



ATTORNEYS

SMITH, RODGERS &
STRICKLAND, PLLC

24 Hour Legal Support for Law Enforcement

PO Box 4803
Greensboro, NC 27404
Phone (336) 691-7058
Fax (336) 969-1879
www.policehelp.net

SOLICITATION OF CHILD BY COMPUTER TO COMMIT AN UNLAWFUL SEX ACT

By

Reece Trimmer

Ralph B. Strickland, Jr.

Three Cheers for the Governor, the Attorney General and the General Assembly

On June 29, 2005 Governor Easley signed into law Senate Bill 472, The Child Exploitation Prevention Act. See Appendix 1 for that bill.

This bill becomes effective on December 1, 2005, and applies to offenses that occur on or after that date.

First Point

Section One of this bill amends G.S. § 14-202.3(a), solicitation of a child by computer to commit an unlawful sex act. This bill will make it a Class H felony for a person 16 years old or older to solicit a person that the perpetrator either knows or believes to be a child less than 16 years of age and three years younger than the perpetrator. The perpetrator must make the solicitation by a computer (such as by Email or through a chat room) and he must solicit the person to commit vaginal intercourse or an unlawful sex acts as defined in G.S. § 14-27.1(4). See Appendix 2 for that definition.

Important Trimmer and Strickland Opinion

As the bill does not specify that the acts defined in G.S. § 14-27.1(4) are the sex acts to which it refers, certainly those acts, and possibly even more that are not defined there, are sex acts for the purpose of this bill. The bill does not define the phrase “sex acts” and so it is our opinion that we must turn to G.S. § 14-27.1(4) for some definitions of sex acts. But since there is no definition in the bill of “sex act” then surely it must include deviant and perverted acts that are not listed in §14-27.1(4). So if you are working one of these cases, look to §14-27.1(4) for guidance, but keep an open mind. For example, if the suspect solicits a young teenage girl to (forgive us for this) suck his toes, and this sexually arouses him, then we believe that he has solicited a sex act even though it is not listed in §14-27.1(4). Heave, gag, and move along. Really – we are embarrassed to have to discuss this.

What Charges are Available Before December 1, 2005

Remember, if you have probable cause to believe that the perpetrator is actually soliciting a minor under 16 years of age, then a charge may be made on that offense before December 1. The new crime of soliciting the undercov-

REECE & RALPH

**Reece Trimmer
Ralph B. Strickland, Jr.**

The two mature geezers of SR&S Opine
on resist, obstruct & delay
NCGS 14-223

JULY 15, 2005

CHILD COMPUTER SOLICITATION

er officer becomes effective December 1.

What this Bill Provides that is New

G.S. § 202.3(a) has always made the solicitation of a child through a computer to commit sex acts a Class I felony. However, this bill amends that section to increase the punishment class to Class H, and to include a person the perpetrator believes to be a child, but is an undercover law enforcement officer acting as online “bait” for the perpetrator’s illicit sexual desires. AND a person convicted of this crime for acts occurring on or after December 1, 2005 must register as a sex offender, providing DNA samples to North Carolina’s database of convicted offender DNA. Oooh Rah!

R&R’s Key Points To Remember

The key points to remember are that the perpetrator must be 16 years old, or older, and at least three years older than the person the perpetrator knows or *believes to be* a child less than sixteen years old, and the communication must occur through a computer.

Example of a Currently Chargable Action

Again, this law applies if the 16 year old or older perpetrator is three years older than a real child who is less than sixteen years old. An example would be a 13 year old girl who is solicited by a 24 year old man through a computer chat room, to meet him and engage with him in vaginal intercourse or a sex act as defined in G.S. § 14-27.1(4). See Appendix 2 for that definition, and keep in mind that any act for sexual gratification is probably a sex act.

What You Can Charge on/After December 1, 2005

New beginning this December is that the law will also apply if the perpetrator believes he is soliciting a child who is not yet 16 years old, and is still three years younger than the perpetrator, but the person is an undercover law enforcement officer. An example of this crime would occur when a law enforcement officer pretends to be a child of either sex who is less than 16 years old and is available in a computer chat room. If the perpetrator believes he is soliciting a child who is less than sixteen years of age, and is at least three years younger than the perpetrator, to engage in vaginal intercourse or a sex act as defined in G.S. § 14-27.1(4), he has committed this crime. See Appendix 2 for that definition, and keep in mind that any act for sexual gratification is probably a sex act.

Jurisdiction Remains the Same

Now, G.S. § 202.3(b) is unchanged. It provides that the jurisdiction of such an offense is in North Carolina if the transmission that constitutes this offense either originates in this State or is received in this State.

Defendants Convicted of the Felony Crime of Solicitation of a Minor by Computer to Commit and Unlawful Sexual Act Must Register as a Sex Offender

Section Two of the bill amends G.S. § 14-208.6(5) to include a violation of G.S. § 14-202.3 as a “sexually violent offense” as a basis for mandating that a person register as a sex offender, and must provide DNA samples to North Carolina’s database of convicted offender DNA.

This Behavior is So Bad That the SBI is Given Special Subject-Matter Jurisdiction. Let’s Sic Those Special Agens On ‘Em!

Finally, Section 3 of the bill adds a new subsection, (b1), to give the State Bureau of Investigation concurrent statutory jurisdiction over certain statutory crimes if committed by or through a computer, when requested to investigate by the Governor or Attorney General. Those are listed as follows:

- (1) GS 14-190.6, employing or permitting a minor to assist in any offense under Article 26 of Chapter 14, Offenses Against Public Morality and Decency;
- (2) GS 14-190.7, dissemination of obscene material to minors under the age of 16 years;
- (3) GS 14-190.8, dissemination of obscene material to minors under the age of 13 years;
- (4) GS 14-190.14, displaying material harmful to minors;
- (5) GS 14-190.15, disseminating harmful material to minors; exhibiting harmful performances to minors;
- (6) GS 14-190.16, first degree sexual exploitation of a minor;
- (7) GS 14-190.17, second degree sexual exploitation of a minor;
- (8) GS 14-190.17A, third degree sexual exploitation of a minor;
- (9) GS 14-190.18, promoting prostitution of a minor;
- (10) GS 14-190.19, participating in prostitution of a minor; and
- (11) GS 14-202.3, solicitation of a child by computer to commit an unlawful sex act.

If an SBI investigation of any of the above listed crimes leads to a suspect in your city or county, the SBI will notify the Sheriff's Office or the appropriate Police Department.

John Gregory Knows All About It

John Gregory at the North Carolina Justice Academy in Salemburg will be teaching courses on this subject in the near future. They range from a one-day eight-hour course to a full week or 40-hour course. One course is "Fundamentals of Cyber Crime Investigation" and another is "Investigating Internet Crimes Against Children." Give John a call at 910/525-4151 to sign up for a course. John plans to do some courses on-line for computer literate law enforcement officers. Well now, that leaves us out – we are neither officers nor computer literate. [And there is some question about whether Trimmer is a carbon-based life form, or even a Homo sapiens (the species to which all human beings belong.) Ralph]

Meanwhile, What You Should Do

Meanwhile, you should reread this memo, study the new laws, and be watchful for this offense. Go to Attorney General Roy Cooper's website www.NCDOJ.com where a free DVD and booklet designed to educate parents on how to protect their kids on the Internet are available. Attaboy Roy!

If you believe this crime is occurring, tell a supervisor or contact a detective. Special Agent Kevin West may also be contacted at the Computer Crimes Division of the State Bureau of Investigation at (919) 662-4500. Tell Kevin that Reece & Ralph told you to call. Let's all do what we can to catch these pedophilic sexual predators, and place them in an environment where there is no contact possible with little boys and girls.

Appendix One

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

SESSION LAW 2005-121

SENATE BILL 472

AN ACT TO PROTECT CHILDREN FROM SEXUAL PREDATORS BY ALSO MAKING IT A FELONY CRIMINAL OFFENSE TO SOLICIT A PERSON THE PERPETRATOR BELIEVES TO BE A CHILD TO COMMIT UNLAWFUL SEX ACTS, TO REQUIRE PERSONS CONVICTED OF THIS OFFENSE TO REGISTER AS SEX OFFENDERS, AND TO AUTHORIZE THE STATE BUREAU OF INVESTIGATION TO INVESTIGATE CERTAIN CRIMES COMMITTED BY USE OF A COMPUTER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-202.3 reads as rewritten:

"§ 14-202.3. Solicitation of child by computer to commit an unlawful sex act.

(a) Offense. – A person is guilty of solicitation of a child by a computer if the person is 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders, or commands, by means of a computer, a child who is less than 16 years of age and at least 3 years younger than the defendant, or a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least 3 years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act. Consent is not a defense to a charge under this section.

(b) 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.

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

SECTION 2. G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), 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), G.S. 14-190.19 (participating in the prostitution of a minor), ~~or~~ G.S. 14-202.1 (taking indecent liberties with children), or G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 3. G.S. 114-15 is amended by adding a new subsection to read:

"(b1) The State Bureau of Investigation is further authorized, upon request of the Governor or Attorney General, to investigate the solicitation, commission, or attempted commission, by means of a computer, computer network, computer system, electronic mail service provider, or the Internet, of the crimes defined in the following statutes:

(1) G.S. 14-190.6;

(2) G.S. 14-190.7;

(3) G.S. 14-190.8;

(4) G.S. 14-190.14;

(5) G.S. 14-190.15;

(6) G.S. 14-190.16;

(7) G.S. 14-190.17;

(8) G.S. 14-190.17A;

(9) G.S. 14-190.18;

(10) G.S. 14-190.19;

(11) G.S. 14-202.3;

Upon determining the location of the criminal violation, the State Bureau of Investigation shall promptly notify the sheriff and local law enforcement of its investigation."

SECTION 4. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 22nd day of June, 2005.

s/ Beverly E. Perdue

President of the Senate

s/ James B. Black

Speaker of the House of Representatives

s/ Michael F. Easley

Governor

Approved 11:22 a.m. this 29th day of June, 2005

Appendix Two

Article 7A.

Rape and Other Sex Offenses.

§ 14-27.1. Definitions.

As used in this Article, unless the context requires otherwise:

(4) "Sexual act" means cunnilingus, fellatio, analingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body: provided, that it shall be an affirmative defense that the penetration was for accepted medical purposes.

R & R Here: We provide you with *some* necessary definitions.

Cunnilingus – application of and stimulation by the lips or tongue by a male or female upon any part of the genitalia of a female. The perpetrator's desire for some form of penetration is not required for solicitation by computer.

Fellatio – application, stimulation or any touching upon the genitalia of a male by the lips, tongue or mouth of a male or female.

Analingus - application and stimulation by the lips or tongue of a male or female upon the rectum or anal opening of a female or a male.

Anal intercourse – penetration, however slight of the female or male rectum or anal opening by male genitalia.

Vaginal intercourse – means the same as the older terms "carnal knowledge" and "sexual intercourse." It means the slightest penetration of the female sexual organ by the male sexual organ. No proof of an erection or emission of seed is necessary to prove penetration.