Sex Offenders in Emergency Shelters

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With Hurricane Harvey fresh in our minds, Hurricane Irma is bearing down on Florida. The storm could work its way up the coast to the Carolinas by early next week, possibly following a path similar to last year's Hurricane Matthew or Hurricane Hugo in 1989. Governor Cooper has declared a state of emergency for all 100 counties, ordering state and local government entities to be prepared and temporarily suspending certain motor vehicle restrictions.

A question that sometimes arises when the government sets up emergency shelters is whether registered sex offenders may use them. The sheriff of Polk County, Florida, tweeted yesterday that registrants would not be allowed in shelters there. What is the law in North Carolina?

Some states have specific rules about sex offenders in emergency shelters. Louisiana, for example, has a law stating that sex offenders may not knowingly be housed or sheltered in the same area with other evacuees, and that any person who becomes aware of a registrant in a shelter must notify the sheriff and chief of police. La. Stat. Ann. § 29:726. Alternative shelter for sex offenders should be provided if possible. *Id.*

North Carolina does not have any specific provisions like that. In fact, I don't think any law here sets out a crystal clear prohibition on a sex offender being in a shelter. There are, however, several provisions that could be read to limit registrants' access to or activities within a shelter in certain situations.

First, there is the **residential restriction** in G.S. 14-208.16 (discussed here). That law, applicable to all registered sex offenders in North Carolina, says that registrants may not knowingly reside within 1,000 feet of the property on which any public or nonpublic school or child care center is located. If a shelter were set up near a prohibited location, would that law bar an offender from "residing" in it?

A threshold question there is whether the temporary shelter is the person's "residence" at all. Our supreme court has said that for purposes of the sex offender registry, a person's residence is "the actual place of abode where he or she lives, whether permanent or temporary." State v. Abshire, 363 N.C. 322 (2009). Applying that rule to a homeless sex offender charged with an improper change of address under G.S. 14-208.11, the court of appeals concluded that the registry operates "on the premise that everyone does, at all times, have an 'address' of some sort, even if it is a homeless shelter, a location under a bridge or some similar place." State v. Worley, 198 N.C. App. 329 (2009).

With that case law in mind, even temporary residence in an emergency shelter might be said to qualify as establishment of a residence within the meaning of G.S. 14-208.16—especially for an otherwise homeless offender with no alternative residence to point to. Arguably G.S. 14-208.16 has its own self-contained definition of what it means to establish a residence—purchase, lease, or residence with an immediate family member who purchases or leases—but I understand that provision to apply for the limited purpose of the law's grandfather clause, excluding from its coverage offenders who established a residence before August 16, 2006, or before a school or child care center opened nearby. Assuming the broader, more functional definition of residence applies, some registrants staying in a shelter may commit a felony by doing so if it is within 1,000 feet of a school or child care center. That said, a registrant charged with a violation of the law might have some sort of defense of necessity—especially if he or she acted pursuant to an evacuation required as part of a state of emergency. (John Rubin wrote about justification and necessity here. My

colleague Norma Houston wrote about evacuations here.)

An additional wrinkle that could apply under the residential restriction: What if the shelter is actually set up in a school facility? If you can't reside near a school, I guess you can't reside in one. But to the extent that the educational function of the school ceases during the facility's use as a shelter, I suppose there's some argument that it isn't actually a school within the meaning of the law at that moment.

Speaking of schools (and similar places), the second statute that may come into play is the **premises restriction** of G.S. 14-208.18. As discussed many times on this blog (e.g., here), that is the law that prevents some (but not all) sex offenders from knowingly being on or near certain child-focused premises. Would any of the prohibitions set out in that law bar an offender from a shelter? Perhaps. If a school or other place "intended primarily for the use, care, or supervision of minors" is used as a shelter, offenders covered under G.S. 14-208.18(a)(1) might be barred from going on the premises. Again, though, I think there is certainly an argument that if the building is being used to shelter *everyone* during the emergency, then it isn't a place *primarily* for the use, care, or supervision of minors at that time.

The 300-foot prohibition of G.S. 14-208.18(a)(2) might possibly apply if there is, within the shelter, some sub-location that is primarily kid-focused. But remember that that provision no longer applies to offenders on the registry for a crime committed against an adult victim, unless a court has made a finding that the person presents a danger to minors. G.S. 14-208.18(c)(2).

Some municipalities may have **local ordinances** that bar sex offenders from some of the places apt to be used as shelters (like recreational facilities). I think there is some argument that those ordinances are preempted under G.S. 160A-174(b)(5) to the extent that they "purport[] to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme." Judge Geer explored the preemption issue in her dissent in Standley v. Town of Woodfin, 186 N.C. App. 134 (2007) (Geer, J., dissenting)—and that was before the premises restrictions of G.S. 14-208.18 existed.

Some offenders on **probation, parole, or post-release supervision** are subject to a condition of supervision that bars them from residing with or, in some cases, simply being around minors. For them, being comingled in a shelter with minors might violate the black letter of their conditions of supervision. Those offenders may wish to consult with their probation officers to get a clearer sense of how, if at all, the conditions will be enforced. Ultimately, even if a violation were alleged, a judge might not be reasonably satisfied that it was willful or without lawful excuse, depending on the nature of the underlying emergency. State v. Duncan, 270 N.C. 241 (1967).

Even if offenders are allowed in the shelter, it would nonetheless violate G.S. 14-208.17 for a registrant to work—with or without compensation—in any capacity where his or her responsibilities or activities included **instruction, supervision, or care of minors**.

As far as I can tell, FEMA's planning guides for emergency shelters don't mandate any particular approach to sex offenders, but they do highlight them as a discussion point and recommend coordination with law enforcement to determine what is required as a matter of local law. In light of some the ambiguities described above, it seems like the sheriff, district attorney, and other local leaders may wish to discuss the issues in advance in case shelters become necessary in response to Irma.