.S. 14-208.40A or G.S. 14-208.40B who receives a community punishment shall,
24 immediately upon sentencing, report to the Division of Community Corrections for
25 enrollment in the satellite-based monitoring program, and, if necessary, shall return at
26 any time designated by that Division to receive the appropriate equipment."

27 **SECTION 5.** G.S. 14-208.42 reads as rewritten:

28 **"§ 14-208.42. ~~Lifetime registration offenders~~ Offenders required to submit to**
29 **satellite-based monitoring for life and to continue on unsupervised**
30 **probation required to cooperate with Department upon completion of**
31 **sentence.**

32 Notwithstanding any other provision of law, when an offender is required to enroll
33 in satellite-based monitoring pursuant to G.S. 14-208.40A or G.S. 14-208.40B, the court
34 sentences an offender who is in the category described by G.S. 14-208.40(a)(1) for a
35 reportable conviction as defined by G.S. 14-208.6(4), and orders the offender to enroll
36 in a satellite-based monitoring program, the court shall also order that the offender,
37 upon completion of the offender's sentence and any term of parole, post-release
38 supervision, intermediate punishment, or supervised probation that follows the sentence,
39 the offender shall continue to be enrolled in the satellite-based monitoring program for
40 the offender's life and be placed on unsupervised probation the period required by
41 G.S. 14-208.40A or G.S. 14-208.40B unless the requirement that the person enroll in a
42 satellite-based monitoring program is terminated pursuant to G.S. 14-208.43.

43 The Department shall have the authority to have contact with the offender at the
44 offender's residence or to require the offender to appear at a specific location as needed

1 for the purpose of enrollment, to receive monitoring equipment, to have equipment
2 examined or maintained, and for any other purpose necessary to complete the
3 requirements of the satellite-based monitoring program. The offender shall cooperate
4 with the Department and the requirements of the satellite-based monitoring program
5 until the offender's requirement to enroll is terminated and the offender has returned all
6 monitoring equipment to the Department."

7 **SECTION 6.** G.S. 14-208.44 reads as rewritten:

8 **"§ 14-208.44. Failure to enroll; tampering with device.**

9 (a) Any person required to enroll in a satellite-based monitoring program who
10 fails to enroll shall be guilty of a Class F felony.

11 (b) Any person who intentionally tampers with, removes, or
12 ~~vandalizes~~vandalizes, or otherwise interferes with the proper functioning of a device
13 issued pursuant to a satellite-based monitoring program to a person duly enrolled in the
14 program shall be guilty of a Class E felony.

15 (c) Any person required to enroll in a satellite-based monitoring program who
16 fails to provide necessary information to the Department, or fails to cooperate with the
17 Department's guidelines and regulations for the program shall be guilty of a Class 1
18 misdemeanor.

19 (d) For purposes of this section, 'enroll' shall include appearing, as directed by
20 the Department, to receive the necessary equipment."

21 **SECTION 7.** G.S. 15A-1343(b2) reads as rewritten:

22 "(b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of
23 Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – As special
24 conditions of probation, a defendant who has been convicted of an offense which is a
25 reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical,
26 mental, or sexual abuse of a minor, must:

- 27 (1) Register as required by G.S. 14-208.7 if the offense is a reportable
28 conviction as defined by G.S. 14-208.6(4).
- 29 (2) Participate in such evaluation and treatment as is necessary to
30 complete a prescribed course of psychiatric, psychological, or other
31 rehabilitative treatment as ordered by the court.
- 32 (3) Not communicate with, be in the presence of, or found in or on the
33 premises of the victim of the offense.
- 34 (4) Not reside in a household with any minor child if the offense is one in
35 which there is evidence of sexual abuse of a minor.
- 36 (5) Not reside in a household with any minor child if the offense is one in
37 which there is evidence of physical or mental abuse of a minor, unless
38 the court expressly finds that it is unlikely that the defendant's harmful
39 or abusive conduct will recur and that it would be in the minor child's
40 best interest to allow the probationer to reside in the same household
41 with a minor child.
- 42 (6) Satisfy any other conditions determined by the court to be reasonably
43 related to his rehabilitation.

- 1 (7) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A
2 of Chapter 14 of the General Statutes, if the defendant is described by
3 G.S. 14-208.40(a)(1).
- 4 (8) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A
5 of Chapter 14 of the General Statutes, if the defendant is in the
6 category described by G.S. 14-208.40(a)(2), and the Department of
7 Correction, based on the Department's risk assessment program,
8 recommends that the defendant submit to the highest possible level of
9 supervision and monitoring.
- 10 (9) Submit at reasonable times to warrantless searches by a probation
11 officer of the probationer's person and of the probationer's vehicle and
12 premises while the probationer is present, for purposes specified by the
13 court and reasonably related to the probation supervision, but the
14 probationer may not be required to submit to any other search that
15 would otherwise be unlawful. For purposes of this subdivision,
16 warrantless searches of the probationer's computer or other electronic
17 mechanism which may contain electronic data shall be considered
18 reasonably related to the probation supervision. Whenever the
19 warrantless search consists of testing for the presence of illegal drugs,
20 the probationer may also be required to reimburse the Department of
21 Correction for the actual cost of drug screening and drug testing, if the
22 results are positive.

23 Defendants subject to the provisions of this subsection shall not be placed on
24 unsupervised probation, ~~except as provided in G.S. 14-208.42, probation.~~"

25 **SECTION 8.** G.S. 15A-1374(b)(11) reads as rewritten:

26 "(b) Appropriate Conditions. – As conditions of parole, the Commission may
27 require that the parolee comply with one or more of the following conditions:

- 28 ...
- 29 (11) Submit at reasonable times to warrantless searches of his person by a
30 parole officer of the parolee's person and of the parolee's vehicle and
31 premises while the parolee is present, for purposes reasonably related
32 to ~~his~~ the parole supervision. The Commission may not require as a
33 condition of parole that the parolee submit to any other searches that
34 would otherwise be unlawful. If the parolee has been convicted of an
35 offense which is a reportable conviction as defined in
36 G.S. 14-208.6(4), or which involves the physical, mental, or sexual
37 abuse of a minor, warrantless searches of the parolee's computer or
38 other electronic mechanism which may contain electronic data shall be
39 considered reasonably related to the parole supervision. Whenever the
40 search consists of testing for the presence of illegal drugs, the parolee
41 may also be required to reimburse the Department of Correction for
42 the actual cost of drug testing and drug screening, if the results are
43 positive."

44 **SECTION 9.** G.S. 15A-1368.4(b1) reads as rewritten:

1 "(b1) Additional Required Conditions for Sex Offenders and Persons Convicted of
2 Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – In addition to the
3 required condition set forth in subsection (b) of this section, for a supervisee who has
4 been convicted of an offense which is a reportable conviction as defined in
5 G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor,
6 controlling conditions, violations of which may result in revocation of post-release
7 supervision, are:

- 8 (1) Register as required by G.S. 14-208.7 if the offense is a reportable
9 conviction as defined by G.S. 14-208.6(4).
- 10 (2) Participate in such evaluation and treatment as is necessary to
11 complete a prescribed course of psychiatric, psychological, or other
12 rehabilitative treatment as ordered by the Commission.
- 13 (3) Not communicate with, be in the presence of, or found in or on the
14 premises of the victim of the offense.
- 15 (4) Not reside in a household with any minor child if the offense is one in
16 which there is evidence of sexual abuse of a minor.
- 17 (5) Not reside in a household with any minor child if the offense is one in
18 which there is evidence of physical or mental abuse of a minor, unless
19 a court of competent jurisdiction expressly finds that it is unlikely that
20 the defendant's harmful or abusive conduct will recur and that it would
21 be in the child's best interest to allow the supervisee to reside in the
22 same household with a minor child.
- 23 (6) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A
24 of Chapter 14 of the General Statutes, if the offense is a reportable
25 conviction as defined by G.S. 14-208.6(4) and the supervisee is in the
26 category described by G.S. 14-208.40(a)(1).
- 27 (7) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A
28 of Chapter 14 of the General Statutes, if the offense is a reportable
29 conviction as defined by G.S. 14-208.6(4) and the supervisee is in the
30 category described by G.S. 14-208.40(a)(2).
- 31 (8) Submit at reasonable times to warrantless searches by a post-release
32 supervision officer of the supervisee's person and of the supervisee's
33 vehicle and premises while the supervisee is present, for purposes
34 reasonably related to the post-release supervision, but the supervisee
35 may not be required to submit to any other search that would otherwise
36 be unlawful. For purposes of this subdivision, warrantless searches of
37 the supervisee's computer or other electronic mechanism which may
38 contain electronic data shall be considered reasonably related to the
39 post-release supervision. Whenever the warrantless search consists of
40 testing for the presence of illegal drugs, the supervisee may also be
41 required to reimburse the Department of Correction for the actual cost
42 of drug screening and drug testing, if the results are positive."

43 **SECTION 10.** G.S. 14-208.16(d) reads as rewritten:

1 "(d) Changes in the ownership of or use of property within 1,000 feet of a
2 registrant's registered address that occur after a registrant establishes residency at the
3 registered address shall not form the basis for finding that an offender is in violation of
4 this section. For purposes of this subsection, a residence is established when the
5 registrant does any of the following:

- 6 (1) Purchases the residence or enters into a specifically enforceable
7 contract to purchase the residence.
- 8 (2) Enters into a written lease contract for the residence and for as long as
9 the person is lawfully entitled to remain on the premises.
- 10 (3) Resides with an immediate family member who established residence
11 in accordance with this subsection. For purposes of this subsection,
12 "immediate family member" means a ~~child, sibling, or parent~~child or
13 sibling who is 18 years of age or older, or a parent, grandparent, legal
14 guardian, or spouse of the registrant."

15 **SECTION 11.** G.S. 14-208.43 is amended by adding a new subsection to
16 read:

17 "(d1) Notwithstanding the provisions of this section, if the Commission is notified
18 by the Department of Correction that the offender has been released, pursuant to
19 G.S. 14-208.12A, from the requirement to register under Part 2 of Article 27A of this
20 Chapter, upon request of the offender, the Commission shall order the termination of the
21 monitoring requirement."

22 **SECTION 12.** G.S. 14-208.45 reads as rewritten:

23 **"§ 14-208.45. Fees.**

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

31 (b) When a court determines a person is required to enroll pursuant to
32 G.S. 14-208.40A, the~~The~~court may exempt a person from paying the fee required by
33 subsection (a) of this section only for good cause and upon motion of the person placed
34 ~~on~~required to enroll in satellite-based monitoring. The court may require that the fee be
35 paid in advance or in a lump sum or sums, and a probation officer may require payment
36 by those methods.~~methods if the officer is authorized by subsection (c) of this section to~~
37 ~~determine the payment schedule. This fee is intended to offset only the costs associated~~
38 ~~with the time correlated tracking of the geographic location of subjects using the~~
39 ~~location tracking crime correlation system.~~

40 (c) When a person is required to enroll based on a determination by the
41 Department pursuant to G.S. 14-208.40B, the Department shall have the authority to
42 exempt the person from paying the fee only for good cause and upon request of the
43 person required to enroll in satellite-based monitoring. The Department may require that

1 the fee be paid in advance or in a lump sum or sums and a probation officer may require
2 payment by those methods.

3 ~~(b) The fee shall be payable to the clerk of superior court, and the fees shall be~~
4 ~~remitted quarterly to the Department of Correction.~~

5 ~~(e) If a person placed on supervised probation, parole, or post-release supervision~~
6 ~~is required as a condition of that probation, parole, or post-release supervision to pay~~
7 ~~any moneys to the clerk of superior court, the court may delegate to a probation officer~~
8 ~~the responsibility to determine the payment schedule."~~

9 **SECTION 13.** G.S. 14-208.41 reads as rewritten:

10 "**§ 14-208.41. Enrollment in satellite-based monitoring programs mandatory;**
11 **length of enrollment.**

12 (a) Any person described by G.S. 14-208.40(a)(1) shall enroll in a satellite-based
13 monitoring program with the Division of Community Corrections office in the county
14 where the person resides. The person shall remain enrolled in the satellite-based
15 monitoring program for the registration period imposed under G.S. 14-208.23 which is
16 the person's life, unless the requirement to enroll in the satellite-based monitoring
17 program is terminated pursuant to ~~G.S. 14-208.42.~~G.S. 14-208.43.

18 (b) Any person described by G.S. 14-208.40(a)(2) who is ordered by the court
19 pursuant to G.S. 14-208.40A or required by the Department pursuant to
20 G.S. 14-208.40B to enroll in a satellite-based monitoring program shall do so with the
21 Division of Community Corrections office in the county where the person resides. The
22 person shall remain enrolled in the satellite-based monitoring program for the period of
23 time ordered by the ~~court.~~court or the period of time specified by the Department."

24 **SECTION 14.** G.S. 143B-266(e) reads as rewritten:

25 "(e) The Commission may accept and review requests from persons placed on
26 probation, parole, or post-release supervision to terminate a mandatory condition of
27 satellite-based monitoring as provided by ~~G.S. 14-208.42.~~G.S. 14-208.43. The
28 Commission may grant or deny those requests in compliance with
29 ~~G.S. 14-208.42.~~G.S. 14-208.43."

30 **SECTION 15.** Section 2 of this act becomes effective December 1, 2007,
31 and applies to sentences entered on or after that date. Section 6 of this act becomes
32 effective December 1, 2007, and applies to offenses committed on or after that date.
33 Sections 7, 8, and 9 of this act become effective December 1, 2007, and apply to
34 persons placed on probation, parole, or post-release supervision on or after that date.
35 The remainder of this act is effective when it becomes law.