Which Sex Offenders Can't Go Certain Places

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The premises restrictions of G.S. 14-208.18 have been in the news again lately. Here in Chapel Hill, a registered sex offender charged with being unlawfully on the premises of the public library had the charge dismissed on constitutional grounds. Meanwhile, the Graham County Sheriff made national headlines went he sent a letter to every registrant in the county prohibiting them, under the 300-foot rule, from going to church. The constitutional issues raised by these scenarios are interesting, but my first reaction in both cases was this: *That law doesn't apply to all registered sex offenders*!

Most sex offender restrictions apply to all registrants, regardless of the particular crime that got them placed on the registry. That is the case for the residency restriction of G.S. 14-208.16, and the work and volunteer restrictions of G.S. 14-208.17, for example. Not so for the premises restrictions of G.S. 14-208.18. They apply only to two sub-categories of offenders. G.S. 14-208.18(c).

The first category is the easy one: defendants who committed an offense in Article 7A of Chapter 14 of the General Statutes. That article includes all rape and sexual offense crimes, sexual battery, and intercourse or sexual offense with certain victims. If a defendant is on the registry for one of those crimes, he or she is subject to the premises restrictions of G.S. 14-208.18. The law does not explicitly cover offenders on the registry for attempts, conspiracies, or solicitations to commit the crimes listed in Article 7A. For now, there is no "substantial similarity" clause extending the prohibition's coverage to offenders on the registry for analogous out-of-state crimes, although S.L. 2015-62 amends the law, effective for offenses committed on or after December 1, 2015, to bring similar out-of-state crimes within the law's coverage.

The second category is a little bit more complicated. It covers offenders on the registry for "[a]ny offense where the victim of the offense was under the age of 16 years at the time of the offense." That language clearly covers offenders on the registry for indecent liberties, a common registration offense, which includes as an element the fact that the victim was under 16. It is unclear, though, whether this category would also cover a crime like a reportable kidnapping, where it may not be obvious from the elements of the offense that the victim was under 16 (he or she could have been 16 or 17 and the crime would still be reportable). May the charging authority look at the underlying facts of an offender's registration crime when determining whether the premises restriction applies to him or her? Or are we limited to the elements of the conviction offense when determining the victim's age? In the satellite-based monitoring context, our appellate courts have held over and over again that the court may consider only the elements of the conviction offense when determining whether a reportable crime is an "aggravated offense," *see, e.g.*, State v. Davison, 201 N.C. App. 354 (2009), but this statute uses different language, and might be interpreted differently.

In the Chapel Hill library situation I mentioned above, the offender's registration crime presents an interesting application second category. The offender in question is on the registry for multiple convictions of third-degree sexual exploitation of a minor committed in 2011. That is not an offense included in Article 7A, so it triggers the premises restriction only if the victims of the crime were under 16 at the time of the offense. Third-degree sexual exploitation of a minor is possession of material containing a visual representation of a minor engaged in sexual activity. "Minor" in that context is defined as an individual less than 18 years old. G.S. 14-190.13(3). So, it is not clear from the elements of the offense that the victims were under 16, and the prohibition would only apply if you were permitted to look at the

underlying facts of the offense.

Even if that's permissible, an additional wrinkle remains. G.S. 14-208.18(c)(2) says the premises restrictions apply only if the victims were under 16 "at the time of the offense." Read literally, that means that in order for this offender to be subject to the premises restriction, the children depicted in the pornography he possessed in 2011 must have been under 16 *at the time the defendant possessed it*. In many cases I think it would be difficult to identify the particular victims depicted in the illegal materials, much less their birthdates and ages at the time the defendant possessed them.

Taken together, the two categories described above bring most registered offenders within the law's sweep. But some offenses will not be covered. And the appellate courts have recognized that an indictment charging a violation of G.S. 14-208.18 is flawed if it alleges merely that the defendant is a registered sex offender. Rather, it must allege that the defendant committed an offense covered under Article 7A or which involved a victim under the age of 16. State v. Harris, 219 N.C. App. 590 (2012).

As for the sheriff's letter, it might be overly broad to the extent that he addressed it to all registrants in the county. But there are only 21 registrants in Graham County, so it wouldn't take too long to figure out who is covered by G.S. 14-208.18 and who isn't.