How to Measure 1,000 Feet for the Sex Offender Residential Restriction

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Under G.S. 14-208.16, a registered sex offender may not reside "within 1,000 feet of the property on which any public or nonpublic school or child care center is located." What's the right way to measure those 1,000 feet? As the crow flies? Property line to property line? Building to building?

The statute is susceptible to multiple interpretations, and the issue has yet to be explored in North Carolina's appellate courts. My sense is that not all 100 sheriffs in North Carolina apply the law in exactly the same way. And that's understandable, because I can think of more than one interpretation that makes sense as a policy matter.

For example, a strict property-line-to-property-line approach isn't a great fit in a rural area where a person's actual residence might be many thousands of feet from the edge of his or her property. And measuring the distance as the crow flies may fail to take into account barriers like rivers and interstate highways that might effectively buffer a school or child care center by more than the required distance. It's also challenging to apply the law to rental properties, where a registrant's individual unit might be more than 1,000 feet from a protected place, but portions of the broader complex—perhaps including common recreation areas, like a perimeter walking trail—fall within the prohibited radius. All of these questions (and many more) have come up in real life.

Even if the "right" way to measure the distance may be open question for now, I do think the statute itself may give us some answers.

As to where to begin the measurement on the side of the protected place (the school or child care center), I think it's reasonably clear that that measurement begins at the edge of the property line. The statute says the registrant may not reside "within 1,000 feet *of the property* on which any public or nonpublic school or child care center is located." That reference to the broader *property* is hard to square with a reading that starts the measurement at the school or child care building itself.

The other end of the measurement is less clear. It refers just to the place where the registrant "reside[s]," which could be read to mean only the actual dwelling place and not the surrounding land. Had the General Assembly wanted to make clear that the distance was to be measured from the edge of the property line of the residence, it could have phrased the law differently, saying registrants could not reside "on *property* that is within 1,000 feet" of a school or child care center. That would parallel the structure the law uses for the protected places. And with that in mind a registrant could certainly make the argument that when the legislature wants the prohibition to extend to the property line, it knows how to say so, but it didn't. Furthermore, to the extent that there's any ambiguity in this criminal provision, a court would generally look to resolve it in the defendant's favor.

On the other hand, that reading would appear to allow registrants free rein to observe a protected place from their own property as long as their dwelling place were set back more than 1,000 feet from the edge of the parcel. That seems unlikely to be the policy result the legislature intended.

Even if you settle on how to determine the endpoints of the distance, you're left with the question of whether obstacles

between them should be taken into account, or whether distance is measured in a straight line. In my mind a straight-line measurement is the most natural reading of the statute, but other interpretations are possible.

An Ohio court considered a similar question briefly in Hyle v. Porter, 868 N.E.2d 1047 (Ohio App. 2006). Ohio's residential restriction prohibited sex offenders from establishing a residence or occupying residential premises within 1,000 feet of any school premises. In *Hyle,* the court evaluated the constitutionality of the restriction as applied to a residence where "it [wa]s impossible to walk to the school in a straight line without averting obstacles, hurdling hedges, traversing trellises, or otherwise encroaching on neighbors' property." The court ultimately approved a straight-line measurement—despite noting that the registrant "is not a crow and cannot fly."

Looking at other case law nationally, it appears that some states have laws that more clearly outline the scope of their residential restrictions, but they are by no means uniform in their approach. In Kentucky, for example, the residential restriction law specifically says that the 1,000 foot measurement "shall be taken in a straight line from the nearest wall of the school to the nearest wall of the registrant's place of residence." Commonwealth v. Baker, 295 S.E.3d 437 (Ky. 2009) (discussing K.R.S. 17.495). By contrast, Georgia's restriction provides that its 1,000-foot buffer is "determined by measuring from the outer boundary of the property on which the individual resides to the outer boundary of the property of the childcare facility, school, or area where minors congregate at their closest point." Thompson v. State, 603 S.E.2d 233 (Ga. 2004) (discussing O.C.G.A. § 42-1-13).

If the General Assembly ever wanted to amend North Carolina's law to make it a little clearer, it appears that examples are available from other states for whatever the preferred substantive rule might be. If the law is amended or clarified, the legislature may wish to consider including a grandfather clause for registrants who—possibly with the approval of the sheriff—made real estate decisions based on the prior version of the law.

Kevin Smith from the Smith Rodgers firm in Greensboro, who advises sheriffs' offices across the state, provided helpful feedback on this post.