

May 28, 2008

S 2063. JESSICA'S LAW/GPS MONITORING. Filed 5/27/08. TO MODEL NORTH CAROLINA'S SATELLITE-BASED MONITORING LAWS AFTER THE STATE OF FLORIDA'S "JESSICA'S LAW" IMPOSING LIFETIME SATELLITE-BASED MONITORING ON OFFENDERS WHO HAVE TAKEN INDECENT LIBERTIES WITH CHILDREN, TO CLARIFY THE PURPOSE AND APPLICATION OF THE SATELLITE-BASED MONITORING LAWS FOR SEX OFFENDERS, TO AMEND THE FEE CHARGED FOR ENROLLMENT INTO THE MONITORING PROGRAM, AND TO DIRECT THE STATE DEPARTMENT OF JUSTICE TO REPORT ON ANY NECESSARY CHANGES TO THE STATE SEX OFFENDER REGISTRATION LAWS FOR COMPLIANCE WITH THE FEDERAL SEX OFFENDER REGISTRATION AND NOTIFICATION ACT.

Enacts GS 14-202.1(c) and (d) to require that, if a person is convicted of taking indecent liberties with children and the district attorney has any evidence that the defendant is 18 years old or older and the offense involved certain indecent liberties against a child less than 13 years of age, the district attorney is required to present such evidence to the court during the sentencing phase. Directs the court to make findings related to such evidence and directs the clerk to ensure that the official record reflects any positive findings by the court in this regard.

Amends GS 14-208.6(1a), defining aggravated offense, to (1) increase the age of the victim from 12 to 13, and (2) include a conviction under GS 14-202.1, where the court found the circumstances of the offense met the requirements discussed above.

Amends GS 14-208.5, which is the purpose statement accompanying Article 27A of Chapter 14, the Sex Offender and Public Protection Registration Programs. Adds language explaining that the electronic monitoring system is designed to use the most current technology to monitor and track serious and violent sex offenders.

Amends GS 14-208.40, which establishes the sex offender monitoring program, to provide that the monitoring requirements are retroactive and apply to any person (1) released from prison on or after August 16, 2006, (2) sentenced to intermediate punishment on or after August 16, 2006, and (3) who completed a sentence on or after August 16, 2006, but is not on post-release supervision or parole. Amends GS 14-208.40B to clarify the circumstances in which the Department of Justice may make an initial determination as to whether a person is subject to the electronic monitoring program. Amends GS 14-208.45 to increase the one-time fee for enrolling in the program from \$90 to \$95.

Directs the Department of Justice to study the federal guidelines related to sex offender registration and notification to identify gaps in North Carolina's law and recommend action required for compliance. Requires the Department to report on its findings to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by December 1, 2008.

Intro. by Hoyle.

GS 14, STUDY

June 24, 2008

S 2063. JESSICA'S LAW/GPS MONITORING. Filed 5/27/08. Senate committee substitute makes the following changes to 1st edition. Changes proposed revised GS 14-202.1 to indicate that the defendant's criminal record will reflect that the court determined that the offense involved *an act or acts described in subsection (c) of this section by an adult* against a child under 13 years of age (was, an offense that involved indecent liberties against a child under 13 years of age). Removes proposed language that prohibited the district attorney from using discretion in withholding evidence required to be presented to the court. Changes the effective date to apply to sentencing hearings commencing on or after December 1, 2008. Provides that, on or after December 1, 2008, persons who are sentenced for violating GS 14-202.1 prior to December 1, 2008, are subject to a hearing to determine if the offense qualifies as an aggravated offense.

Provides in revised GS 14-208.5 that the satellite-based monitoring program is civil, not punitive, and is designed to protect the public. Makes a technical change.

Makes a clarifying change to proposed revised GS 14-208.6.

Amends GS 14-208.40 by clarifying that it is not necessary, for a sex offender's enrollment in a continuous satellite-based monitoring program, that an offense: (1) be shown to have constituted *the physical, mental, or sexual abuse of a minor* or (2) require *the highest possible level of supervision and monitoring*, based on the Department of Correction's risk assessment

(now only requires enrollment under that assessment). Makes organizational and technical changes to proposed subsection on retroactive application.

Amends GS 14-208.40A by requiring a finding of fact by the court regarding whether a sex offender should be placed in a monitoring program, regardless of the outcome of that determination. Makes conforming changes.

Makes a clarifying change to proposed revised GS 14-208.40B to reflect that the district attorney is required to schedule the hearing in superior court regarding offender enrollment in a monitoring program. Makes technical and conforming changes.

Effective December 1, 2008, as applied to offenses committed on or after that date, enacts a new GS 14-221.3 to make it a Class A1 misdemeanor for any person to knowingly, and without lawful authority, remove, tamper with, or interfere with the operation of any device that (1) was ordered by the court to be placed on a person as a result of a criminal trial, proceeding, or other hearing; or (2) was placed on a person as a condition of probation, parole, or by court-delegated authority.

Clarifies that prosecutions for offenses committed before the effective date are not abated or affected by the act and existing statutes remain applicable to those prosecutions. Provides that the provisions of the act are severable in the event other provisions are found invalid.

Makes conforming change to title.