

207.71A UNLAWFUL ONLINE CONDUCT BY A HIGH-RISK SEX OFFENDER
THAT ENDANGERS CHILDREN. FELONY.

The defendant has been charged with unlawful online conduct by a high-risk sex offender.

For you to find the defendant guilty of this offense, the State must prove three things beyond a reasonable doubt.

First, that the defendant:

- (a) [Communicated online with a person that the defendant believed to be under 16 years of age];
- (b) [Contacted online a person that the defendant believed to be under 16 years of age];
- (c) [Used a web site to gather information about a person that the defendant believed to be under 16 years of age];
- (d) [Used a commercial social networking web site¹ in violation of a policy of the web site which prohibited convicted sex offenders from using the site and which was posted in a manner reasonably likely to come to the attention of users].

Second, that the defendant was a person required to register as a sex offender under North Carolina law;²

And Third, that:

- (a) [On (name date) the defendant in (name court) [was convicted of] [pled guilty to] the aggravated offense³ of (name offense, e.g. first degree forcible rape) against a person under 18 years of age in violation of the law of the State of North Carolina]

- (b) [The defendant was a recidivist⁴, that is, that [on (name date) the defendant in (name court) [was convicted of] [pled guilty to] the offense of (name offense from G.S. 14-208.6(4), (e.g. first degree forcible rape) which was against a person under 18 years of age]
- (c) [On (name date) the defendant in (name court) [was convicted of] [pled guilty to] the offense against a minor⁵ of (name offense, e.g. kidnapping) in violation of the law of the State of North Carolina]
- (d) [On (name date) the defendant in (name court) [was convicted of] [pled guilty to] the sexually violent offense⁶ of (name offense, e.g. first degree forcible rape) against a person under 18 years of age]
- (e) [On (name date) the defendant in (name court) was found to be a sexually violent predator⁷, based on a conviction of a sexually violent offense committed against a minor.]

If you find from the evidence beyond a reasonable doubt that or about the alleged date the defendant:

- (a) [communicated with a person that the defendant believed to be under 16 years of age];
- (b) [contacted a person that the defendant believed to be under 16 years of age];
- (c) [used a web site to gather information about a person that the defendant believed to be under 16 years of age];
- (d) [Used a commercial social networking web site⁸ in violation of a policy of the web site which prohibited convicted sex offenders from using the site and which was posted in a manner reasonably likely to come to the attention of users].

And that,

- (a) [On (name date) the defendant in (name court) [was convicted of] [pled guilty to] the aggravated offense of (name offense) against a person under 18 years of age]
- (b) [The defendant was a recidivist and at least one offense was against a person under 18 years of age]
- (c) [On (name date) the defendant in (name court) [was convicted of] [pled guilty to] the offense against a minor of (name offense)]
- (d) [On (name date) the defendant in (name court) [was convicted of] [pled guilty to] the—sexually violent offense of (name offense) against a person under 18 years of age]
- (e) [On (name date) the defendant in (name court) was found to be a sexually violent predator, based on a conviction of a sexually violent offense committed against a minor.]

it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

1. N.C.G.S. § 14-202.5(b) defines “**commercial social networking web site**” as any web site, application, portal, or other means of accessing the internet that meets all of the following requirements:

- (1) Is operated by a person who derives revenue from membership fees, advertising, or other sources related to the operation of the web site.
- (2) Allows users to create personal web pages or profiles that contain the user’s name or nickname, photographs of the user, and other personal information.
- (3) Provides users or visitors a mechanism to communicate with others, such as a message board, chat room, or instant messenger.

A commercial social networking web site **does not** include a web site that meets either of the following requirements:

- (1) Has as its primary purpose the facilitation of commercial transactions, the dissemination of news, the discussion of political or social issues, or professional networking.

Is a website owned or operated by a local, State, or federal governmental entity.

2. N.C.G.S. § 14-202.5(c1) defines “**high-risk sex offender**” as any person registered in accordance with Article 27A of Chapter 14 of the General Statutes that meets any of the following requirements:

- (1) Was convicted of an aggravated offense, as that term is defined in G.S. 14-208.6, against a person under 18 years of age.
- (2) Is a recidivist, as that term is defined in G.S. 14-208.6, and one offense is against a person under is years of age.
- (3) Was convicted of an offense against a minor, as that term is defined in G.S. 14-08.6.
- (4) Was convicted of a sexually violent offense, as that term is defined in G.S. 14-208.6, against a person under 18 years of age.
- (5) Was found by a court to be a sexually violent predator, as that term is defined in G.S. 14-208.6, based on a conviction of a sexually violent offense committed against a minor.

3. N.C.G.S. § 14-208.6(1a) defines “**aggravated offense**” as any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of serious violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old.

4. N.C.G.S. 208.6(2b) defines “**recidivist**” as a person who has a prior conviction for an offense that is described in G.S. 14-208.6(4) as provided below:

Reportable conviction—any of the following:

- A) A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.
- B) A final conviction in another state of an offense, which if committed in this State, is substantially similar to an offense against a minor or a sexually violent offense as defined by this section, or a final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state.
- C) A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.
- D) A final conviction for a violation of G.S. 14-202(d), (e), (f), (g), or (h), or a second or subsequent conviction for a violation of G.S. 14-202(a), (a1), or (c), only if the court sentencing the individual issues an order pursuant to G.S. 14-202 (l) requiring the individual to register.
- E) A final conviction for a violation of G.S. 14-43.14, only if the court sentencing the individual issues an order pursuant to G.S. 14-43.14(e) requiring the individual to register.

5. N.C.G.S. § 14-208.6(1m) defines “**offense against a minor**” as any of the following offenses if the offense is committed against a minor, and the person committing the offense is not the minor's parent: G.S. 14-39 (kidnapping), G.S. 14-41 (abduction of

children), and G.S. 14-43.3 (felonious restraint). The term also includes the following if the person convicted of the following is not the minor's parent: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

6. N.C.G.S. § 14-208.6(5) defines "sexually violent offense" as a violation of former G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.21 (first-degree forcible rape), G.S. 14-27.22 (second-degree forcible rape), G.S. 14-27.23 (statutory rape of a child by an adult), G.S. 14-27.24 (first-degree statutory rape), G.S. 14-27.25(a) (statutory rape of a person who is 15 years of age or younger and where the defendant is at least six years older), G.S. 14-27.26 (first-degree forcible sexual offense), G.S. 14-27.27 (second-degree forcible sexual offense), G.S. 14-27.28 (statutory sexual offense with a child by an adult), G.S. 14-27.29 (first-degree statutory sexual offense), G.S. 14-27.30(a) (statutory sexual offense with a person who is 15 years of age or younger and where the defendant is at least six years older), G.S. 14-27.31 (sexual activity by a substitute parent or custodian), G.S. 14-27.32 (sexual activity with a student), G.S. 14-27.33 (sexual battery), G.S. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against any person with the intent that they be held in sexual servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), 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. 14-190.9(a1) (felonious indecent exposure), 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. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-205.2(c) or (d) (patronizing a prostitute who is a minor or has a mental disability), G.S. 14-205.3(b) (promoting prostitution of a minor or a person who has a mental disability), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

7. N.C.G.S. § 14-208.6(5) defines "sexually violent predator" as a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

8. N.C.G.S. § 14-202.5(b) defines "**commercial social networking web site**" as any web site, application, portal, or other means of accessing the internet that meets all of the following requirements:

- (1) Is operated by a person who derives revenue from membership fees, advertising, or other sources related to the operation of the web site.
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