

Sex Crime Tiers under Federal Law

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Like most states, North Carolina has not substantially implemented the federal Sex Offender Registration and Notification Act (SORNA). (Only [17 states](#) have.) Nevertheless, some portions of the federal law wind up impacting sex offenders in North Carolina. As discussed in previous posts, as a matter of existing state law, a judge may not grant a petition for removal from the sex offender registry if doing so would violate the “federal Jacob Wetterling Act, as amended, and any other standards applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State.” [G.S. 14-208.12A\(a1\)\(2\)](#). With that requirement in place, federal rules regarding minimum registration period effectively trump the state-law regime allowing a non-lifetime registrant to petition for removal 10 years after the date of initial county registration. The minimum registration periods under federal law are 15 years for so-called “Tier I” offenses (reducible to 10 years in certain circumstances), 25 years for “Tier II” offenses, and life for “Tier III” offenses.

That longwinded introduction brings me to the real purpose of today’s post. To apply the state law referencing federal law correctly, you need to know the tier into which the registrant’s reportable offense would fall. Federal law defines the tiers mostly by reference to federal crimes. In today’s post I will summarize the federal laws and regulations regarding tiering, including all of the relevant definitions of qualifying acts.

Tier I. Tier I is a residual category that includes sex offenders other than tier II and tier III sex offenders. [42 U.S.C. § 16911\(2\)](#). Thus, the only way to identify tier I offenses is to know which offenses fall into tiers II and III.

Tier II. Tier II offenses (defined in 42 U.S.C. § 16911(3)) are described in U.S. Department of Justice (USDOJ) guidelines on SORNA as (1) offenses involving the use of minors in prostitution; (2) offenses against minors involving sexual contact—i.e., any sexual touching of or contact with the intimate parts of the body, either directly or through the clothing; and (3) offenses involving the production or distribution (but not the mere possession) of child pornography. [73 Fed. Reg. 38030, 38053–54](#).

More specifically, Tier II offenses are those other than Tier III offenses (described below) that are punishable by imprisonment for more than one year, and fall into one of the following three categories (A, B, or C):

A. Are comparable to or more severe than the following offenses, when committed against a minor (or an attempt or conspiracy to commit them):

1. Sex trafficking as defined in [18 U.S.C. § 1591](#);
2. Coercion and enticement under [18 U.S.C. § 2422\(b\)](#);
3. Transportation with intent to engage in criminal sexual activity under [18 U.S.C. § 2423\(a\)](#); or
4. Abusive sexual contact under [18 U.S.C. § 2244](#). Abusive sexual contact generally requires, among other things, that the defendant engage in or cause “sexual contact” with or by another person, defined in [18 U.S.C. § 2246\(3\)](#) as the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

B. That involve:

1. Use of a minor in a sexual performance;
2. Solicitation of a minor to practice prostitution; or
3. Production or distribution of child pornography.

C. That occur after the offender becomes a tier I sex offender.

Tier III. Tier III offenses (defined in 42 U.S.C. § 16911(4)) are those that are punishable by imprisonment for more than 1 year and fall into one of the following three categories (A, B, or C).

A. Are comparable to or more severe than the following offenses (or an attempt or conspiracy to commit them):

1. Aggravated sexual abuse under [18 U.S.C. § 2241](#) or sexual abuse under [18 U.S.C. § 2242](#). “Sexual abuse” crimes generally require, among other things, the commission of a “sexual act,” defined in [18 U.S.C. § 2246](#) as contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or the mouth and the anus; penetration of the anal or genital opening of another by a hand, finger, or any object; or direct touching, not through the clothing, of the genitalia of a person under 16.
2. Abusive sexual contact under 18 U.S.C. § 2244 (described above in the tier II offense definition) when committed against a minor under 13 years old.

B. Involve kidnapping of a minor (unless committed by a parent or guardian).

C. That occur after the offender becomes a tier II sex offender.

If the a person’s registration offense does not match up with any of the descriptions set out above, then North Carolina would be permitted under SORNA to treat it as a tier I offense.

For those (like me) who prefer a chart, I created one for the tier class definitions. It is [here](#).

All of that is pretty complicated, but unfortunately, identifying the relevant federal definitions is the easy part. The hard part is sorting North Carolina’s reportable offenses into tiers. I’ll attempt to do that in a subsequent post. I’m not exactly looking forward to it, but as one of my personal heroes once said, “[Sometimes the right thing and the hard thing are the same thing.](#)”