

March 20, 2007

H 933. JESSICA LUNSFORD ACT FOR NC. Filed 3/20/07. *TO PROVIDE THAT CERTAIN CRIMINAL OFFENSES OF RAPE OR FIRST-DEGREE SEXUAL OFFENSE COMMITTED AGAINST A CHILD ARE PUNISHABLE BY EITHER LIFE IMPRISONMENT WITHOUT PAROLE OR A MANDATORY ACTIVE SENTENCE OF TWENTY-FIVE YEARS AND LIFETIME SATELLITE-BASED MONITORING, TO CREATE THE CRIMINAL OFFENSE OF LEWD OR LASCIVIOUS MOLESTATION OF A CHILD TO BE PUNISHABLE BY LIFE IMPRISONMENT WITHOUT PAROLE OR A MANDATORY ACTIVE SENTENCE OF TWENTY-FIVE YEARS AND LIFETIME SATELLITE-BASED MONITORING, TO INCREASE THE CRIMINAL PENALTIES FOR SEXUAL EXPLOITATION OF A MINOR AND PROMOTING PROSTITUTION OF A MINOR, TO AMEND THE SEX OFFENDER REGISTRATION REQUIREMENTS TO BE MORE STRINGENT, TO REQUIRE COMMUNITY NOTIFICATION REGARDING THE PRESENCE OF A SEXUALLY VIOLENT PREDATOR OR REPEAT SEX OFFENDER IN THE AREA, TO AMEND THE LAW REGARDING BAIL FOR VIOLATIONS OF PROBATION AND POST-RELEASE SUPERVISION, TO CREATE A NEW CRIMINAL OFFENSE THAT MAKES IT UNLAWFUL FOR A SEX OFFENDER TO BE ON CERTAIN PREMISES INCLUDING THOSE WHERE A REASONABLE PERSON WOULD KNOW CHILDREN REGULARLY CONGREGATE, AND TO REQUIRE CRIMINAL BACKGROUND CHECKS OF CONTRACTUAL PERSONNEL BEFORE ALLOWING THEM TO GO ON SCHOOL GROUNDS, HAVE DIRECT CONTACT WITH STUDENTS, OR HAVE ACCESS TO SCHOOL FUNDS.*

First degree-rape and sexual offense. Amends GS 14-27.2 to include as rape in the first degree an offense where a person who is at least 18 years old engages in intercourse with a victim under the age of 13. Amends GS 14-27.4 to include as a sexual offense in the first degree an offense where a person who is at least 18 years old engages in a sexual act with a victim under the age of 13. Both offenses are B1 felonies punishable by life without parole or a 25-year active sentence followed by satellite-based monitoring for life.

Lewd or lascivious molestation. Enacts new GS 14-202.5 creating the offense of lewd or lascivious molestation. Any person 18 years of age or older who intentionally touches in a lewd or lascivious manner the breasts, genital area, or buttocks, or the clothing covering these areas, of a person less than 12 years of age, or forces or entices a person under 12 to so touch the perpetrator, is guilty of a class B1 felony punishable by life imprisonment without parole or a sentence of 25 years of active punishment followed by post-release supervision with electronic monitoring for life. Makes conforming changes to GS 14-208.6(5).

Monitoring requirements. Amends GS 14-208.40 to include in the satellite based monitoring program offenders convicted of lewd or lascivious molestation, first degree rape, or first degree sexual offense that have been sentenced to monitoring. Amends GS 14-208.41 to require those offenders to enroll in the satellite-based monitoring program with the Division of Community Correction office in the county where they reside after completing the 25-year active sentence, for the person's life unless the requirement is terminated. Makes conforming changes to GS 14-208.42 and GS 14-208.43.

Penalty increases. Amends GS 14-190.16, 14-190.17, 14-190.17A, and 14-190.18 to increase penalties as follows: (1) violation of first degree sexual exploitation of a

minor from a Class D to a Class C felony; (2) violations of second degree sexual exploitation of a minor from a Class F to a Class D felony; (3) violations of third degree sexual exploitation of a minor from a Class I to a Class E felony; and (4) violations of promoting the prostitution of a minor from a Class D to a Class C felony.

More stringent registration requirements. Amends GS 14-208.6A to increase from 10 years to 30 years the required registration period for adults convicted of certain offenses against minors or sexually violent offenses that require registration. Amends GS 14-208.7 to require a person who moves to North Carolina from outside the state and who has a conviction that must be registered to register within 48 hours of establishing residence (was, 10 days). A person who is a resident of North Carolina and released from a penal institution must register within 48 hours (was, 10 days) of release from a penal institution or arrival in a county to live outside a penal institution. Registration under the section must be maintained for at least 30 years (was, 10) following initial county registration. Amends GS 14-208.9 to require that a registered offender who changes his or her address must report in person within 48 hours after the change (was, 10 days); requires a person who intends to move to another state report in person to the sheriff of the county of current residence at least 48 hours (was, 10 days) before the date the person intends to leave this state; a person who indicates his or her intent to move to another state or jurisdiction but later decides to remain in this state must, within 48 hours (was, 10 days) after the date upon which the person indicated he or she would leave this state, report in person his or her intention to remain in this state; changes from 10 days to 48 hours the time within which the person must report any change in the person's academic or employment status at an institution of higher education. Amends GS 14-208.9A to require registrants to return the verification form in person to the sheriff within 48 hours of receipt (was, 10 days); requires registrants to appear for a new photograph within 48 hours (was, 72 hours) after a request from the sheriff. Amends GS 14-208.12A to provide that a person may petition the superior court to terminate the registration requirement 30 (was, 10) years after the date of the initial county registration.

Unlawful to be on premises. Enacts new GS 14-208.18 making it a Class F felony for any person who is required to register as a sexually violent predator, to be on the premises of listed areas, including: school, day care center, park, playground, and other listed locations, or other place where a reasonable person knows children regularly congregate.

Notification. Enacts new GS 14-208.25A to establish community and public notification requirements for law enforcement agencies regarding any person required to register as a recidivist, as a sexually violent predator, or because the person has committed an aggravated offense. Requires that notification be given to each licensed day care center, elementary school, middle school, and high school within a one-mile radius of the registrant's residence. Requires the Division of Criminal Statistics of the Department of Justice to notify the public of all registrants through the Internet.

Juvenile information. Amends GS 14-208.27 and 14-208.28, to require that when a registered offender changes the offender's address, the juvenile court counselor for the juvenile must provide written notice of the new address within 48 hours after the change (was, 10 days), and requires the juvenile court counselor to return the information verification to the sheriff within 48 hours (was, 10 days).

Bail. Amends GS 15A-1345(b) (bail following arrest for probation violation) to require the court to make a finding that the probationer is not a danger to the public prior to release without bail if the probationer has been convicted of an offense at any time that requires registration or an offense that would have required registration but for the effective date of the law establishing the Sex Offender and Public Protection Registration Program. Amends GS 15A-1368.4 to require the Post-Release Supervision and Parole Commission to impose mandatory electronic monitoring for those convicted of an offense requiring registration.

Background check. Enacts new GS 115C-332A to require a local school board to require that any contracted personnel (vendor, individual, or entity under contract with the local board of education) undergo a criminal history check before being permitted to be on school grounds where students are present, to have direct contact with students, or to have access to or control of school funds.

Effective December 1, 2007, and applies to offenses committed on or after that date.

Intro. by Howard, Clay, Moore, Thomas.

GS 14, 15A, 115C

July 28, 2007

H 933. JESSICA LUNSFORD ACT FOR NC. Filed 3/20/07. House committee substitute makes the following changes to 1st edition. Amends GS 14-27.2(b1) and GS 14-27.4(b1) to change references to GS 15A-1340.1 to GS 15A-1340.17. Amends GS 14-190.17(d) to specify that violation of the statute is a Class E felony (was, Class D). Amends GS 14-190.17A(d) to specify that violation of the section is a Class H felony (was, Class E). Deletes proposed new GS 14-202.5 governing lewd or lascivious molestation of a child) and deletes the proposed amendment to GS 14-208.6(5). Amends GS 14-208.7 to: (1) require a person who has a reportable conviction and moves to North Carolina to register within three business days (previously proposed 48 hours; current law is 10 days) of establishing residence in the state, or whenever the person has been present in the state for 15 days, whichever comes first; (2) to require a North Carolina resident to register within three days (previously proposed 48 hours; current law is 10 days) of release from a penal institution or arrival in a county to live outside a penal institution; and (3) to specify that the registration must be maintained for a period of at least 30 years (was, 10 years) following the date of initial registration unless the person, after 10 years of registration, successfully petitions the superior court to shorten the registration time period under GS 14-208.12A. Amends GS 14-208.9 and GS 14-208.12A to change the time period for notifying of certain address, residency, academic status or employment status changes and returning registration verification information to three business days (previously proposed 48 hours; current law is 10 days). Amends GS 14-208.12A to authorize a person required to register to petition the superior court in the district where the person resides to terminate the 30-year registration requirement ten years from the date of initial county registration, if the person has not been convicted of a subsequent offense requiring registration. Modifies proposed GS 14-208.18 to make it unlawful for any person convicted of an offense that requires registration to be on a premise that a reasonable person knows is a place where children regularly congregate without adult supervision and to make violating the statute a Class H felony (was, Class F). Deletes provisions of proposed GS 14-208.25A and replaces it with a requirement that the licensee for each licensed day care center, and the principal of each elementary school, middle school, and high school must register with the North Carolina Sex Offender and Public Protection Registry to receive e-mail notification when a registered sex offender moves within a one-mile radius of the licensed day care center or school. Amends GS 14-208.27 and GS 14-208.28 to require a juvenile court counselor to provide written notice of a new address and verification of registration information of a juvenile who is adjudicated delinquent and required to register within three business days (previously proposed 48 hours; current law is 10 days). Modifies GS 14-208.40(a) to delete references to GS 14-202.5(b)(2) and GS 14-202.5. Modifies proposed new GS

115C-332A to: (1) modify the definition of contractual personnel to include any individual or entity under contract with the local board of education whose contractual job involves direct interaction with students as part of the job; (2) require that as a term of any contract the local board of education enters, the employers of a person who is a contractual personnel must conduct an annual check of that person on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predatory Registration Program, and the National Sex Offender Registry; (3) to require that as a term of any contract the local board of education must prohibit any contractual personnel listed in one of these registries from having direct interaction with students; and (4) makes technical changes. Makes other conforming changes.

June 4, 2008

H 933. JESSICA LUNSFORD ACT FOR NC. Filed 3/20/07. Senate committee substitute makes the following changes to 2nd edition. Deletes proposed new amendments to GS 14-27.2 (first-degree rape), and GS 14-27.4 (first-degree sexual offense) regarding sexual assault of a child under the age of 13 by a person who is at least 18 years of age.

Instead, enacts new GS 14-27.2A (rape of a child; adult offender), providing that a person is guilty of rape of a child (was, guilty of rape in the first degree) and a Class B1 felony, if the person is 18 years old or older, engages in vaginal intercourse with the victim, and the victim is a child under the age of 13. Makes the offense of first-degree rape under GS 14-27.2(a)(1) a lesser included offense. Incorporates into new GS 14-27.2A the deleted proposed GS 14-27.2(b1), providing sentencing guidelines for persons convicted of the offense of rape of a child. Provides that the sentencing guidelines are to be applied notwithstanding the provisions of GS 15A-1340.10 (was, GS 15A-1340.17). Also provides that a person convicted under this section has no rights to custody or of inheritance regarding any child born as a result of the rape, and no rights related to the child under GS Chapter 48 or GS Chapter 7B, Subchapter 1.

Also enacts new GS 14-27.4A (sexual offense with a child; adult offender), providing that a person is guilty of sexual offense with a child (was, guilty of sexual offense in the first degree) and a Class B1 felony, if the person is 18 years old or older, engages in a sexual act with the victim, and the victim is a child under the age of 13. Makes the offense of first-degree sexual offense under GS 14-27.4(a)(1) a lesser included offense. Incorporates into new GS 14-27.4A the deleted proposed GS 14-27.4(b1), providing sentencing guidelines for persons convicted of the offense of sexual offense with a child. Provides that the sentencing guidelines are to be applied notwithstanding the provisions of GS 15A-1340.10 (was, GS 15A-1340.17).

Amends new GS 14-208.18 to particularly list locations where it is unlawful for a person required to register as a sex offender under GS Chapter 14, Article 27A, to be on the premises (was, more generally stated as restricted from being on a premise that a reasonable person knows that children regularly gather). Provides that the restriction is applicable to persons required to register under GS Chapter 14, Article 27A, who have committed (1) any offense under GS Chapter 14, Article 7A, or (2) any offense where the victim was under the age of 16.

Recodifies proposed new GS 115C-332A as GS 115C-332.1. Makes additional conforming, organizational, and technical changes including changing the title.

Effective December 1, 2008 (was, 2007), and applies to offenses committed on or after that date.

June 11, 2008

H 933. JESSICA LUNSFORD ACT FOR NC. Filed 3/20/07. Senate committee substitute makes the following changes to 3rd edition. Amends the proposed new GS 14-208.18 to create exceptions for registered sex offenders under this Article from being prohibited from certain listed premises for: (1) individuals eligible to attend public school and be present on school property if permitted by the local board of education, and (2) juveniles that are receiving medical treatment or mental health services and remain under the direct supervision of a treating institution employee at all times.

Amends GS 115C-391(d) by adding a new subdivision to allow a local board of education to expel a student subject to GS 14-208.18. Provides that the decision to expel must be based on clear and convincing evidence. Requires that the local board consider alternative programs to

provide educational services, prior to expulsion, and if a student is allowed to remain on school property, then the student must be supervised by school personnel at all times. Makes technical and conforming changes.

Amends GS 14-208.29 to allow local boards of education to have access to juvenile sex offender registry information. Requires that registry information for any juvenile enrolled in a local school administrative unit be forwarded to the local board of education.

Makes clarifying and conforming changes to the title.

July 17, 2008

H 933. JESSICA LUNSFORD ACT FOR NC. Filed 3/20/07. Conference report recommends the following changes to 4th edition to reconcile matters in controversy.

Provides that an adult offender convicted of (1) the rape of a child or (2) sexual offense with a child is to be sentenced under GS Chapter 15A, Article 81B (structured sentencing of persons convicted of crimes) except retains provision that the active punishment is to be no less than 300 months (25 years). Provides an additional exception permitting the court, notwithstanding the provisions of GS Chapter 15A, Article 81B, to sentence a defendant to active punishment for a term of months that is greater than that authorized under GS 15A-1340.17 (sets punishment limits for each class of offense and prior record level), up to and including life imprisonment without parole (was, allowed the court, at its discretion, to impose on the convicted person a sentence of life imprisonment without parole or 25 years mandatory punishment). Requires the court to make findings of fact to support its decision to impose punishment in excess of the sentencing guidelines in GS 15A-1340.17 that include matters the court considered to be *egregious aggravation*. Provides factors to be considered in determining if there was egregious aggravation. Retains provision providing satellite-based monitoring for life following the termination of active punishment.

Amends GS 14-208.6(5) to add violations of proposed new GS 14-27.2A (rape of a child; adult offender) and GS 14-27.4A (sex offense with a child; adult offender) to the definition of *sexually violent offense*.

Amends proposed new GS 14-208.18 to provide additional exceptions to prohibitions restricting registered sex offenders from being in certain locations. Permits a parent or guardian of a minor to take the minor to any location that can provide emergency medical care treatment if care is needed. Permits a parent or a guardian of a student enrolled in a school to be present on school property providing that the visit is (1) to attend a conference with school personnel about the academic or social progress of the child, or (2) in response to a request from the principal or the principal's designee for any other reason relating to the child's welfare or transportation of the child. Requires that the parent or guardian provide the principal notice of his or her registration under the Sex Offender and Public Protection Registration Programs (Program) and notice of the parent's or guardian's presence at the school unless he or she has prior permission to be present. Additionally, requires that the parent or guardian be under direct supervision of school personnel at all times during the visit. Permits a registered sex offender who is eligible to vote to be present at a prohibited location that is being used as a voting place only for the purpose of voting. Provides that if the voting place is a school, then the registered sex offender must notify the principal of the school that he or she is registered under the Program.

Amends GS 14-208.40(a) to clarify that a sex offender convicted under GS 14-27.2A or GS 14-27.4A is in the category of offenders to be monitored for the duration of the offender's natural life upon termination of the offender's active punishment.

Provides that the term *contractual personnel*, defined in proposed new GS 115C-332.1, does not include any person covered under GS 115C-332 (regarding school personnel criminal history check).

Directs the Department of Justice to study the guidelines issued by the United States Attorney for the federal Sex Offender Registration and Notification Act (SORNA) to determine whether North Carolina is in compliance with the guidelines. Requires the Attorney General or the Attorney General's designee to report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by December 1, 2008, regarding the status of the state's

compliance with SORNA and to recommend any actions or legislation necessary to satisfy the SORNA guidelines. Effective when the act becomes law.

Unless otherwise indicated, effective December 1, 2008, and applies to offenses committed on or after that date.

July 29, 2008

SL 2008-117 (H 933). JESSICA LUNSFORD ACT FOR NC. AN ACT TO PROVIDE THAT CERTAIN CRIMINAL OFFENSES OF RAPE OR SEXUAL OFFENSE COMMITTED AGAINST A CHILD ARE CLASS B1 FELONIES AND THE OFFENDER SHALL NOT RECEIVE ACTIVE PUNISHMENT OF LESS THAN THREE HUNDRED MONTHS FOLLOWED BY LIFETIME SATELLITE-BASED MONITORING OR THE POSSIBILITY OF LIFE IMPRISONMENT WITHOUT PAROLE, TO INCREASE THE CRIMINAL PENALTIES FOR SEXUAL EXPLOITATION OF A MINOR AND PROMOTING PROSTITUTION OF A MINOR, TO AMEND THE SEX OFFENDER REGISTRATION REQUIREMENTS TO BE MORE STRINGENT, TO REQUIRE COMMUNITY NOTIFICATION REGARDING THE PRESENCE OF A SEXUALLY VIOLENT PREDATOR OR REPEAT SEX OFFENDER, TO AMEND THE LAW REGARDING BAIL FOR VIOLATIONS OF PROBATION AND POST-RELEASE SUPERVISION, TO CREATE A NEW CRIMINAL OFFENSE THAT MAKES IT UNLAWFUL FOR A SEX OFFENDER TO BE ON CERTAIN PREMISES, TO ADDRESS EDUCATION AND HEALTH OF JUVENILES SUBJECT TO RESTRICTIONS, AND TO REQUIRE SEX OFFENDER REGISTRIES CHECKS OF SCHOOL CONTRACTUAL PERSONNEL BEFORE ALLOWING THEM TO HAVE DIRECT INTERACTION WITH STUDENTS. Summarized in *Daily Bulletin* 3/20/07, 7/28/07, 6/4/08, 6/11/08, and 7/17/08. Enacted July 28, 2008. Section 21.2 is effective July 28, 2008. The remainder is effective December 1, 2008.