

## Sex Offenders Living with Minors, Part I

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Every now and then I get a call—usually from a concerned citizen or a prosecutor—asking whether it’s okay for a sex offender to be living in the same residence as a minor. This post summarizes the restrictions on living with minors applicable to registered offenders who are still under supervision by the Department of Correction. In a subsequent post I’ll discuss the restrictions (or, as turns out to be the case, the lack of restrictions) on registered offenders generally.

Offenders under supervision for a conviction that requires registration or that involved the physical, mental, or sexual abuse of a minor must be subject to certain special conditions of probation under [G.S. 15A-1343\(b2\)](#) or post-release supervision under [G.S. 15A-1368.4\(b1\)](#). The substance of the mandatory conditions is the same for both types of supervisees. First, those convicted of offenses for which there was evidence of the *sexual abuse of a minor* may not reside in a household with any minor child. G.S. 15A-1343(b2)(4), -1368.4(b1)(4). Second, those convicted of offenses for which there was evidence of *physical or mental abuse of a minor* may only reside in a household a minor child if the court expressly finds that it is “unlikely that the defendant’s harmful or abusive conduct will recur and that it would be in the minor child’s best interest to allow the probationer to reside in the same household.” G.S. 15A-1343(b2)(5), -1368.4(b1)(5). Recall that the period of post release supervision for an offender convicted of a reportable Class B1 through E felony is 5 years—not the typical 9 months—so the condition has the potential to apply for some time. [G.S. 15A-1368.2\(c\)](#).

The court of appeals has upheld the mandatory prohibition on living in a household with a minor against a constitutional challenge. In [State v. Strickland](#), 169 N.C. App. 193 (2005), the defendant was convicted of taking indecent liberties with a child for having sex with his wife’s 13-year-old sister, who was living with the defendant, his wife, and their young son at the time. The court placed him on probation and, after finding that the offense involved the sexual abuse of a minor, ordered that he could not reside in any household with a minor child under G.S. 15A-1343(b2).

When Strickland continued to live with his family (including his son), his probation was revoked. He argued on appeal that the condition violated his fundamental right to the custody and care of his own child. The court of appeals disagreed, holding that a condition of probation may restrict a fundamental right if it is reasonably related to protecting the public and to rehabilitating the offender—and, the court concluded, this condition was. The court noted that the condition did not amount to a loss of custody of the child or a general prohibition on visiting the child in the home. Rather, it “simply prevented [Strickland] from also residing in that home for the probationary period.” The court also rejected the defendant’s argument that the condition should not apply because to him because his victim was not a blood relative, and there was no evidence that he ever abused his own child.

Note that these special conditions are mandatory for *any offense* that involves the physical, mental, or sexual abuse of a minor, not just for reportable crimes. As in the context of the satellite-based monitoring law, “physical, mental, or sexual abuse of a minor” is not defined in the probation statutes. One could imagine, for example, that certain non-reportable assaults might be deemed to involve the physical abuse of a minor, and thus trigger the mandatory special conditions, although there are no appellate cases on that issue. (I’m curious if any readers have seen it happen.) Page Two, Side Two of [AOC-CR-603](#) guides the court through the appropriate findings and the special conditions themselves.