

SEXUALLY VIOLENT OFFENSES (14-208.6(5))

- ★ 1° Rape (14-27.2) ★ 2° Rape (14-27.3)
 - ★ 1° Sex Offense (SO) (14-27.4) ★ 2° SO (14-27.5)
 - ✎ Sexual Battery (14-27.5A)
 - ★ Att. Rape/SO (14-27.6)
 - ★ Intercourse/SO w/ cert. victims (14-27.7)
 - ◆ Stat. Rape (13-15 y.o., D 6+ y. older)(14-27.7A(a))
 - ◆ Sexual Servitude (14-43.13) ★ Incest (14-178)
 - ★ Minor Assist in Pub. Morality Off. (14-190.6)
 - ✎ Felony Indecent Exposure (14-190.9(a1))
 - ★ 1° Sex. Exploitation of Minor (SEM) (14-190.16)
 - ★ 2° SEM (14-190.17) ★ 3° SEM (14-190.17A)
 - ★ Promoting Prostitution of Minor (14-190.18)
 - ★ Participating in Prost. of Minor (14-190.19)
 - ★ Indecent Liberties w/ Children (14-202.1)
 - ✎ Computer Solicitation of Child (14-202.3)
 - ☹ Rape of Child by Adult Offender (14-27.2A)
 - ☹ SO w/child by Adult Offender (14-27.4A)
 - ◎ Parent/caretaker prostitution (14-318.4(a1))
 - ◎ Parent commit/allow sexual act (14-318.4(a2))
- Key to effective dates for crime to be reportable:**
- ★ Convicted or released from penal institution on/after Jan. 1, 1996. S.L. 1995-545.
 - ✎ Committed on/after Dec. 1, 2005. S.L. 2005-226; 2005-121; 2005-130.
 - ◆ Committed on/after Dec. 1, 2006. S.L. 2006-247.
 - ☹ Committed on/after Dec. 1, 2008. S.L. 2008-117.
 - ◎ Convicted or released from penal institution on/after Dec. 1, 2008. S.L. 2008-220.

OFFENSES AGAINST A MINOR (14-208.6(1i))

- Kidnapping (14-39)
- Abduction of Children (14-41)
- Felonious Restraint (14-43.3)
- S.L. 1997-516 made offenses against a minor reportable. At a minimum, that law applies to offenses committed on or after April 1, 1998.
- Offender must not be the minor's parent.
- For offenses committed before Dec. 1, 1999, offenses committed by a legal custodian were also excluded (S.L. 1999-393).

INCHOATE OFFENSES / AIDING & ABETTING:

- **Attempt:** S.L. 1997-516 made attempts reportable. At a minimum, applies to offenses committed on or after April 1, 1998 (unless target offense has a later effective date).
- **Conspiracy & Solicitation:** S.L. 1999-363 made solicitations and conspiracies reportable. Applies to offenses committed on/after Dec. 1, 1999 (unless target offense has a later effective date).
- **Aiding & Abetting:** S.L. 1999-393 made aiding & abetting reportable only if the court finds, pursuant to 14-208.6(4)(a), that registration furthers purposes of Art. 27A, set out in 14-208.5. Applies to offenses committed on/after Dec. 1, 1999 (unless target offense has later date).

SEX OFFENDER REGISTRATION AND MONITORING (current as of Apr 16, 2009) Prepared by Jamie Markham UNC School of Government markham@sog.unc.edu

SECRETLY PEEPING (14-208.6(4)(d))

- 2nd/subseq. conviction AND court issues order under 14-202(l) requiring individual to register:
 - Misd. Peeping (14-202(a) or (c)) (offenses committed on/after Dec. 1, 2003). S.L. 2003-303.
 - Misd. Peeping w/ Mirror or Device (14-202(a1)) (offenses committed on/after Dec. 1, 2004). S.L. 2004-109.
- Conviction AND court issues order 14-202(l):
 - Felony Peeping (14-202 (d), (e), (f), (g), or (h)) (offenses committed on/after Dec. 1, 2003). S.L. 2003-303.
- Notes:
 - Peeping not covered under 14-208.6B requiring regular registration for juveniles tried as adult.
 - Inchoate and A&A peeping NOT reportable

REPORTABLE CONVICTION

Requires a 30-year registration period. 14-208.7, S.L. 2008-117, effective for registrations made on/after Dec. 1, 2008. (Initial period is 10 years for pre-Dec. 1, 2008 registrations.) Offenders may petition for deregistration after 10 yrs. 14-208.12A.

FEDERAL CONVICTION

- Conviction in federal jurisdiction (including court martial) for offense substantially similar to NC Offense Against a Minor or Sexually Violent Offense (includes inchoate offenses). Applies to those convicted/released from penal institution on/after April 3, 1997. S.L. 1997-15, unless N.C. offense has a later effective date.

CONVICTION FROM OTHER STATE

- Conviction from another state substantially similar to NC Offense Against a Minor or Sexually Violent Offense (includes inchoate offenses). Use effective date of relevant NC offense. Peeping offenses NOT covered.
- Any conviction from another state that requires registration in that state. Applies to all who move to NC on/after Dec. 1, 2006, and to offenses committed on/after Dec. 1, 2006, regardless of move to NC. S.L. 2006-247, § 19(e).

SATELLITE-BASED MONITORING (SBM) DETERMINATION

- For D sentenced o/a Dec. 1, 2007, SBM determined at sentencing. 14-208.40A. S.L. 2007-484 §42(b)
- For D sentenced prior to Dec 1, 2007, conduct a 14-208.40B “bring back hearing” for those who:
 - Committed a reportable offense on/after Aug. 16, 2006; or
 - Were sentenced to intermediate punishment on/after Aug. 16, 2006; or
 - Were released from prison by parole or PRS on/after Aug. 16, 2006; or
 - Complete a sentence on/after Aug. 16, 2006 (meaning unclear). S.L. 2006-247 § 15(l).
- Bring back procedure: DOC makes initial determination that D fits one of criteria above; hearing in county of residence; standard of proof unclear; no provision for appeal in statute; 15-day notice by certified mail or in-person notice for inmates. *State v. Wooten*, 669 S.E.2d 749 (2008).

IF COURT FINDS (EITHER AT SENTENCING OR BRING-BACK HEARING) THAT THE OFFENDER ...

A. IS A SEXUALLY VIOLENT PREDATOR (14-208.6(6) and 14-208.20) (rare, only 10 in N.C.)

- DA gives notice of intent to seek SVP classification; board of 4 experts investigates whether offender suffers mental abnormality per 14-208.6(6); court makes SVP determination

B. IS A RECIDIVIST (14-208.6(2b))

- Person w/ prior conviction for offense described in 14-208.6(4) (i.e., “reportable”)
- Definition established by S.L. 2001-373, applies to offenders whose second/subsequent offense was committed on/after Oct. 1, 2001; first offense can count regardless of offense date. *Wooten*.

C. COMMITTED AN AGGRAVATED OFFENSE (14-208.6(1a))

- Criminal offense that includes a sexual act involving:
 - Vaginal, anal, oral penetration through force or threat of serious violence; or,
 - Vaginal, anal, or oral penetration with a victim under 12
- Only offenses committed on/after Oct. 1, 2001 can be Aggravated. S.L. 2001-373.
- 18 U.S.C. 2246 suggests “oral penetration” is only oral-genital contact, not French kissing
- Unclear whether the court, per 14-208.40A/B, should look at elements of offense of conviction OR the facts of the acts committed. Consider the following in developing arguments for/against:
 - 14-208.40A/B use terms “offender’s conviction” and “conviction offense,” perhaps suggesting an elements-based approach; use of term “evidence” suggests facts approach
 - In *State v. Hamilton*, 277 Neb. 593 (Apr. 10, 2009), Neb. Supreme Ct. adopts a facts-based approach, allowing court to look at the record, pre-sentencing report, & factual basis for plea.
 - Federal cases suggest elements-based approach is proper: *Taylor*, 495 U.S. 575 (1990); *James*, 127 S. Ct. 1586 (2007); *Shepard*, 544 U.S. 13 (2005) (police reports shouldn’t be used).

D. COMMITTED RAPE OR SEX OFFENSE WITH MINOR BY ADULT (14-27.2A; -27.4A)

...THEN OFFENDER IS SUBJECT TO:

LIFETIME REGISTRATION (14-208.23)

- Discontinued only if conviction reversed, vacated, or pardoned (14-208.6C)

LIFETIME SATELLITE-BASED MONITORING (SBM) (14-208.41)

- 1 year after completion of sentence and any supervision period, offender may petition Parole Commission for termination of SBM (14-208.43)

E. COMMITTED OFFENSE INVOLVING PHYSICAL, MENTAL, OR SEXUAL ABUSE OF MINOR AND IS HIGHEST RISK LEVEL ON DOC RISK ASSESSMENT (STATIC-99)

- Abuse of a minor is an undefined term; first appeared in S.L. 1996-18-es2 (regarding probation conditions); at a minimum applies to offenses committed on/after Dec. 1, 1996.
- 14-208.40(a)(2) suggests DOC risk assessment must be HIGH for court to order SBM
- 14-208.40A/B suggest court discretion (“court shall determine”) in spite of DOC risk assessment (i.e., judge may order SBM even if DOC risk assessment shows MODERATE or LOW risk).

...THEN OFFENDER IS SUBJECT TO:

SBM FOR A PERIOD OF TIME SPECIFIED BY THE COURT

- Limited by length of registration (14-208.40(a)(2)(ii) and -208.43(d1))
- DCC calls these “conditionals” (as opposed to mandatory categories above)