

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 591
Senate Judiciary Committee Substitute Adopted 6/27/23
PROPOSED SENATE COMMITTEE SUBSTITUTE H591-PCS30482-CE-37

Short Title: Modernize Sex Crimes.

(Public)

Sponsors:

Referred to:

April 13, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH SEXUAL EXTORTION OFFENSES, TO UPDATE OFFENSES
3 RELATED TO SEXUAL EXPLOITATION OF A MINOR, TO UPDATE SEX
4 OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAMS, AND TO
5 CLARIFY THE OFFENSE OF DISCLOSURE OF PRIVATE IMAGES.

6 The General Assembly of North Carolina enacts:

7
8 **ESTABLISH SEXUAL EXTORTION OFFENSES**

9 **SECTION 1.** Article 26 of Chapter 14 of the General Statutes is amended by adding
10 a new section to read:

11 "**§ 14-202.7. Sexual extortion; aggravated sexual extortion.**

12 (a) Definitions. – The following definitions apply in this section:

13 (1) Adult. – A person 18 years or older.

14 (2) Disclose. – To transfer, publish, distribute, or reproduce.

15 (3) Image. – A photograph, film, videotape, recording, live transmission, digital
16 or computer-generated visual depiction, including a realistic visual depiction
17 created, adapted, or modified by technological means, including algorithms or
18 artificial intelligence, such that a reasonable person would believe the image
19 depicts an identifiable individual, or any other reproduction that is created,
20 adapted, or modified by electronic, mechanical, or other means.

21 (4) Immediate family member. – As defined in G.S. 14-43.17.

22 (5) Individual with a disability. – As defined in G.S. 14-32.1.

23 (6) Minor. – A person who has not reached the age of 18 years.

24 (7) Private image. – An image depicting sexual activity or sexually explicit
25 nudity.

26 (8) Sexual activity. – As defined in G.S. 14-190.13.

27 (9) Sexually explicit nudity. – As defined in G.S. 14-190.13.

28 (b) Sexual Extortion. – A person commits the offense of sexual extortion if the person
29 intentionally threatens to disclose a private image, or to decline to delete, remove, or retract a
30 previously disclosed private image, of the victim or of an immediate family member of the victim
31 in order to compel or attempt to compel the victim or an immediate family member of the victim
32 to do any act or refrain from doing any act against the victim's will, with the intent to obtain
33 additional private images or anything else of value or any acquittance, advantage, or immunity.
34 A violation of this subsection is punishable as follows:



* H 5 9 1 - P C S 3 0 4 8 2 - C E - 3 7 *

- 1 (1) For an offense by a person who is an adult at the time of the offense, the
 2 violation is a Class F felony.
 3 (2) For a first offense by a person who is a minor at the time of the offense, the
 4 violation is a Class 1 misdemeanor.
 5 (3) For a second or subsequent offense by a person who is a minor at the time of
 6 the offense, the violation is a Class F felony.

7 (c) Aggravated Sexual Extortion. – A person commits the offense of aggravated sexual
 8 extortion if the person intentionally threatens to disclose a private image, or to decline to delete,
 9 remove, or retract a previously disclosed private image, of the victim or of an immediate family
 10 member of the victim in order to compel or attempt to compel the victim or an immediate family
 11 member of the victim to do any act or refrain from doing any act against the victim's will, with
 12 the intent to obtain additional private images or anything else of value or any acquittance,
 13 advantage, or immunity, and the victim is a minor or an individual with a disability and the person
 14 is an adult at the time of the offense. A violation of this subsection shall be punishable as a Class
 15 E felony."

17 **UPDATE OFFENSES RELATED TO SEXUAL EXPLOITATION OF A MINOR**

18 **SECTION 2.(a)** G.S. 14-190.13 reads as rewritten:

19 **"§ 14-190.13. Definitions for certain offenses concerning minors.**

20 The following definitions apply to G.S. 14-190.14, displaying material harmful to minors;
 21 G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances;
 22 G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual
 23 exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a ~~minor~~ minor; and
 24 G.S. 14-190.17C, obscene visual representation of sexual exploitation of a minor.

- 25 (1) **Harmful to Minors.** – That quality of any material or performance that depicts
 26 sexually explicit nudity or sexual activity and that, taken as a whole, has the
 27 following characteristics:
 28 a. The average adult person applying contemporary community
 29 standards would find that the material or performance has a
 30 predominant tendency to appeal to a prurient interest of minors in sex;
 31 and
 32 b. The average adult person applying contemporary community
 33 standards would find that the depiction of sexually explicit nudity or
 34 sexual activity in the material or performance is patently offensive to
 35 prevailing standards in the adult community concerning what is
 36 suitable for minors; and
 37 c. The material or performance lacks serious literary, artistic, political,
 38 or scientific value for minors.

39 (1a) **Identifiable Minor.** – An individual who meets all of the following criteria:

- 40 a. Was a minor at the time either of the following occurred:
 41 1. The material was created, adapted, or modified.
 42 2. The image that was used in creating, adapting, or modifying
 43 the material was taken.
 44 b. Is recognizable as an actual person by the person's face, likeness, or
 45 other distinguishing characteristic, such as a unique birthmark or other
 46 recognizable feature.

47 The term "identifiable minor" does not require proof of the actual identity of
 48 the minor.

- 49 (2) **Material.** – Pictures, drawings, video recordings, films or other visual or
 50 physical depictions or ~~representations~~–representations, including digital or
 51 computer-generated visual depictions or representations created, adapted, or

1 modified by technological means, such as algorithms or artificial intelligence,
 2 but not material consisting entirely of written words.

3 (3) Minor. – An individual who is less than 18 years old and is not married or
 4 judicially emancipated.

5 (3a) Obscene. – Material is obscene if it meets all of the following criteria:

6 a. The material depicts or describes in a patently offensive way sexual
 7 activity.

8 b. The average person applying contemporary community standards
 9 relating to the depiction or description of sexual matters would find
 10 that the material taken as a whole appeals to the prurient interest in
 11 sex.

12 c. The material lacks serious literary, artistic, political, or scientific
 13 value.

14 d. The material as used is not protected or privileged under the
 15 Constitution of the United States or the Constitution of North Carolina.

16 (4) Prostitution. – Engaging or offering to engage in sexual activity with or for
 17 another in exchange for anything of value.

18 (5) Sexual Activity. – Any of the following acts:

19 a. Masturbation, whether done alone or with another human or an animal.

20 b. Vaginal, anal, or oral intercourse, whether done with another human
 21 or with an animal.

22 c. Touching, in an act of apparent sexual stimulation or sexual abuse, of
 23 the clothed or unclothed genitals, pubic area, or buttocks of another
 24 person or the clothed or unclothed breasts of a human female.

25 d. An act or condition that depicts torture, physical restraint by being
 26 fettered or bound, or flagellation of or by a nude person or a person
 27 clad in undergarments or in revealing or bizarre costume.

28 e. Excretory functions; provided, however, that this sub-subdivision
 29 shall not apply to G.S. 14-190.17A.

30 f. The insertion of any part of a person's body, other than the male sexual
 31 organ, or of any object into another person's anus or vagina, except
 32 when done as part of a recognized medical procedure.

33 g. The lascivious exhibition of the genitals or pubic area of any person.

34 (6) Sexually Explicit Nudity. – The showing of:

35 a. Uncovered, or less than opaquely covered, human genitals, pubic area,
 36 or buttocks, or the nipple or any portion of the areola of the human
 37 female breast, except as provided in G.S. 14-190.9(b); or

38 b. Covered human male genitals in a discernibly turgid state.

39 (7) Child Sex Doll. – Means an anatomically correct doll, mannequin, or robot
 40 that meets both of the following requirements:

41 a. Has the features of or features that resemble those of a minor.

42 b. Is intended to be used for sexual stimulation or gratification."

43 **SECTION 2.(b)** G.S. 14-190.16 reads as rewritten:

44 "**§ 14-190.16. First degree sexual exploitation of a minor.**

45 (a) Offense. – A person commits the offense of first degree sexual exploitation of a minor
 46 if, knowing the character or content of the material or ~~performance, he:~~performance, the person
 47 does any of the following:

48 (1) Uses, employs, induces, coerces, encourages, or facilitates a minor to engage
 49 in or assist others to engage in sexual activity for a live performance or for the
 50 purpose of producing material that contains a visual representation depicting
 51 this ~~activity;~~ activity.

- 1 (2) Permits a minor under his custody or control to engage in sexual activity for
2 a live performance or for the purpose of producing material that contains a
3 visual representation depicting this ~~activity~~; ~~or activity~~.
- 4 (3) Transports or finances the transportation of a minor through or across this
5 State with the intent that the minor engage in sexual activity for a live
6 performance or for the purpose of producing material that contains a visual
7 representation depicting this ~~activity~~; ~~or activity~~.
- 8 (4) Records, photographs, films, develops, or duplicates for sale or pecuniary gain
9 material that contains a visual representation depicting a minor engaged in
10 sexual activity.
- 11 (5) Creates for sale or pecuniary gain material created, adapted, or modified to
12 appear that an identifiable minor is engaged in sexual activity.
- 13 (6) Creates for sale or pecuniary gain a child sex doll of an identifiable minor.
- 14 (b) Inference. – In a prosecution under this section, the trier of fact may infer that a
15 participant in sexual activity whom material through its title, text, visual representations, or
16 otherwise represents or depicts as a minor is a minor.
- 17 (c) Mistake of Age. – Mistake of age is not a defense to a prosecution under this section.
- 18 (d) Punishment and Sentencing. – ~~Violation of this section is a Class C felony.~~ A violation
19 of subdivision (a)(5) or subdivision (a)(6) of this section is a Class D felony. Any other violation
20 of this section is a Class C felony."

21 **SECTION 2.(c)** G.S. 14-190.17 reads as rewritten:

22 **"§ 14-190.17. Second degree sexual exploitation of a minor.**

23 (a) Offense. – A person commits the offense of second degree sexual exploitation of a
24 minor if, knowing the character or content of the ~~material, he~~: material, the person does any of
25 the following:

- 26 (1) Records, photographs, films, develops, or duplicates material that contains a
27 visual representation of a minor engaged in sexual ~~activity~~; ~~or activity~~.
- 28 (2) Distributes, transports, exhibits, receives, sells, purchases, exchanges, or
29 solicits material that contains a visual representation of a minor engaged in
30 sexual ~~activity~~-activity or that has been created, adapted, or modified to appear
31 that an identifiable minor is engaged in sexual activity.
- 32 (3) Distributes, transports, exhibits, receives, sells, purchases, exchanges, or
33 solicits a child sex doll.
- 34 (b) Inference. – In a prosecution under this section, the trier of fact may infer that a
35 participant in sexual activity whom material through its title, text, visual representations or
36 otherwise represents or depicts as a minor is a minor.
- 37 (c) Mistake of Age. – Mistake of age is not a defense to a prosecution under this section.
- 38 (d) Punishment and Sentencing. – Violation of this section is a Class E felony."

39 **SECTION 2.(d)** G.S. 14-190.17A reads as rewritten:

40 **"§ 14-190.17A. Third degree sexual exploitation of a minor.**

41 (a) Offense. – A person commits the offense of third degree sexual exploitation of a
42 minor if, knowing the character or content of the material, he possesses a child sex doll or material
43 that contains a visual representation of a minor engaging in sexual ~~activity~~-activity or that has
44 been created, adapted, or modified to appear that an identifiable minor is engaging in sexual
45 activity.

- 46 (b) Inference. – In a prosecution under this section, the trier of fact may infer that a
47 participant in sexual activity whom material through its title, text, visual representations or
48 otherwise represents or depicts as a minor is a minor.
- 49 (c) Mistake of Age. – Mistake of age is not a defense to a prosecution under this section.
- 50 (d) Punishment and Sentencing. – Violation of this section is a Class H felony."

1 **SECTION 2.(e)** Article 26 of Chapter 14 of the General Statutes is amended by
2 adding a new section to read:

3 **"§ 14-190.17C. Obscene visual representation of sexual exploitation of a minor.**

4 (a) It is a Class E felony for any person to knowingly produce, distribute, receive, or
5 possess with intent to distribute material that meets both of the following criteria:

6 (1) Depicts a minor engaging in sexual activity.

7 (2) Is obscene.

8 (b) It is a Class H felony for any person to knowingly possess material that meets both of
9 the following criteria:

10 (1) Depicts a minor engaging in sexual activity.

11 (2) Is obscene.

12 (c) It is not a required element of any offense under this section that the minor depicted
13 actually exist."

14 **SECTION 2.(f)** G.S. 14-202.3 reads as rewritten:

15 **"§ 14-202.3. Solicitation of child by computer or certain other electronic devices to commit**
16 **an unlawful sex act.**

17 (a) Offense. – A person is guilty of solicitation of a child by a computer if the person is
18 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act,
19 entices, advises, coerces, orders, or commands, by means of a computer or any other device
20 capable of electronic data storage or ~~transmission,~~ transmission, any of the following:

21 (1) ~~a~~A child who is less than 16 years of age and at least five years younger than
22 the ~~defendant,~~ defendant to meet with the defendant or any other person for
23 the purpose of committing an unlawful sex act.

24 (2) ~~or a~~A person the defendant believes to be a child who is less than 16 years of
25 age and who the defendant believes to be at least five years younger than the
26 defendant, to meet with the defendant or any other person for the purpose of
27 committing an unlawful sex act. ~~Consent is not a defense to a charge under~~
28 this section.

29 (3) A person the defendant believes to be the parent, guardian, or caretaker of a
30 child who is less than 16 years of age and who the defendant believes to be at
31 least five years younger than the defendant, to meet with the defendant or any
32 other person for the purpose of committing an unlawful sex act.

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

36 (c) Punishment. – A violation of this section is punishable as follows:

37 (1) A violation is a Class H felony except as provided by subdivision (2) of this
38 subsection.

39 (2) If either the defendant, or any other person for whom the defendant was
40 arranging the meeting in violation of this section, actually appears at the
41 meeting location, then the violation is a Class G felony.

42 (d) Consent not a Defense. – Consent is not a defense to a charge under this section."

43
44 **UPDATE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION**
45 **PROGRAMS**

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

47 (5) Sexually violent offense. – A violation of former G.S. 14-27.6 (attempted rape
48 or sexual offense), G.S. 14-27.21 (first-degree forcible rape), G.S. 14-27.22
49 (second-degree forcible rape), G.S. 14-27.23 (statutory rape of a child by an
50 adult), G.S. 14-27.24 (first-degree statutory rape), G.S. 14-27.25(a) (statutory
51 rape of a person who is 15 years of age or younger and where the defendant is

1 at least six years older), G.S. 14-27.26 (first-degree forcible sexual offense),
 2 G.S. 14-27.27 (second-degree forcible sexual offense), G.S. 14-27.28
 3 (statutory sexual offense with a child by an adult), G.S. 14-27.29 (first-degree
 4 statutory sexual offense), G.S. 14-27.30(a) (statutory sexual offense with a
 5 person who is 15 years of age or younger and where the defendant is at least
 6 six years older), G.S. 14-27.31 (sexual activity by a substitute parent or
 7 custodian), G.S. 14-27.32 (sexual activity with a student), G.S. 14-27.33
 8 (sexual battery), G.S. 14-43.11 (human trafficking) if (i) the offense is
 9 committed against a minor who is less than 18 years of age or (ii) the offense
 10 is committed against any person with the intent that they be held in sexual
 11 servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual
 12 servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6
 13 (employing or permitting minor to assist in offenses against public morality
 14 and decency), G.S. 14-190.9(a1) (felonious indecent exposure),
 15 G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17
 16 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree
 17 sexual exploitation of a minor), G.S. 14-190.17C (obscene visual
 18 representation of sexual exploitation of a minor), G.S. 14-202.1 (taking
 19 indecent liberties with children), G.S. 14-202.3 (Solicitation of child by
 20 computer or certain other electronic devices to commit an unlawful sex act),
 21 G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-205.2(c)
 22 or (d) (patronizing a prostitute who is a minor or has a mental disability),
 23 G.S. 14-205.3(b) (promoting prostitution of a minor or a person who has a
 24 mental disability), G.S. 14-318.4(a1) (parent or caretaker commit or permit
 25 act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or
 26 allowing of sexual act upon a juvenile by parent or guardian). The term also
 27 includes the following: a solicitation or conspiracy to commit any of these
 28 offenses; aiding and abetting any of these offenses."

29 **SECTION 3.(b)** G.S. 14-208.15A(e) reads as rewritten:

30 "(e) An entity that receives:

- 31 (1) A complaint from a user of the entity's services that a person uses its service
 32 to solicit a minor by computer to commit an unlawful sex act as defined in
 33 G.S. 14-202.3, or
- 34 (2) A report that a user may be violating G.S. 14-190.17 ~~or G.S. 14-190.17A~~
 35 G.S. 14-190.17A, or G.S. 14-190.17C by posting or transmitting material that
 36 contains a visual representation of a minor engaged in sexual activity,

37 shall report that information and the online identifier information of the person allegedly
 38 committing the offense, including whether that online identifier is included in the statewide
 39 registry, to the Cyber Tip Line at the National Center for Missing and Exploited Children, which
 40 shall forward that report to an appropriate law enforcement official in this State. The offense is
 41 committed in the State for purposes of determining jurisdiction, if the transmission that
 42 constitutes the offense either originates in the State or is received in the State."

43 **SECTION 3.(c)** G.S. 14-208.18 reads as rewritten:

44 "**§ 14-208.18. Sex offender unlawfully on premises.**

45 (a) It shall be unlawful for any person required to register under this Article, if the offense
 46 requiring registration is described in subsection (c) of this section, to knowingly be at any of the
 47 following locations:

- 48 (1) On the premises of any place intended primarily for the use, care, or
 49 supervision of minors, including, but not limited to, schools, children's
 50 museums, child care centers, nurseries, and playgrounds.

- 1 (2) Within 300 feet of any location intended primarily for the use, care, or
2 supervision of minors when the place is located on premises that are not
3 intended primarily for the use, care, or supervision of minors, including, but
4 not limited to, places described in subdivision (1) of this subsection that are
5 located in malls, shopping centers, or other property open to the general
6 public.
- 7 (3) At any place where minors frequently congregate, including, but not limited
8 to, libraries, arcades, amusement parks, recreation parks, and swimming
9 pools, when minors are present.
- 10 (4) On the State Fairgrounds during the period of time each year that the State
11 Fair is conducted, on the Western North Carolina Agricultural Center grounds
12 during the period of time each year that the North Carolina Mountain State
13 Fair is conducted, and on any other fairgrounds during the period of time that
14 an agricultural fair is being conducted.
- 15 (b) Notwithstanding any provision of this section, a person subject to subsection (a) of
16 this section who is the parent or guardian of a minor may take the minor to any location that can
17 provide emergency medical care treatment if the minor is in need of emergency medical care.
- 18 (c) The subdivisions of subsection (a) of this section are applicable as follows:
- 19 (1) Subdivisions (1), (3), and (4) of subsection (a) of this section apply to persons
20 required to register under this Article who have committed any of the
21 following offenses:
- 22 a. Any offense in Article 7B of this Chapter or any federal offense or
23 offense committed in another state, which if committed in this State,
24 is substantially similar to an offense in Article 7B of this Chapter.
- 25 b. Any offense where the victim of the offense was under the age of 18
26 years at the time of the offense.
- 27 c. Any offense in violation of G.S. 14-190.16, 14-190.17, ~~or 14-190.17A~~
28 14-190.17A, or 14-190.17C or any federal offense or offense
29 committed in another state, which if committed in this State is
30 substantially similar to an offense in violation of G.S. 14-190.16,
31 14-190.17, ~~or 14-190.17A~~, 14-190.17A, or 14-190.17C.
- 32 (2) Subdivision (2) of subsection (a) of this section applies to persons required to
33 register under this Article if any of the following apply:
- 34 a. The person has committed any offense in Article 7B of this Chapter or
35 any federal offense or offense committed in another state, which if
36 committed in this State is substantially similar to an offense in Article
37 7B of this Chapter, and a finding has been made in any criminal or
38 civil proceeding that the person presents, or may present, a danger to
39 minors under the age of 18.
- 40 b. The person has committed any offense where the victim of the offense
41 was under the age of 18 years at the time of the offense.
- 42 c. The person has committed an offense in violation of G.S. 14-190.16,
43 14-190.17, ~~or 14-190.17A~~, 14-190.17A, or 14-190.17C or any federal
44 offense or offense committed in another state, which if committed in
45 this State is substantially similar to an offense in violation of
46 G.S. 14-190.16, 14-190.17, ~~or 14-190.17A~~, 14-190.17A, or
47 14-190.17C.
- 48 (d) A person subject to subsection (a) of this section who is a parent or guardian of a
49 student enrolled in a school may be present on school property if all of the following conditions
50 are met:

- 1 (1) The parent or guardian is on school property for the purpose for one of the
2 following:
- 3 a. To attend a conference at the school with school personnel to discuss
4 the academic or social progress of the parents' or guardians' child; or
5 b. The presence of the parent or guardian has been requested by the
6 principal or his or her designee for any other reason relating to the
7 welfare or transportation of the child.
- 8 (2) The parent or guardian complies with all of the following:
- 9 a. Notice: The parent or guardian shall notify the principal of the school
10 of the parents' or guardians' registration under this Article and of his
11 or her presence at the school unless the parent or guardian has
12 permission to be present from the superintendent or the local board of
13 education, or the principal has granted ongoing permission for regular
14 visits of a routine nature. If permission is granted by the superintendent
15 or the local board of education, the superintendent or chairman of the
16 local board of education shall inform the principal of the school where
17 the parents' or guardians' will be present. Notification includes the
18 nature of the parents' or guardians' visit and the hours when the parent
19 or guardian will be present at the school. The parent or guardian is
20 responsible for notifying the principal's office upon arrival and upon
21 departure. Any permission granted under this sub-subdivision shall be
22 in writing.
- 23 b. Supervision: At all times that a parent or guardian is on school
24 property, the parent or guardian shall remain under the direct
25 supervision of school personnel. A parent or guardian shall not be on
26 school property even if the parent or guardian has ongoing permission
27 for regular visits of a routine nature if no school personnel are
28 reasonably available to supervise the parent or guardian on that
29 occasion.
- 30 (e) A person subject to subsection (a) of this section who is eligible to vote may be present
31 at a location described in subsection (a) used as a voting place as defined by G.S. 163-165 only
32 for the purposes of voting and shall not be outside the voting enclosure other than for the purpose
33 of entering and exiting the voting place. If the voting place is a school, then the person subject to
34 subsection (a) shall notify the principal of the school that he or she is registered under this Article.
- 35 (f) A person subject to subsection (a) of this section who is eligible under G.S. 115C-378
36 to attend public school may be present on school property if permitted by the governing body of
37 the public school unit pursuant to G.S. 115C-390.11(a)(2).
- 38 (g) A juvenile subject to subsection (a) of this section may be present at a location
39 described in that subsection if the juvenile is at the location to receive medical treatment or mental
40 health services and remains under the direct supervision of an employee of the treating institution
41 at all times.
- 42 (g1) Notwithstanding any provision of this section, a person subject to subsection (a) of
43 this section who is required to wear an electronic monitoring device shall wear an electronic
44 monitoring device that provides exclusion zones around the premises of all elementary and
45 secondary schools in North Carolina.
- 46 (h) A violation of this section is a Class H felony."
- 47 **SECTION 3.(d)** G.S. 14-208.40A(d) reads as rewritten:
- 48 "(d) The court shall order that the Department of Adult Correction do a risk assessment of
49 the offender if the court finds each of the following:
- 50 (1) The offender committed an offense that involved the physical, mental, or
51 sexual abuse of a minor.

- 1 (2) The offense under subdivision (1) of this subsection is not an aggravated
2 offense or a violation of G.S. 14-27.23 or G.S. 14-27.28.
- 3 (3) The offender is not a reoffender, or is a reoffender of a crime under
4 G.S. 14-27.31, 14-27.32, 14-27.33, 14-178(b)(3), 14-190.6, 14-190.9(a1),
5 14-190.17, 14-190.17A, 14-190.17C, 14-202.1, 14-202.3, 14-202.4(a), or
6 14-205.2(c).

7 The Department shall have up to 60 days to complete the risk assessment of the offender and
8 report the results to the court. The Department may use a risk assessment of the offender done
9 within six months of the date of the hearing."

10 11 CLARIFY OFFENSE OF DISCLOSURE OF PRIVATE IMAGES

12 SECTION 4. G.S. 14-190.5A reads as rewritten:

13 "§ 14-190.5A. Disclosure of private images; civil action.

14 (a) Definitions. – The following definitions apply in this section:

- 15 (1) Disclose. – Transfer, publish, distribute, or reproduce.
- 16 (2) Image. – A photograph, film, videotape, recording, live transmission, digital
17 or computer-generated visual depiction, including a realistic visual depiction
18 created, adapted, or modified by technological means, including algorithms or
19 artificial intelligence, such that a reasonable person would believe the image
20 depicts an identifiable individual, or any other reproduction that is ~~made~~
21 created, adapted, or modified by electronic, mechanical, or other means.
- 22 (3) Intimate parts. – Any of the following naked human parts: (i) male or female
23 genitals, (ii) male or female pubic area, (iii) male or female anus, or (iv) the
24 nipple of a female over the age of 12.
- 25 (4), (5) Repealed by Session Laws 2017-93, s. 1, effective December 1, 2017, and
26 applicable to offenses committed on or after that date.
- 27 (6) Sexual conduct. – Includes any of the following:
- 28 a. Vaginal, anal, or oral intercourse, whether actual or simulated, normal
29 or perverted.
- 30 b. Masturbation, excretory functions, or lewd exhibition of uncovered
31 genitals.
- 32 c. An act or condition that depicts torture, physical restraint by being
33 fettered or bound, or flagellation of or by a nude person or a person
34 clad in undergarments or in revealing or bizarre costume.

35 (b) Offense. – A person is guilty of disclosure of private images if all of the following
36 apply:

- 37 (1) The person knowingly discloses an image of another person with the intent to
38 do either of the following:
- 39 a. Coerce, harass, intimidate, demean, humiliate, or cause financial loss
40 to the depicted person.
- 41 b. Cause others to coerce, harass, intimidate, demean, humiliate, or cause
42 financial loss to the depicted person.
- 43 (2) The depicted person is identifiable from the disclosed image itself or
44 information offered in connection with the image.
- 45 (3) The depicted person's intimate parts are or are realistically depicted to be
46 exposed or the depicted person is or is realistically depicted to be engaged in
47 sexual conduct in the disclosed image.
- 48 (4) The person discloses the image without the affirmative consent of the depicted
49 person.
- 50 (5) The person ~~obtained~~ obtained, created, adapted, or modified the image without
51 consent of the depicted person or under circumstances such that the person

- 1 knew or should have known that the depicted person expected the images to
2 remain private.
- 3 (c) Penalty. – A violation of this section shall be punishable as follows:
- 4 (1) For an offense by a person who is 18 years of age or older at the time of the
5 offense, the violation is a Class H felony.
- 6 (2) For a first offense by a person who is under 18 years of age at the time of the
7 offense, the violation is a Class 1 misdemeanor.
- 8 (3) For a second or subsequent offense by a person who is under the age of 18 at
9 the time of the offense, the violation is a Class H felony.
- 10 (d) Exceptions. – This section does not apply to any of the following:
- 11 (1) Images involving voluntary exposure in public or commercial settings.
- 12 (2) Disclosures made in the public interest, including, but not limited to, the
13 reporting of unlawful conduct or the lawful and common practices of law
14 enforcement, criminal reporting, legal proceedings, medical treatment, or
15 scientific or educational activities.
- 16 (3) Providers of an interactive computer service, as defined in 47 U.S.C. § 230(f),
17 for images provided by another person.
- 18 (e) Destruction of Image. – In addition to any penalty or other damages, the court may
19 award the destruction of any image made in violation of this section.
- 20 (f) Other Sanctions or Remedies Not Precluded. – A violation of this section is an offense
21 additional to other civil and criminal provisions and is not intended to repeal or preclude any
22 other sanctions or remedies.
- 23 (g) Civil Action. – In addition to any other remedies at law or in equity, including an
24 order by the court to destroy any image disclosed in violation of this section, any person whose
25 image is disclosed, or used, as described in subsection (b) of this section, has a civil cause of
26 action against any person who discloses or uses the image and is entitled to recover from the
27 other person any of the following:
- 28 (1) Actual damages, but not less than liquidated damages, to be computed at the
29 rate of one thousand dollars (\$1,000) per day for each day of the violation or
30 in the amount of ten thousand dollars (\$10,000), whichever is higher.
- 31 (2) Punitive damages.
- 32 (3) A reasonable attorneys' fee and other litigation costs reasonably incurred.
- 33 The civil cause of action may be brought no more than one year after the initial discovery of the
34 disclosure, but in no event may the action be commenced more than seven years from the most
35 recent disclosure of the private image."

36 37 **EFFECTIVE DATE**

38 **SECTION 5.** This act becomes effective December 1, 2024, and applies to offenses
39 committed on or after that date.