



Interpreting Sex Offender Consequence Laws: Contact with Minors

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A few years ago I began tracking and compiling the consequences that attach to an offense subject to sex offender registration (a registrable offense). In preparation for an upcoming course, I just updated my [Consequences Paper](#).

The list of consequences continues to grow. So, too, has litigation over them. A recent court of appeals decision, [State v. Barnett](#) (Jan. 19, 2016), considered the limits on the court's authority to enter a no-contact order against a person convicted of a registrable offense. (Jamie Markham wrote a [blog post](#) about another aspect of the decision—whether attempted rape is an aggravated offense and subject to stricter registration and monitoring requirements. It isn't.) [After publication of this blog post, the [North Carolina Supreme Court](#) reversed the Court of Appeals' decision in *Barnett*. The Supreme Court agreed that G.S. 15A-1340.50 protects the victim of the offense, not third parties, and a judge may not prohibit contact with third parties for their protection; however, the Supreme Court held that, on appropriate findings, a judge may prohibit the defendant from indirectly contacting the victim through specifically identified third parties, such as the victim's family.]

Barnett addressed G.S. 15A-1340.50, which authorizes the sentencing judge, with appropriate findings, to enter an order permanently barring a person convicted of a registrable offense from contacting the victim of the offense. The relief differs from other consequences of a registrable offense in that it lasts for the defendant's lifetime, not for the period of registration only. The order also differs from other protective orders in that it remains in effect unless rescinded by the court; it need not be renewed. Compare G.S. 50B-3(b) (authorizing domestic violence protective orders for up to one year initially and up to two-year terms thereafter). A violation of the order is a crime, a Class A1 misdemeanor. Arrest is mandatory—a law enforcement officer must arrest, with or without a warrant, if probable cause of a violation exists. G.S. 15A-1340.50(g).

The court held that the plain language of the statute does not give the sentencing judge authority to enter an order barring the defendant from having contact with the victim's children, as was ordered by the judge in *Barnett*. The court rejected the State's argument that the catch-all relief provision in G.S. 15A-1340.50(f)(7), authorizing "other relief deemed necessary and appropriate by the court," allows the sentencing judge to prohibit contact with the victim's children. The court held that while the catch-all provision allows a judge to order relief beyond the relief specifically described in the statute, the catch-all provision must be interpreted consistently with the remainder of the statute, which only authorizes the court to prohibit the defendant from taking actions against the victim—that is, "[t]he person against whom the sex offense was committed." G.S. 15A-1340.50(a)(3).

Two aspects of the decision occur to me beyond the specific holding. First, the court's finding that the statute does not permit the court to bar the defendant from having contact with the victim's children seems consistent with other consequence statutes for registrable offenses. The sex offender statutes impose numerous restrictions on where a person convicted of a registrable offense may work, go, or live. Among other things, the person may not work at a place where minors are present if the person instructs, supervises, or directs minors. See G.S. 14-208.17. A complicated set of requirements prohibits the person from going on or near places intended primarily for the use, care, or supervision of minors. See G.S. 14-208.18. Subject to some exceptions, the person may not live within 1,000 feet of a school or child care center. See G.S. 14-208.16. While on probation and post-release supervision, a person convicted of an offense involving sexual abuse of a minor may not reside with a minor, and a person convicted of an

offense involving physical or mental abuse of a minor may not reside with a minor unless permitted by the court. See G.S. 15A-1343(b2)(4), (5); G.S. 15A-1368.4(b1)(4), (5).

These statutes impose heavy restrictions, many of which apply whether or not the person was convicted of an offense against a minor. The statutes do not impose a blanket ban on contact with minors, however. For example, in *State v. Crowder*, 208 N.C. App. 723 (2010), *superseded in part on other grounds by State v. Kornegay*, 228 N.C. App. 320 (2013), the court held that visiting a minor did not violate the statutory probation condition barring a probationer from residing with a minor if convicted of an offense involving sexual abuse of a minor. (The court did not determine whether such a restriction could be imposed as a probation condition in an individual case.) In *Bobbitt v. Eizenga*, 215 N.C. App. 378 (2011), the court held that the statutory residence restrictions did not bar a person subject to those restrictions from obtaining visitation rights. Now, *Barnett* finds that the statute allowing the sentencing court to enter a no-contact order does not authorize a ban on contact with minors who are not victims of the offense. Presumably, the same rule applies to a recently-enacted statute allowing the victim of a registrable offense to institute a civil action for a permanent no-contact order against the defendant if the victim did not seek a no-contact order at sentencing. [S.L. 2015-91](#). Like the sentencing provisions considered in *Barnett*, the language of the new statute, G.S. 50D-1(4), allows the court to issue an order prohibiting the defendant from taking certain actions against the victim only. (A minor still may obtain a protective order under Chapter 50C of the General Statutes if the minor is a victim of unlawful conduct as defined there.)

A second aspect of *Barnett* that strikes me as noteworthy is that the decision rests on the language of the statute itself. Constitutional challenges have been and continue to be raised to the consequences of a conviction of a registrable offense. In *State v. Hunt*, 221 N.C. App. 48 (2012), the court held that the statute addressed in *Barnett* did not impose an unconstitutional punishment. While constitutional questions remain about various consequences, *Barnett* indicates that a close reading of the statutory language may reveal limitations in particular cases without reaching larger constitutional considerations.

You can find citations to other North Carolina decisions on the consequences of a registrable offense in my [Consequences Paper](#). You can find additional resources on sex offender registration and monitoring in my [Relief Guide to a Criminal Conviction](#) (scroll through the menu until you reach sex offender registration and monitoring) and the [Collateral Consequences Assessment Tool \(C-CAT\)](#) (where I've collected papers on sex offender consequences).