

Revised Sex Offender Flow Chart (July 2017 Edition)

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With another legislative session in the books, it's time for an update to the sex offender registration and monitoring flow chart.

The revised chart is [here](#). In addition to routine citation and formatting maintenance, it makes the following changes.

First-degree statutory rape is reportable again. When the General Assembly recodified many of North Carolina's sex laws in 2015, the recodified version of first-degree statutory rape (G.S. 14-27.24) was left off the list of reportable sex crimes set out in G.S. 14-208.6(5). That meant anyone convicted of first-degree statutory rape for an offense committed on or after December 1, 2015 did not have to register as a sex offender.

This year's technical corrections act ([S.L. 2017-102](#)) fixed the omission, adding G.S. 14-27.24 to the list of reportable crimes. And so that crime is added to the chart.

Note the effective date. The change was made retroactively effective to December 1, 2015. That retroactivity is probably fine when it comes to sex offender registration itself. Under our current understanding of things, registration is not punishment, and applying a registration requirement retroactively therefore does not violate the Ex Post Facto Clause. *State v. White*, 162 N.C. App. 183 (2004). My guess is that anyone convicted of first-degree statutory rape for an offense committed since December 1, 2015 is still in prison for it and wouldn't have been registered yet in any event. Under the revised law they will have to register when they are released, so no harm done by the two-year statutory hiatus in reportability.

But remember that there are sentencing consequences that flow from reportability. If it were a sex crime, a Class B1 offense like first-degree statutory rape would have 60 extra months built into its maximum sentence for post-release supervision instead of the usual 12. G.S. 15A-1340.17(f). The period of post-release supervision would be 5 years instead of 12 months. G.S. 15A-1368.2(c). And additional conditions of post-release supervision would apply during that lengthier period of supervision. G.S. 15A-1368.4(b1). All of those additional requirements surely constitute punishment that may not permissibly be applied retroactively to a person who committed his or her offense before the law was amended to make them applicable.

The upshot, I think, is that defendants convicted of first-degree statutory rape for offenses committed from December 1, 2015 to July 12, 2017 (the day the governor signed the amended statute into law) *will* ultimately need to register as sex offenders, but *will not* be subject to an elevated maximum sentence or extended PRS for that crime. So file that analysis away for, like, 2028 or whenever the first of the impacted defendants is due to be released from prison.

No-contact orders. The note on the chart about no-contact orders under G.S. 15A-1340.50 is amended to reflect the supreme court's decision in *State v. Barnett*, ___ N.C. ___, 794 S.E.2d 306 (2016). In *Barnett* the supreme court held that the court of appeals erred in concluding that a trial judge had no authority to enter a no-contact order keeping the defendant away from anyone other than the victim (in that case, the victim's children). The supreme court said a judge could enter such an order, so long as it was directed at preventing indirect contact with the actual victim through specifically identified third parties, as long as the order is supported by appropriate findings.

Emphasizing *Grady*. In the section of the chart covering constitutional issues, I emphasized the blurb about *Grady v. North Carolina*, 575 U.S. ___, 135 S. Ct. 1368 (2015)—the case in which the Supreme Court held that satellite-based monitoring is a search and then remanded for a determination of its reasonableness. Many post-*Grady* SBM orders have been summarily reversed on account of the trial court’s failure to determine the reasonableness of the search as applied to the particular defendant. One line of bold text on an already overcrowded chart obviously does not solve all of your problems about how properly to analyze the reasonableness of a search that will, in most cases, not occur for decades. But I hope it will at least serve as a reminder that a failure to consider the issue is a surefire path to reversal. (For whatever they may be worth, my thoughts on the proper analysis are [here](#).)