

SEXUALLY VIOLENT OFFENSES (14-208.6(5))**Reportable Convictions**

- First-degree rape (14-27.2) ①
- Rape of a child by an adult offender (14-27.2A) ④
- Second-degree rape (14-27.3) ①
- First-degree sexual offense (14-27.4) ①
- Sexual offense with a child by an adult offender (14-27.4A) ④
- Second-degree sexual offense (14-27.5) ①
- Sexual battery (14-27.5A) ②
- Former attempted rape/sexual offense (14-27.6) ①
- Intercourse/sexual offense w/ certain victims (14-27.7) ①
- Stat. rape/Sexual off. (13-15yo/D 6+ yrs. older) (14-27.7A(a)) ③
- Human trafficking (if victim <18 or for sex serv.) (14-43.11) ⑫
- Sexual Servitude (14-43.13) ③
- Incest between near relatives (14-178) ①
- Employ minor in offense/public morality (14-190.6) ①
- Felony indecent exposure (14-190.9(a1)) ②
- First-degree sexual exploitation of minor (14-190.16) ①
- Second-degree sexual exploitation of minor (14-190.17) ①
- Third-degree sexual exploitation of minor (14-190.17A) ①
- Former promoting prostitution of minor (14-190.18) ①
- Former participating in prostitution of minor (14-190.19) ①
- Taking indecent liberties with children (14-202.1) ①
- Solicitation of child by computer (14-202.3) ②
- Taking indecent liberties with a student (14-202.4(a)) ⑥
- Patronize minor/mentally disabled prostitute (14-205.2(c-d)) ⑭
- Prostitution of minor/mentally disabled child (14-205.3(b)) ⑭
- Parent/caretaker prostitution (14-318.4(a1)) ⑤
- Parent/guardian commit/allow sexual act (14-318.4(a2)) ⑤

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

Only when victim is a minor and the offender is not the minor's parent [biological/adoptive, not stepparent, Stanley, 205 N.C. App. 707 (2010)]. *Court not limited to elements of offense in finding these additional facts. Arrington, 741 S.E.2d 453 (2013).*

- Kidnapping (14-39) ⑦
- Abduction of children (14-41) ⑦
- Felonious restraint (14-43.3) ⑦

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

Reportable only if court finds registration furthers purposes of registry (14-208.5) and offender dangerous; findings must be supported by competent evidence. Pell, 211 N.C. App. 376.

- Felony peeping under 14-202 (d), (e), (f), (g), or (h) ⑨; or Second/subsequent conviction of:
- Misd. peeping under 14-202(a) or (c) ⑨
- Misd. peeping w/ mirror/device under 14-202(a1) ⑩

Note: Inchoate & aiding/abet peeping are not reportable.

SALE OF A CHILD (14-208.6(4)e.) ⑪

Reportable only if the sentencing court rules under G.S. 14-43.14(e) that the person is a danger to the community and required to register. Note: Attempt, conspiracy, and solicitation to sell a child are not reportable.

ATTEMPTS, CONSPIRACIES, SOLICITATIONS, & AID/ABETTING

Attempt: Final convictions for attempts to commit an "offense against a minor" or a "sexually violent offense" are reportable. 14-208.6(4)a. ⑦ (unless target offense has later effective date)

Conspiracy/Solicitation: Conspiracy and solicitation to commit an "offense against a minor" or a "sexually violent offense" are reportable. 14-208.6(1m); -208.6(5). ⑬

Aiding & Abetting: Aiding and abetting an "offense against a minor" or "sexually violent offense" is reportable **only** if the court finds that registration furthers the purposes of the registry (set out in 14-208.5). 14-208.6(4)a. ⑬

FEDERAL CONVICTIONS (14-208.6(4)c.)

Offenses *substantially similar* to a North Carolina "offense against a minor" or "sexually violent offense" (includes conspiracy, solicitation, and aiding/abetting; excludes attempts) ⑧

Court martial: offenses committed on/after Oct. 1, 2001.

[S.L. 2001-373](#)

CONVICTIONS FROM ANOTHER STATE (14-208.6(4)b.)

1. Offenses substantially similar to NC offense against a minor or sexually violent offense (includes conspiracy, solicitation, and aid/abetting; excludes attempts) (use effective date of similar NC offense); or
2. Any offense that requires registration in the state of conviction (applies to offenders who moved to NC on/after Dec. 1, 2006; and to offenders who moved to NC before Dec. 1, 2006 if they serve active time, are on probation/parole/PRS, are req'd to register in NC for another offense, or are convicted of any felony on/after Oct. 1, 2010. [S.L. 2010-174](#)).

"FINAL CONVICTION" FOR REGISTRATION PURPOSES

A PJC is not a "final conviction" for registration purposes. *Walters*, 367 N.C. 117 (2013). A conviction on appeal to the appellate division requires registration. *Smith*, 749 S.E.2d 507 (2013).

KEY FOR EFFECTIVE DATE CRITERIA:

- ① Convicted/released from prison on/after Jan. 1, 1996. [S.L. 1995-545](#)
- ② Committed on/after Dec. 1, 2005. [S.L. 2005-226](#); -121; -130
- ③ Committed on/after Dec. 1, 2006. [S.L. 2006-247](#)
- ④ Committed on/after Dec. 1, 2008. [S.L. 2008-117](#)
- ⑤ Convicted /released on/after Dec. 1, 2008. [S.L. 2008-220](#)
- ⑥ Convicted /released on/after Dec. 1, 2009. [S.L. 2009-498](#)
- ⑦ Committed on/after Apr. 1, 1998 (at a minimum). [S.L. 1997-516](#)
- ⑧ Convict/release on/after Apr. 3, 1997 (NC date if later). [S.L. 1997-15](#)
- ⑨ Committed on/after Dec. 1, 2003. [S.L. 2003-303](#)
- ⑩ Committed on/after Dec. 1, 2004. [S.L. 2004-109](#)
- ⑪ Committed on/after Dec. 1, 2012. [S.L. 2012-153](#)
- ⑫ Committed on/after Dec. 1, 2013. [S.L. 2013-33](#)
- ⑬ Committed on/after Dec. 1, 1999 (unless underlying offense has a later effective date). [S.L. 1999-363](#)
- ⑭ Committed on/after Oct. 1, 2013. [S.L. 2013-368](#).

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An offender with a reportable conviction must register for 30 years (reducible to 10 in some cases by petition under 14-208.12A), unless lifetime registration applies. 14-208.7. Lifetime registration applies to recidivists, offenders convicted of an aggravated offense, and sexually violent predators. 14-208.23. See reverse for case law related to those categories.

SBM. A satellite-based monitoring (SBM) determination hearing must be held for a defendant with a reportable conviction. See reverse for applicable procedures.

NO CONTACT ORDER. The DA may ask the court to issue a permanent no contact order for any defendant convicted of a reportable offense. 15A-1340.50. Use [AOC-CR-620](#).

Satellite-Based Monitoring (SBM)

Effective date. SBM applies to offenders with a reportable conviction who: (1) Commit a reportable offense on/after Aug. 16, 2006; (2) are sentenced to intermediate punishment on/after Aug. 16, 2006; (3) are released from prison by parole/post-release supervision on/after Aug. 16, 2006; or (4) complete a sentence on/after Aug. 16, 2006 and are not on PRS or parole. [S.L.2006-247 § 15\(f\)](#). Use [AOC-CR-615](#).

If the defendant falls into the one of the four categories set out below, the court must order SBM for life. 14-208.40A(c).

- 1. SEXUALLY VIOLENT PREDATOR (SVP) (14-208.6(6)).** A person convicted of a sexually violent offense who suffers from an abnormality or disorder, as determined by the court after examination by an expert panel under [14-208.20](#).
 - The court cannot classify an offender as a SVP without following 14-208.20. *State v. Zinkand*, 190 N.C. App. 765 (2008).
- 2. RECIDIVIST (14-208.6(2b)).** A person with a prior conviction for an offense described in [14-208.6\(4\)](#).
 - A prior conviction need not itself be reportable (based on date) to qualify a person as a recidivist. *State v. Wooten*, 194 N.C. App. 524 (2008).
 - At least one of the offender's convictions must be committed on/after Oct. 1, 2001 for him or her to qualify as a recidivist. [S.L. 2001-373](#).
- 3. COMMITTED AN AGGRAVATED OFFENSE (14-208.6(1a)).** An aggravated offense is one that includes:
 - (1) Engaging in a sexual act involving vaginal, anal, or oral penetration;
 - (2) (a) With a victim of any age through the use of force or the threat of serious violence, or
(b) With a victim who is less than 12 years old.
 - Only offenses committed on/after Oct. 1, 2001 can be aggravated offenses. [S.L. 2001-373](#).
 - To determine whether an offense is aggravated, the court may only look at the elements of the conviction offense, not the underlying facts of what might have happened in a particular case. *State v. Davison*, 201 N.C. App. 354 (2009).
 - AGGRAVATED:
 - 1st-deg. stat. rape (victim under 13, 14-27.2(a)(1)). *State v. Clark*, 714 S.E.2d 754 (2011).
 - Stat. rape (victim 13, 14, 15/def. 6 yrs. older, 14-27.7A(a)). *State v. Sprouse*, 719 S.E. 2d 234 (Dec. 6, 2011).
 - 2nd-deg. rape (forcible, 14-27.3(a)(1)). *State v. McCravey*, 203 N.C. App. 627 (2010).
 - 2nd-deg. rape (mentally disabled victim, 14-27.3(a)(2)). *State v. Oxendine*, 206 N.C. App. 205 (2010).
 - 2nd-deg. rape (physically helpless victim, 14-27.3(a)(2)). *State v. Talbert*, 756 S.E.2d 98 (2014).
 - NOT AGGRAVATED:
 - Sexual offense by a substitute parent (14-27.7(a)). *State v. Mann*, 715 S.E.2d 213 (2011).
 - 1st-deg. forcible sex offense (14-27.4(a)(2)). *State v. Green*, 2013 WL 4441921 (Aug. 20, 2013).
 - 1st-deg. sex offense (victim under 13, 14-27.4(a)(1)). *State v. Treadway*, 208 N.C. App. 286 (2010).
 - 2nd-deg. sex offense (14-27.5). *State v. Boyett*, 735 S.E.2d 371 (2012).
 - Child abuse by sex act (14-318.4(a2)). *State v. Phillips*, 203 N.C. App. 326 (2010).
 - Indecent liberties with a child. *State v. Singleton*, 201 N.C. App. 620 (2010).
 - Sexual battery. *State v. Brooks*, 204 N.C. App. 193 (2010).
- 4. RAPE OR SEXUAL OFFENSE WITH MINOR BY ADULT (14-27.2A; -27.4A).** A conviction for one of these crimes requires lifetime SBM.

If the court finds that the defendant does not fit into any of the four lifetime categories set out above, it must determine whether the offender committed an "offense that involved the physical, mental, or sexual abuse of a minor." 14-208.40A(d).

"Physical, mental, or sexual abuse of a minor" is undefined. The following have been ruled abuse of a minor: Indecent liberties, *State v. Jarvis*, 715 S.E.2d 252 (2011); Solicitation to commit ind. liberties, *State v. Cowan*, 207 N.C. App. 192 (2010); 1st deg. sexual offense, *State v. Carter*, 718 S.E.2d 687 (2011). Other crimes may also qualify.

If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, it must order DAC to do a risk assessment (Static-99R, or OTI for women). DAC shall have 30-60 days to complete the assessment (usually it can be completed in hours). Upon receipt of the assessment, the court determines whether the offender requires the "highest possible level of supervision and monitoring." If so, the court shall order SBM enrollment for a period specified by the court in its discretion. 14-208.40A(d)-(e).

If the Static-99 is HIGH, the court may order SBM for a specified period. If MODERATE or LOW, the court may nonetheless order SBM if it makes additional factual findings related to the defendant's dangerousness. *State v. Morrow*, 364 N.C. 424 (2010).

- **Findings that may trump a non-HIGH Static-99:** Victim especially young; failure to complete treatment, *State v. Green*, 211 N.C. App. 599 (2011). Position of trust/victim vulnerability, *State v. Jarvis*, 214 N.C. App. 84 (2011). Temporal proximity of multiple crimes; all victims young girls; escalating sexual aggressiveness; crimes in public and during residential break-in, *State v. Smith*, ___ N.C. App. ___ (Mar. 17, 2015).
- **Findings that may not trump a non-HIGH Static-99:** Prior dismissed indecent liberties charge, *Smith. Alford* plea signaled lack of remorse, *Jarvis*. Old prior sex crime already incorporated into Static-99; unsworn statement about victim's emotional trauma, *State v. Thomas*, 741 S.E.2d 384 (2013). Prior non-reportable assault on female, *State v. Jones*, 758 S.E.2d 444 (2014).
- The court should order a discrete time for SBM (e.g. "3 yrs."), not a range (e.g. "7-10 yrs."). *State v. Morrow*, 200 N.C. App. 123 (2009).
- The trial court may not order lifetime SBM for a defendant in this category. *State v. Cowan*, 207 N.C. App. 192 (2010).

Bring-back hearings. If no SBM determination made at sentencing, DAC makes an initial determination as to whether SBM applies and notifies the offender. The notice must state the expected SBM eligibility category & a brief statement of factual basis for that determination. *Stines*, 200 N.C. App. 193 (2009). DAC is not req'd to file a civil complaint for the hearing. *State v. Self*, 720 S.E.2d 776 (2011). The DA schedules a hearing in superior court (never district court, *Miller*, 209 N.C. App. 466 (2011)) in the county of residence (this relates to venue, not jurisdiction, *Mills*, 754 S.E.2d 674 (2014)). 15 days notice req'd. Indigent offenders entitled to counsel. [14-208.40B](#). Use [AOC-CR-616](#).

Constitutional issues. SBM is civil and thus does not violate the Ex Post Facto Clause, *Bowditch*, 364 N.C. 335 (2010); double jeopardy, *Wagoner*, 364 N.C. 422 (2010); or *Blakely, Hagerman*, 364 N.C. 423 (2010). SBM does not infringe on interstate travel, *Manning*, 221 N.C. App. 201 (2012). Though civil, SBM is a search (reasonableness TBD). *Grady*, 575 U.S. ___ (Mar. 30, 2015) (reversing *Jones*, 750 S.E.2d 883).

Appeals. Because SBM is civil in nature, defendants must note their appeal of an SBM determination in writing pursuant to Rule 3(a) of the N.C. Rules of Appellate Procedure; oral notice is insufficient. *State v. Brooks*, 204 N.C. App. 193 (2010).