

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2008-218
SENATE BILL 132**

AN ACT TO EXPAND THE SCOPE OF CERTAIN PORNOGRAPHY LAWS BY AMENDING THE DEFINITION OF SEXUAL ACTIVITY; TO INCREASE THE PENALTY FOR FIRST, SECOND, AND THIRD DEGREE SEXUAL EXPLOITATION OF A MINOR; TO INCREASE THE PENALTY IN CERTAIN CIRCUMSTANCES WHERE THERE IS A SOLICITATION BY COMPUTER TO COMMIT AN UNLAWFUL SEX ACT AND TO PROVIDE FOR CIVIL LIABILITY; TO MAKE IT A FELONY FOR A REGISTERED SEX OFFENDER TO ACCESS A COMMERCIAL SOCIAL NETWORKING WEB SITE; AND TO PROHIBIT A REGISTERED SEX OFFENDER FROM OBTAINING A NAME CHANGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-190.13 reads as rewritten:

"§ 14-190.13. Definitions for certain offenses concerning minors.

The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a minor; and G.S. 14-190.19, participating in prostitution of a minor.

- (1) Harmful to Minors. – That quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:
 - a. The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and
 - b. The average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and
 - c. The material or performance lacks serious literary, artistic, political, or scientific value for minors.
- (2) Material. – Pictures, drawings, video recordings, films or other visual depictions or representations but not material consisting entirely of written words.
- (3) Minor. – An individual who is less than 18 years old and is not married or judicially emancipated.
- (4) Prostitution. – Engaging or offering to engage in sexual activity with or for another in exchange for anything of value.
- (5) Sexual Activity. – Any of the following acts:
 - a. Masturbation, whether done alone or with another human or an animal.

- b. Vaginal, anal, or oral intercourse, whether done with another human or with an animal.
 - c. Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.
 - d. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a person clad in undergarments or in revealing or bizarre costume.
 - e. Excretory functions; provided, however, that this sub-subdivision shall not apply to G.S. 14-190.17A.
 - f. The insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.
 - g. The lascivious exhibition of the genitals or pubic area of any person.
- (6) Sexually Explicit Nudity. – The showing of:
- a. Uncovered, or less than opaquely covered, human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast, except as provided in G.S. 14-190.9(b); or
 - b. Covered human male genitals in a discernibly turgid state."

SECTION 2. G.S. 14-190.16(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class D felony~~. Class C felony."

SECTION 3. G.S. 14-190.17(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class F felony~~. Class E felony."

SECTION 4. G.S. 14-190.17A(d) reads as rewritten:

"(d) Punishment and Sentencing. – Violation of this section is a ~~Class I felony~~. Class H felony."

SECTION 5. G.S. 14-202.3(c) reads as rewritten:

"(c) Punishment. – A violation of this section is a ~~Class H felony~~. punishable as follows:

- (1) A violation is a Class H felony except as provided by subdivision (2) of this subsection.
- (2) If either the defendant, or any other person for whom the defendant was arranging the meeting in violation of this section, actually appears at the meeting location, then the violation is a Class G felony."

SECTION 6. Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

§ 14-202.5. Ban use of commercial social networking Web sites by sex offenders.

(a) Offense. – It is unlawful for a sex offender who is registered in accordance with Article 27A of Chapter 14 of the General Statutes to access a commercial social networking Web site where the sex offender knows that the site permits minor children to become members or to create or maintain personal Web pages on the commercial social networking Web site.

(b) For the purposes of this section, a "commercial social networking Web site" is an Internet Web site that meets all of the following requirements:

- (1) Is operated by a person who derives revenue membership fees, advertising, or other sources related to the operation of the Web site.
- (2) Facilitates the social introduction between two or more persons for the purposes of friendship, meeting other persons, or information exchanges.

- (3) Allows users to create Web pages or personal profiles that contain information such as the name or nickname of the user, photographs placed on the personal Web page by the user, other personal information about the user, and links to other personal Web pages on the commercial social networking Web site of friends or associates of the user that may be accessed by other users or visitors to the Web site.
- (4) Provides users or visitors to the commercial social networking Web site mechanisms to communicate with other users, such as a message board, chat room, electronic mail, or instant messenger.

(c) A commercial social networking Web site does not include an Internet Web site that either:

- (1) Provides only one of the following discrete services: photo-sharing, electronic mail, instant messenger, or chat room or message board platform; or
- (2) Has as its primary purpose the facilitation of commercial transactions involving goods or services between its members or visitors.

(d) Jurisdiction. – The offense is committed in the State for purposes of determining jurisdiction, if the transmission that constitutes the offense either originates in the State or is received in the State.

(e) Punishment. – A violation of this section is a Class I felony."

SECTION 7. Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-202.5A. Liability of commercial social networking sites.

(a) Notwithstanding the provisions of G.S. 14-208.15A(f), a commercial social networking site, as defined in G.S. 14-202.5, may be held civilly liable for damages for failing to make reasonable efforts to prevent a sex offender who is registered in accordance with Article 27A of Chapter 14 of the General Statutes to access its Web site.

(b) For the purposes of this section, "access" is defined as allowing the sex offender to do any of the activities or actions described in G.S. 14-202.5(b)(2) through G.S. 14-202.5(b)(4) by utilizing the Web site."

SECTION 8. Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-202.6. Ban on name changes by sex offenders.

It is unlawful for a sex offender who is registered in accordance with Article 27A of Chapter 14 of the General Statutes to obtain a change of name under Chapter 101 of the General Statutes."

SECTION 9. G.S. 101-6 is amended by adding a new subsection to read:

"(c) A sex offender who is registered in accordance with Article 27A of Chapter 14 of the General Statutes is prohibited from obtaining a change of name under this Chapter."

SECTION 10. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

SECTION 11. Section 7 of this act becomes effective May 1, 2009, and applies to acts occurring on or after that date. The remainder of this act becomes effective December 1, 2008, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 18th day of July, 2008.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:23 a.m. this 16th day of August, 2008