

Notice of the Duty to Register as a Sex Offender

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When a defendant is convicted of a reportable sex crime, someone is required to give him or her notice of the duty to register. Who does it depends on whether or not the defendant receives an active sentence.

If the defendant receives an active sentence, notice of the duty will come from the prison system or the jail. Under [G.S. 14-208.8\(a\)](#), at least 10 days but not earlier than 30 days before a person is due to be released from a penal institution, a prison or jail official must give the inmate prerelease notice of his or her duty to register. The official must also require the inmate to sign a written statement that he or she received the notice. If the inmate refuses to sign, the official should certify that the notification was conveyed.

The official is also directed to jump-start the registration process by gathering some of the information listed in [G.S. 14-208.7\(b\)](#), including the defendant's basic biographical information, driver license number, address, and information about the registration crime. Some additional information is collected from lifetime registrants (recidivists, those convicted of an aggravated offense, and sexually violent predators). G.S. 14-208.22(c). All the information gets conveyed to the Department of Public Safety and to the sheriff of the county where the person expects to reside upon release.

If the defendant does not receive an active sentence, the sentencing court does the notification. The form for doing that is [AOC-CR-261](#). So, whether a defendant is convicted in district or superior court, the sentencing judge should complete that form for any defendant sentenced to probation (including a split sentence), or to a fine only. (To be clear, the notice of the duty to register is not itself an *order* to register. The sentencing court should make that order, when necessary, using form [AOC-CR-615](#).)

A defendant should get the notice *again* if he or she is convicted of any of the failure to register crimes spelled out in [G.S. 14-208.11](#). As with the initial notification, the notice is given by the court at sentencing if the defendant is sentenced to probation, or by the prison or jail institution if the defendant gets active time. G.S. 14-208.11(b).

What if the defendant doesn't receive the notice within the proper statutory time frame? That's what happened in *State v. Harris*, 171 N.C. App. 127 (2005). The prison notified the defendant-inmate of his duty to register only 5 days before release instead of the requisite 10. Nevertheless, the court of appeals affirmed the defendant's conviction for failure to register, rejecting his argument that the untimely notice extinguished his duty to register altogether. The court deemed the prerelease notice provision to be an "administrative provision" designed to "facilitate cooperation" among the agencies tasked with running the registry, but not a "precondition for . . . conviction." *Id.* at 130.

The lack of proper notice could, however, play a role in a prosecution for failure to register. Though it was at one time a strict liability offense, G.S. 14-208.11 was amended in 2006 to add a *mens rea* element requiring that the crime be committed willfully. A person who received no notice at all might be able to defend against a failure to register charge. *Cf.* *State v. Moore*, ___ N.C. App. ___, 770 S.E.2d 131 (2015) (vacating the defendant's conviction for failing to return a verification form when there was no evidence that the defendant actually received it).