Effective Dates for the Satellite-Based Monitoring Law

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The court of appeals decided two satellite-based monitoring cases last week, State v. May and State v. Cowan. The *May* case—which primarily orders the correction of a clerical error—reminds us that as used in the sex offender context, "offense against a minor" does not mean any sex crime that happens to be against a minor. Rather, it is a defined term referring to three specific offenses, committed against a minor by a person other than his or her parent: kidnapping, abduction of children, and felonious restraint. G.S. 14-208.6(1m). Most reportable crimes are actually "sexually violent offenses" as defined in G.S. 14-208.6(5), and that is the box (1b. in the "Findings" section) that should typically be checked on form AOC-CR-615.

Cowan is more noteworthy. It covers new ground by answering a longstanding question about satellite-based monitoring: what is the law's effective date?

In *Cowan*, the defendant was initially charged with rape and other crimes for a sexual assault on a four-year-old girl on April 1, 2005. Ultimately, on August 29, 2007, he pled guilty to one count of solicitation to commit indecent liberties with a child, for which he received probation. Cowan's suspended sentence was activated in early 2008. Just prior to his release from DOC, he received notice of a hearing to determine whether he would be required to enroll in SBM. At the hearing the court determined that Cowan had committed an offense "involv[ing] the physical, mental, and sexual abuse of a minor" and ordered him to enroll in SBM for life. Though he gave only oral notice of appeal, the court of appeals decided to treat his brief as a petition for a writ of certiorari and to address his challenges to the SBM order. (See this post for a full discussion of the oral appeal issue.)

Cowan first argued that based on his offense date (again, April 1, 2005), he should not be eligible for monitoring at all. As amended by a technical correction (S.L. 2007-484, sec. 42), the effective date provision of the 2007 law that added the SBM determination hearing procedure set out in G.S. 14-208.40B (the provision under which Cowan was called back in to court) reads simply that it was effective December 1, 2007—after Cowan was sentenced and well after his 2005 offense date. The court of appeals disagreed, holding that the 2007 legislation adding G.S. 14-208.40A and -208.40B are merely a procedural gloss on the substance of G.S. 14-208.40, which was enacted in 2006 and made applicable to, among others, offenders "sentenced to intermediate punishment on or after [August 16, 2006]." S.L. 2006-247, sec. 15(*l*). The law thus applied to Cowan, who was sentenced to intensive probation in 2007.

So, after many cases in which the court assumed that the August 16, 2006 effective date was the one that matters (I wrote about this issue in my very first blog post!), we finally have a case saying so. As a reminder (in case you don't have your flow chart handy) the full effective date provision in the 2006 law reads as follows: "Unless otherwise provided in the section, this section is effective [August 16, 2006] and applies to offenses committed on or after that date. This section also applies to any person sentenced to intermediate punishment on or after that date and to any person released from prison by parole or post-release supervision on or after that date. This section also applies to any person who completes his or her sentence on or after the effective date of this section who is not on post-release supervision or parole." See pages 6–7 of the legislative summary available here for John Rubin's analysis of the full effective date provision.

The effective date issue was not the only one resolved by the court of appeals in *Cowan*. The defendant also argued

that his crime—solicitation to commit indecent liberties with a child—did not involve the "physical, mental, or sexual abuse of a minor" as required by G.S. 14-208.40(a)(2). The court disagreed, for reasons I'll discuss in my next post.