



SENATE BILL 199: Child Sex Abuse/Strengthen Laws.

2019-2020 General Assembly

Committee:		Date:	January 15, 2020
Introduced by:		Prepared by:	Tawanda F. Artis
Analysis of:	S.L. 2019-245		Staff Attorney

OVERVIEW: *S.L. 2019-245 protects children from sexual abuse and strengthens and modernizes sexual assault laws.*

Parts I, II, III, V, VI, VII, and VIII of this act became effective December 1, 2019, and apply to offenses committed on or after that date. Part IV of this act became effective December 1, 2019, and applies to civil actions commenced on or after that date. The remainder of this act became effective on November 7, 2019.

CURRENT LAW AND BILL ANALYSIS:

PART I. EXPAND DUTY TO REPORT CRIMES AGAINST JUVENILES

G. S. 7B-301 requires every person who knows or has cause to suspect that a juvenile is abused, neglected, dependent, or has died as the result of maltreatment to social services. Failure to report the case of a juvenile under this statute is a Class 1 misdemeanor.

G. S. 15-1 establishes the statute of limitations for most misdemeanors as two years, with the exception of malicious misdemeanors. There is no statute of limitations for malicious misdemeanors.

G. S. 14-202.5 bans the use of commercial social networking Web sites by registered sex offenders.

- In 2017 this statute was found to be unconstitutional by the United States Supreme Court, holding that while protecting children from sex crimes is a legitimate governmental interest, the statute impermissibly restricts lawful speech in violation of the First Amendment. *See, Packingham v. North Carolina, 582 U.S. ____ (2017).*

G.S. 14-202.5A limits the civil liability of commercial networking sites when they comply with current law or make reasonable efforts to prevent registered sex offenders from accessing its site.

Civil procedure statutes govern when an action or special proceeding can be filed and the remedies available to petitioners in those actions. G.S. 1-17 sets forth the application of the statutes of limitations for a person entitled to commence an action who is under a disability at the time the cause of action occurs. The current law provides that person can bring his or her action within the time limits in the General Statutes, after the disability is removed, except in cases related to real property, when the person must commence his or her action, or make the entry, within three years after the removal of the disability. A person is under a disability if the person is 1) under the age of 18 years; 2) insane; or 3) incompetent.

Chapter 115C contains the provisions related to maintaining a general and uniform system of free public schools governed by the State Board of Education. These statutes apply to local public schools, charter

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schools, and optional programs, such as innovative and regional schools. University of North Carolina (UNC) Laboratory Schools are governed by Chapter 116 of the General Statutes.

Part I of this act increases prosecutorial options when there are delayed reports of juveniles who are victims of violent offenses, sexual offenses, or child abuse by adding a new section to Article 39 (Protection of Minors) of Chapter 14 of the General Statutes to require any adult who knows or should have reasonably known a juvenile has been or is the victim of a violent offense, sexual offense, or misdemeanor child abuse to immediately report the case of that juvenile to the appropriate local law enforcement agency in the county where the juvenile resides or is found. The report can be made in person or by telephone.

- The report must include the following information if it is known to the reporter:
 - the name, address, and age of the juvenile;
 - the name and address of the juvenile's parent, guardian, custodian, or caretaker;
 - the name, address, and age of the person who committed the offense against the juvenile;
 - the location where the offense was committed;
 - the names and ages of other juveniles present or in danger;
 - the present whereabouts of the juvenile if not at the home address;
 - the nature and extent of any injury or condition resulting from the abuse or offense; and
 - any other information which the person making the report believes might be helpful in establishing the need for law enforcement involvement.
 - The person making the report must also give their name, address, and telephone number.
- This Part also makes the failure to report that a juvenile was the victim of a violent offense, sexual offense, or misdemeanor child abuse a Class 1 misdemeanor.
- A person who makes a report in good faith is immune from any civil or criminal liability that might otherwise be incurred or imposed for that action provided that person was acting in good faith.

PART II. EXPANDING THE STATUTE OF LIMITATIONS FOR MISDEMEANOR CRIMES INVOLVING ABUSE AGAINST CHILDREN

Part II of this act expands the duty to report child abuse by extending the statute of limitations to 10 years for the following misdemeanor offenses:

- Failure to report abuse, neglect, dependency or death due to maltreatment.
- Sexual battery.
- Indecent liberties between children.
- Misdemeanor child abuse.
- Failure to report crimes against juveniles.

PART III. PROTECTING CHILDREN ONLINE FROM HIGH-RISK SEX OFFENDERS

Part III of this act protects children from online predators by defining the terms "high-risk sex offender" and "commercial social networking web site." Also, this Part makes it unlawful for a high-risk sex offender to do any of the following online:

- To communicate with a person that the offender believes is under 16 years of age.
- To contact a person that the offender believes is under 16 years of age.

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- To pose falsely as a person under 16 years of age with the intent to commit an unlawful sex act with a person the offender believes is under 16 years of age.
- To use a Web site to gather information about a person that the offender believes is under 16 years of age.
- To use a commercial social networking Web site in violation of a policy posted in a manner reasonably likely to come to the attention of users, prohibiting convicted sex offenders from using the site.

This Part also provides a commercial social networking website that complies with the current law on prescreening registered sex offenders or makes other reasonable efforts to prevent a high-risk sex offender from using its Web site to endanger children will not be held civilly liable for damages arising out of the sex offender's communication on that site.

PART IV. EXTEND CIVIL STATUTE OF LIMITATIONS AND REQUIRE TRAINING

Part IV of this act extends the statute of limitations for a civil action for child sexual abuse so that a plaintiff has until age twenty-eight to commence an action and requires training related to child sexual abuse and sex trafficking for school personnel by doing the following:

- Extends the statute of limitations for a civil action for child sexual abuse so that a plaintiff has until age twenty-eight to commence the action. This Part also allows a plaintiff to file a civil action within two years of the date of a criminal conviction for a related sexual offense against a defendant for claims related to sexual abuse suffered while the plaintiff was under the age of eighteen,
- Makes conforming changes to the statute of limitations for criminal conversation, personal injury, assault, battery, and false imprisonment to extend the statute of limitations in those causes of action so that a plaintiff has until age twenty-eight to commence the action and to allow a plaintiff to file a civil action within two years of the date of a criminal conviction for a related sexual offense against a defendant for claims related to sexual abuse suffered while the plaintiff was under the age of eighteen.
- This Part also allows any civil action for child sexual abuse that has been otherwise time-barred under the current law to be revived from January 1, 2020, through December 31, 2021.
- Requires all school personnel who work directly with students in grades kindergarten through twelve to receive two hours of training biennially related to child sexual abuse and child sex trafficking to include: best practices from the field of prevention, the grooming process of sexual predators, the warning signs of sexual abuse and sex trafficking, how to intervene when sexual abuse or sex trafficking is suspected or disclosed, legal responsibilities for reporting sexual abuse or sex trafficking, and available resources for assistance.

PART V. RIGHT TO REVOKE CONSENT

Part V of this act creates a new definition in Article 7B (Rape and Other Sex Offenses) of Chapter 14 (Criminal Law) of the General Statutes for "against the will of the other person" to mean without the consent of the other person or to allow persons to revoke consent in a manner that would cause a reasonable person to believe consent is revoked during intercourse or a sex act.

PART VI. MODERNIZING SEXUAL ASSAULT LAWS

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Part VI of this act clarifies the definition of the term "caretaker" used in Chapter 7B (Juvenile Code) of the General Statutes; amends the current law to prohibit the knowing distribution of a beverage that contains a substance that could be injurious to a person's health; and amends the definition for the term "mentally incapacitated" used in Article 7B (Rape and Other Sex Offenses) of Chapter 14 (Criminal Law) by doing the following:

- Amends the definition of "caretaker" as it is used in the juvenile code to include any adult entrusted with the juvenile's care (previously only included adult relatives.)
- Amends G.S. 14-401.11 Distribution of Certain Food Prohibited to include the distribution of beverages that could be injurious to a person's health as well as food.
- Amends the definition of "mentally incapacitated" as it applies to rape and other sex offenses to apply to a victim who is rendered incapable by any act. Previously, the law required that the act be committed upon the victim or be the result of a poisonous or controlled substance provided to the victim without their knowledge or consent.
- Provides prosecutions for offenses committed before the effective date are not affected by this act.

PART VII. SEX OFFENDER VICTIM RIGHTS

Part VII of this act allows victims to appear and be heard by the court regarding a request for termination of the sex offender registration requirement.

- If the victim has elected to receive notices of such proceedings, the district attorney's office must notify the victim of the date, time, and place of the hearing. The district attorney's office can provide the required notification electronically or by telephone, unless the victim requests otherwise.
- The victim will be responsible for notifying the district attorney's office of any changes in the victim's address and telephone number or other contact information.
- The judge in any court proceeding subject to this section must inquire as to whether the victim is present and wishes to be heard.
- If the victim is present and wishes to be heard, the court must grant the victim an opportunity to be reasonably heard, through an oral statement, submission of a written statement, or submission of an audio or video statement.

PART VIII. SEX OFFENDER RESIDENTIAL RESTRICTIONS

For the purposes of sex offender residential restrictions, Part VIII of this act clarifies the term "school" includes any construction project designated for use as a public school if the governing body has notified the sheriff or sheriffs with jurisdiction within 1,000 feet of the construction project of the construction of the public school.

PART IX. SEVERABILITY CLAUSE/SAVINGS CLAUSE/EFFECTIVE DATE

EFFECTIVE DATE: Parts I, II, III, V, VI, VII, and VIII of this act became effective December 1, 2019, and apply to offenses committed on or after that date. Part IV of this act became effective December 1, 2019, and applies to civil actions commenced on or after that date. The remainder of this act became effective on November 7, 2019.