

SORNA Compliance Legislation

Author : Jamie Markham

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I've [written before](#) about how North Carolina's law related to sex offender registration has changed over the years in response to federal mandates. In 2006 Congress passed [the Adam Walsh Child Protection and Safety Act](#), Title I of which is the Sex Offender Registration and Notification Act, or SORNA. SORNA includes a set of minimum standards related to sex offender registration that all states must substantially implement or lose 10 percent of their federal [Byrne Memorial Justice Assistance Grant](#) money. (To give you a sense of scale, [North Carolina's JAG allocation](#) in 2010 was about \$8.7 million.)

SORNA initially required jurisdictions to substantially implement its requirements by July of 2009. North Carolina—along with just about every other state—has received two one-year [extensions](#), pushing our compliance deadline to July 27, 2011. With that deadline approaching, a SORNA compliance bill ([HB 772](#)) was introduced in the General Assembly a few weeks ago. I don't generally want to offer much comment on pending legislation, but because some of the provisions in the bill would apply retroactively, people whose cases are pending now (who might, for instance, be in the midst of plea negotiations) may be interested to know how the law would affect them.

A major change made in the bill is to eliminate the definitions of "aggravated offense" and "sexually violent offense" and instead classify offenses into three tiers as follows:

TIER I OFFENSES

Sexual battery (G.S. 14?27.5A);

Sexual servitude (G.S. 14?43.13), *where the facts of the case show the victim was not a minor at the time of the offense;*

Incest between near relatives (G.S. 14?178), *where the facts of the case show the victim was not a minor at the time of the offense;*

Felonious indecent exposure (G.S. 14?190.9(a1));

Third-degree sexual exploitation of a minor (G.S. 14-190.17A);

Secretly peeping (G.S. 14?202(d), (e), (f), (g), or (h), or a second or subsequent violation of G.S. 14?202(a), (a1), or (c), *only if the court sentencing the individual issues an order pursuant to G.S. 14?202(l) requiring the individual to register;*

Taking indecent liberties with children (G.S. 14?202.1), *when there is no sexual contact, or, if the court sentencing the individual finds that the victim was at least 13 years old, the offender was no more than eight years older than the victim, no force was used in the commission of the offense, and it is appropriate for the offense to be classified as a tier I offense;*

The term also includes the following: an attempt, solicitation, or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

TIER II OFFENSES

Intercourse and sexual offense with certain victims (G.S. 14-27.7), *where the facts of the case show the victim was at least 13 years old at the time of the offense;*

Statutory rape or sexual offense of person who is 13, 14, or 15 years old (G.S. 14-27.7A);

Sexual servitude (G.S. 14-43.13), *where the facts of the case show the victim was at least 13 but less than 18 years old at the time of the offense;*

Incest between near relatives (G.S. 14-178), *where the facts of the case show the victim was at least 13 but less than 18 years old at the time of the offense;*

Employing or permitting a minor to assist in offenses against public morality and decency (G.S. 14-190.6);

First-degree sexual exploitation of a minor (G.S. 14-190.16);

Second-degree sexual exploitation of a minor (G.S. 14-190.17);

Promoting the prostitution of a minor (G.S. 14-190.18);

Participating in the prostitution of a minor (G.S. 14-190.19);

Taking indecent liberties with children (G.S. 14-202.1), *where the facts of the case show the victim was at least 13 but less than 16 years old at the time of the offense and there was sexual contact with the victim;*

Solicitation of child by computer to commit an unlawful sex act (G.S. 14-202.3);

Parent or caretaker commit or permit act of prostitution with or by a juvenile (G.S. 14-318.4(a1));

Commission or allowing of sexual act upon a juvenile by parent or guardian (G.S. 14-318.4(a2)), *where the facts of the case show the victim was at least 13 but less than 18 years old at the time of the offense;*

The term also includes the following: an attempt, solicitation, or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

TIER III OFFENSES

Any offense against a minor (defined in the bill just as it is under current law to include **kidnapping** (G.S. 14-39), **abduction of children** (G.S. 14-41), and **felonious restraint** (G.S. 14-43.3), if committed against a minor and the defendant is not the minor's parent);

First-degree rape (G.S. 14-27.2);

Rape of a child; adult offender (G.S. 14-27.2A);

Second-degree rape (G.S. 14-27.3);

First-degree sexual offense (G.S. 14-27.4);

Sexual offense with a child; adult offender (G.S. 14-27.4A);

Second-degree sexual offense (G.S. 14-27.5);

Attempted rape or sexual offense (G.S. 14-27.6);

Intercourse and sexual offense with certain victims (G.S. 14-27.7), *where the facts of the case show the victim was under the age of 13 at the time of the offense;*

Subjecting or maintaining a person for sexual servitude (G.S. 14-43.13), *where the facts of the case show the victim was under the age of 13 at the time of the offense;*

Incest between near relatives (G.S. 14-178), *where the facts of the case show the victim was under the age of 13 at the time of the offense;*

Taking indecent liberties with children (G.S. 14-202.1), *where the facts of the case show the victim was under the age of 13 at the time of the offense and there was sexual contact with the victim;*

Commission or allowing of sexual act upon a juvenile by parent or guardian (G.S. 14-318.4(a2)), *where the facts of the case show the victim was under the age of 13 at the time of the offense;*

The term also includes the following: an attempt, solicitation, or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

The registration obligations of a tier I offender under the proposed law would be similar to those of non-lifetime registrants under current law. He or she would have to register for 30 years with an opportunity to petition for removal from the registry after 10 years. (Federal guidelines require a minimum 15-year registration period for tier I offenders, reducible to 10 years for offenders with a “clean record,” as defined in SORNA. The proposed bill does not address that distinction.) Tier II offenders would have to register for 30 years (which exceeds the federally-mandated minimum of 25 years). Tier III offenders would have to register for life (which is what federal law requires). Recidivists would not necessarily have to register for life under the new law. Instead, tier I registrants who committed another tier I offense would become tier II registrants (and thus subject to a 30-year registration requirement), and tier II registrants who committed a subsequent tier I or tier II offense would become tier III registrants (and thus subject to lifetime registration).

Several things stand out to me about the new tier classification structure. First, statutory rape of a 13, 14, or 15 year-old by a defendant more than four but less than six years older than the victim under G.S. 14-27.7A(b) is added as a reportable conviction (it is not reportable under existing law). Second, indecent liberties with a student under G.S. 14-202.4(a) appears to have dropped off the list of reportable crimes. Third, the bill makes aiding and abetting an offense of any tier automatically reportable, unlike current law, under which aiding and abetting is only reportable if the court makes a finding that registration furthers the purposes of the registry. G.S. 14-208.6(4)(a).

Additionally, note that some offenses fall into different tiers depending on the way the offense is committed according to “the facts of the case.” Those added qualifiers are (I assume) designed to classify each offense as neatly as possible into the tiers set out in SORNA, which are themselves defined by reference to federal crimes or standards that do not always dovetail with our law. For instance, state offenses comparable to or more severe than abusive sexual contact (18 U.S.C. § 2244) of a minor who has not attained the age of 13 must, under SORNA, be classified in tier III. Thus, indecent liberties (which can be committed against 13, 14, and 15 year-olds by means other than sexual contact) is tier III under the proposed law only when “the facts of the case show the victim was under the age of 13 at the time

of the offense and there was sexual contact with the victim.”

The requirement to evaluate the facts of the case raises some questions. Who will evaluate those facts? And what documents and other sources may that person consult to determine those facts? The final SORNA guidelines recognize this difficulty by providing that “[i]n assessing whether the offense satisfies the criteria for tier II or tier III classification, jurisdictions generally may premise the determination on the elements of the offense, and are not required to look to underlying conduct that is not reflected in the offense of conviction. However, where the tier classification depends on commission of an offense against a victim who is below a certain age, the requirement to give weight to this factor (victim age) is not limited to cases involving convictions for offenses whose elements specify that the victim must be below that age.” [73 Fed. Reg. 38030, 38053 \(July 2, 2008\)](#). So in some ways, the bill’s approach goes beyond what federal law requires (which is permissible—the federal guidelines are a floor, not a ceiling).

The proposed law makes numerous other changes. Notably, it would make certain adjudications of delinquency for juveniles at least 14 years of age reportable just like crimes. This post is already too long so I won’t mention any others, but this may be a bill that interested persons want to add to their [RSS feed](#).