

## 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)
- ★ Sex. 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)
- ✦ Indecent Liberties with Student (14-202.4(a))
- ✦ 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.
- ✦ Convicted or released from penal institution on/after Dec. 1, 2009. S.L. 2009-498

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

- Kidnapping (14-39) *Victim must be a minor*
- Abduct Child (14-41) Fel. 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 further 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 Sept. 22, 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. 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. 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; 15-day notice by certified mail or in-person notice for inmates. *State v. Wooten*, 669 S.E.2d 749 (2008). Under S.L. 2009-387, DA schedules hearing and “represents DOC.”

### 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; ~ 12 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 due process limits on facts-based approach: *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 REQUIRES THE HIGHEST POSSIBLE LEVEL OF SUPERVISION AND MONITORING

- ★ Court must order DOC risk assessment (Static-99) and determine, based on that assessment, whether defendant requires highest possible level of supervision and monitoring
- ★ If assessment other than high, must make findings of fact to justify SBM. *State v. Kilby* (7/21/09)
- ★ Abuse of a minor is an undefined term (probably makes sense to start with G.S. 7B-101 to define “abuse”); term first appeared in S.L. 1996-18-es2 (regarding probation conditions); at a minimum applies to offenses committed on/after Dec. 1, 1996.

### ...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)