

SORNA Tiers for North Carolina Sex Crimes
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North Carolina law states that a superior court judge may remove a person from the sex offender registry if, among other things, doing so “complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State.” G.S. 14-208.12A(a1)(2).

Whether a person’s removal from the registry would comply with relevant federal law requires a determination of the “tier” into which the crime would fall under the tiering standards set out in the federal Sex Offender Registration and Notification Act (SORNA), because those tiers require a minimum registration period that sometimes exceeds what would be required under other provisions of North Carolina law. If the defendant’s conviction offense falls into a tier that requires a registration period longer than the time the defendant has already spent on the registry, then removing the person would not comply with federal standards, and so would violate G.S. 14-208.12A(a1)(2). The three federal tiers are defined mostly by reference to a set of benchmark federal offenses, as indicated in the chart below. If a crime does not fit into Tier II or Tier III, it is Tier I by default.

Tier I 15 years (10 with “clean record”)	Tier II 25 years	Tier III Lifetime
A sex offender other than a Tier II or Tier III sex offender. 42 U.S.C. § 16911(2).	<p>Defined in 42 U.S.C. § 16911(3) as an offense punishable by imprisonment for more than one year and:</p> <p>A. Comparable to or more severe than the following offenses, when committed against a minor (or an attempt or conspiracy to commit them):</p> <ol style="list-style-type: none"> 1. Sex trafficking as defined in 18 U.S.C. § 1591; 2. Coercion & enticement under 18 U.S.C. § 2422(b); 3. Transportation with intent to engage in criminal sexual activity under 18 U.S.C. § 2423(a); or 4. Abusive sexual contact under 18 U.S.C. § 2244 committed against a minor 13 years old or older. <p style="text-align: center;">OR</p> <p>B. That involves:</p> <ol style="list-style-type: none"> 1. Use of a minor in a sexual performance; 2. Solicitation of a minor to practice prostitution; or 3. Production or distribution of child pornography. <p style="text-align: center;">OR</p> <p>C. That occurs after the offender becomes a Tier I offender.</p>	<p>Defined in 42 U.S.C. § 16911(4) as an offense punishable by imprisonment for more than one year and:</p> <p>A. Comparable to or more severe than the following offenses (or an attempt or conspiracy to commit them):</p> <ol style="list-style-type: none"> 1. Aggravated sexual abuse under 18 U.S.C. § 2241 or sexual abuse under 18 U.S.C. § 2242. 2. Abusive sexual contact under 18 U.S.C. § 2244 (described in the tier II offense definition) when committed against a minor under 13 years old. <p style="text-align: center;">OR</p> <p>B. Involve kidnapping of a minor (unless committed by a parent or guardian).</p> <p style="text-align: center;">OR</p> <p>C. That occurs after the offender becomes a Tier II offender.</p>

Summary of Selected Federal Benchmark Crimes

18 U.S.C. § 2241 Aggravated sexual abuse

A sexual act — Defined in 18 U.S.C. § 2246(2) as contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or the mouth and the anus; penetration of the anal or genital opening of another by a hand, finger, or any object; or direct touching, not through the clothing, of the genitalia of a person under 16, committed in any of the following circumstances:

- (a) By force or threat
- (b) By rendering another person unconscious to engage in a sexual contact, or by administering a drug, intoxicant, or other substance to substantially impair the ability of another person to appraise or control conduct to engage in a sexual act with that person, or
- (c) Against a child who has not attained the age of 12 years.

18 U.S.C. § 2244 Abusive sexual contact

Sexual contact — Defined in 18 U.S.C. § 2246(3) as the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, committed in any of the following circumstances:

Under the circumstances described in 18 U.S.C. § 2241, which is to say:

- (a) By force or threat
- (b) By rendering another person unconscious to engage in a sexual contact, or by administering a drug, intoxicant, or other substance to substantially impair the ability of another person to appraise or control conduct to engage in a sexual act with that person, or
- (c) Against a child who has not attained the age of 12 years.

OR

Under the circumstances described in 18 U.S.C. § 2242, which is to say:

- (1) By threatening or placing another person in fear other than the fear of death, serious bodily injury, or kidnapping, or
- (2) With a person who is incapable of appraising the nature of the conduct, or with a person who is physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual contact.

OR

Under the circumstances described in 18 U.S.C. § 2243, which is to say:

- (a) With a person who is 12, 13, 14, or 15 years old, if the defendant is at least four years older than the victim, or
- (b) With a person who is in official detention and under the custodial, supervisory, or disciplinary authority of the defendant.

Caution: This chart represents my understanding of the proper federal tier for all North Carolina crimes requiring sex offender registration. Except as indicated in the explanatory notes, the ultimate determination of the proper tier for each offense is an open question yet to be addressed by the appellate courts.

CRIME	OFFENSE SUBCATEGORIES	TIER	EXPLANATORY NOTES
First-degree forcible rape (G.S. 14-27.21)		III	<ul style="list-style-type: none"> Comparable to 18 U.S.C. § 2241(a) (forcible)
Second-degree forcible rape (G.S. 14-27.22)		III	<ul style="list-style-type: none"> Under subsection (a)(1): forcible, and thus comparable to 18 U.S.C. § 2241(a) Under subsection (a)(2): comparable to either 18 U.S.C. § 2241 (physically helpless or mentally incapacitated) or 18 U.S.C. § 2242 (mentally disabled)
Statutory rape of a child by an adult (G.S. 14-27.23)		III	<ul style="list-style-type: none"> For victims under 12, comparable to 18 U.S.C. § 2241(c) For 12-year-old victims, comparable to 18 U.S.C. § 2244, via 18 U.S.C. § 2243(a)
Statutory rape of a person who is 15 years of age or younger and where the defendant is at least six years older (G.S. 14-27.25(a))	Victim under 13	III	<ul style="list-style-type: none"> For victims under 12, comparable to 18 U.S.C. § 2241(c) For 12-year-old victims, comparable to 18 U.S.C. § 2244, via 18 U.S.C. § 2243(a)
	Victim 13 or older	II	<ul style="list-style-type: none"> Comparable to 18 U.S.C. § 2244, via 18 U.S.C. 2243(a)
First-degree forcible sexual offense (G.S. 14-27.26)		III	<ul style="list-style-type: none"> Comparable to 18 U.S.C. § 2241(a) (forcible)
Second-degree forcible sexual offense (G.S. 14-27.27)		III	<ul style="list-style-type: none"> Under subsection (a)(1): forcible, and thus comparable to 18 U.S.C. § 2241(a) Under subsection (a)(2): comparable to either 18 U.S.C. § 2241 (physically helpless or mentally incapacitated) or 18 U.S.C. § 2242 (mentally disabled)
Statutory sexual offense with a child by an adult (G.S. 14-27.28)		III	<ul style="list-style-type: none"> For victims under 12, comparable to 18 U.S.C. § 2241(c) For 12-year-old victims, comparable to 18 U.S.C. § 2244, via 18 U.S.C. § 2243(a)
First-degree statutory sexual offense (G.S. 14-27.29)		III	<ul style="list-style-type: none"> For victims under 12, comparable to 18 U.S.C. § 2241(c) For 12-year-old victims, comparable to 18 U.S.C. § 2244, via 18 U.S.C. § 2243(a)
Statutory sexual offense with a person who is 15 years of age or younger and where the defendant is at least six years older (G.S. 14-27.30(a))	Victim under 13	III	<ul style="list-style-type: none"> For victims under 12, comparable to 18 U.S.C. § 2241(c) For 12-year-old victims, comparable to 18 U.S.C. § 2244, via 18 U.S.C. § 2243(a)
	Victim 13 or older	II	<ul style="list-style-type: none"> Comparable to 18 U.S.C. § 2244, via 18 U.S.C. 2243(a)
Sexual activity by a substitute parent or custodian (G.S. 14-27.31)	Victim under 13	III	<ul style="list-style-type: none"> For victims under 12, comparable to 18 U.S.C. § 2241(c) For 12-year-old victims, comparable to 18 U.S.C. § 2244, via 18 U.S.C. § 2243(a)
	Victim 13, 14, or 15, if defendant is at least 4 years older than the victim	II	<ul style="list-style-type: none"> Comparable to 18 U.S.C. § 2244, via 18 U.S.C. 2243(a) Offenses comparable to federal sexual abuse of a minor or ward (18 U.S.C. § 2243) would be Tier III, but the federal crime applies only to victims “<i>in official detention</i>” who are under the custodial, supervisory, or disciplinary authority of the defendant. North Carolina’s sexual activity by a custodian offense covers situations that go beyond official detention (e.g., a nurse offending against a patient who was voluntarily in a hospital), and thus does not categorically fit the definition of a Tier III offense when the victim is 13 or older.
	Other victims	I	<ul style="list-style-type: none"> Not clearly comparable to any category defined as Tier II or Tier III

CRIME	OFFENSE SUBCATEGORIES	TIER	EXPLANATORY NOTES
Sexual activity with a student (G.S. 14-27.32)	Victim under 13	III	<ul style="list-style-type: none"> For victims under 12, comparable to 18 U.S.C. § 2241(c) For 12-year-old victims, comparable to 18 U.S.C. § 2244, via 18 U.S.C. § 2243(a)
	Victim 13, 14, or 15, if defendant is at least 4 years older than the victim	II	<ul style="list-style-type: none"> Comparable to 18 U.S.C. § 2244, via 18 U.S.C. § 2243(a)
	Other victims	I	<ul style="list-style-type: none"> Not clearly comparable to any category defined as Tier II or Tier III
Sexual battery (G.S. 14-27.33)		I	<ul style="list-style-type: none"> Not punishable by imprisonment for more than one year
Human trafficking (G.S. 14-43.11)		II	<ul style="list-style-type: none"> Likely comparable to 18 U.S.C. § 1591 or § 2422
Sexual servitude (G.S. 14-43.13)		II	<ul style="list-style-type: none"> Likely comparable to 18 U.S.C. § 1591 or § 2422
Incest between near relatives (G.S. 14-178)	Victim under 13	III	<ul style="list-style-type: none"> For victims under 12, comparable to 18 U.S.C. § 2241(c) For 12-year-old victims, comparable to 18 U.S.C. § 2244, via 18 U.S.C. § 2243(a)
	Victim 13, 14, or 15, if defendant is at least 4 years older than the victim	II	<ul style="list-style-type: none"> Comparable to 18 U.S.C. § 2244, via 18 U.S.C. 2243(a)
	Other victims	I	<ul style="list-style-type: none"> Not clearly comparable to any category defined as Tier II or Tier III
Employing or permitting a minor to assist in offenses against public morality and decency (G.S. 14-190.6)		I	<ul style="list-style-type: none"> Does not categorically involve activities that involve the use of a minor in a sexual performance or the production/distribution of child pornography that would fall within Tier II.
Felonious indecent exposure (G.S. 14-190.9(a1))		I	<ul style="list-style-type: none"> Not comparable to any offense in Tier II or Tier III
First-degree sexual exploitation of a minor (G.S. 14-190.16)		II	<ul style="list-style-type: none"> Involves the production or distribution of child pornography
Second-degree sexual exploitation of a minor (G.S. 14-190.17)	Under G.S. 14-190.17(a)(1)	II	<ul style="list-style-type: none"> G.S. 14-190.17 appears to be a divisible statute, with subdivisions (a)(1) and (a)(2) defining different crimes. The subdivision (a)(1) crime appears to be Tier II in that it categorically involves the production or distribution of child pornography.
	Under G.S. 14-190.17(a)(2)	I	<ul style="list-style-type: none"> G.S. 14-190.17 appears to be a divisible statute, with subdivisions (a)(1) and (a)(2) defining different crimes. The subdivision (a)(2) crime may be Tier I to the extent that it can include mere “receipt” of prohibited materials. Federal regulations expressly say that mere receipt or possession of child pornography fall within Tier I. 73 Fed. Reg. 38030, 38053.
Third-degree sexual exploitation of a minor (G.S. 14-190.17A)		I	<ul style="list-style-type: none"> Federal regulations expressly say that mere receipt or possession of child pornography fall within Tier I. 73 Fed. Reg. 38030, 38053.

CRIME	OFFENSE SUBCATEGORIES	TIER	EXPLANATORY NOTES
Indecent liberties with children (G.S. 14-202.1)	Under G.S. 14-202.1(a)(1) (“indecent liberty”)	I	<ul style="list-style-type: none"> If indecent liberties is a divisible offense, with subdivisions (a)(1) and (a)(2) defining different crimes, then subdivision (a)(1) is categorically Tier I. Proof of a touching is not required for a conviction under this subdivision. <i>State v. Moir</i>, __ N.C. __, 794 S.E.2d 685 (2016) (citing <i>State v. Hartness</i>, 326 N.C. 561 (1990)).
	Under G.S. 14-202.1(a)(2) (“lewd or lascivious act upon or with the body”)	I	<ul style="list-style-type: none"> If indecent liberties is a divisible offense, with subdivisions (a)(1) and (a)(2) defining different crimes, then subdivision (a)(2) <i>arguably</i> requires a touching in every case (although the court of appeals has said it does <i>not</i>, <i>State v. Hammett</i>, 182 N.C. App. 316 (2007), the supreme court has never addressed the issue, <i>Moir</i>, 794 S.E.2d at 697). However, even if subdivision (a)(2) does require contact, it does not appear categorically to require contact that meets the federal definition of “sexual contact” in 18 U.S.C. § 2246(3) that would elevate it to Tier II or Tier III (e.g., a French kiss).
Solicitation of a child by computer (G.S. 14-202.3)		II	<ul style="list-style-type: none"> Likely comparable to coercion and enticement under 18 U.S.C. § 2422
Indecent liberties with a student (G.S. 14-202.4(a))		I	<ul style="list-style-type: none"> Does not appear categorically to require contact that meets the definition of “sexual contact” in 18 U.S.C. § 2246(3).
Patronizing a prostitute who is a minor or a mentally disabled person (G.S. 14-205.2)		II	<ul style="list-style-type: none"> Involves the use of minors in prostitution
Promoting prostitution of a minor or a mentally disabled person (G.S. 14-205.3)		II	<ul style="list-style-type: none"> Involves the use of minors in prostitution
Child abuse (prostitution) (G.S. 14-318.4(a1))		II	<ul style="list-style-type: none"> Involves the use of minors in prostitution
Child abuse (sexual act) (G.S. 14-318.4(a4))	Victim under 13	III	<ul style="list-style-type: none"> For victims under 12, comparable to 18 U.S.C. § 2241(c) For 12-year-old victims, comparable to 18 U.S.C. § 2244, via 18 U.S.C. § 2243(a)
	Victim 13, 14, or 15, if defendant is at least 4 years older than the victim	II	<ul style="list-style-type: none"> Comparable to 18 U.S.C. § 2244, via 18 U.S.C. 2243(a)
	Other victims	I	<ul style="list-style-type: none"> Not clearly comparable to any category defined as Tier II or Tier III
Kidnapping (G.S. 14-39)		III	<ul style="list-style-type: none"> Involves kidnapping of a minor
Abduction of children (G.S. 14-41)		I	<ul style="list-style-type: none"> Not clearly comparable to any offense in Tier II or Tier III
Felonious restraint (G.S. 14-43.3)		I	<ul style="list-style-type: none"> Not clearly comparable to any offense in Tier II or Tier III
Peeping (all variations, felony and misdemeanor) (G.S. 14-202)		I	<ul style="list-style-type: none"> Not clearly comparable to any offense in Tier II or Tier III Misdemeanor offenses not punishable by imprisonment for more than one year
Sale of a child (G.S. 14-43.14)		I	<ul style="list-style-type: none"> Not clearly comparable to any offense in Tier II or Tier III
Former first-degree rape (G.S. 14-27.2)		III	<ul style="list-style-type: none"> Comparable to 18 U.S.C. § 2241(a) (forcible) For victims under 12, comparable to 18 U.S.C. § 2241(c) For 12-year-old victims, comparable to 18 U.S.C. § 2244, via 18 U.S.C. § 2243(a)
Former rape of a child by an adult offender (G.S. 14-27.2A)		III	<ul style="list-style-type: none"> For victims under 12, comparable to 18 U.S.C. § 2241(c) For 12-year-old victims, comparable to 18 U.S.C. § 2244, via 18 U.S.C. § 2243(a)

CRIME	OFFENSE SUBCATEGORIES	TIER	EXPLANATORY NOTES
Former second-degree rape (G.S. 14-27.3)		III	<ul style="list-style-type: none"> Under subsection (a)(1): forcible, and thus comparable to 18 U.S.C. § 2241(a) Under subsection (a)(2): comparable to either 18 U.S.C. 2241 (physically helpless or mentally incapacitated) or 18 U.S.C. § 2242 (mentally disabled)
Former first-degree sexual offense (G.S. 14-27.4)		III	<ul style="list-style-type: none"> For victims under 12, comparable to 18 U.S.C. § 2241(c) For 12-year-old victims, comparable to 18 U.S.C. § 2244, via 18 U.S.C. § 2243(a)
Former sexual offense with a child by an adult offender (G.S. 14-27.4A)		III	<ul style="list-style-type: none"> For victims under 12, comparable to 18 U.S.C. § 2241(c) For 12-year-old victims, comparable to 18 U.S.C. § 2244, via 18 U.S.C. § 2243(a)
Former second-degree sexual offense (G.S. 14-27.5)		III	<ul style="list-style-type: none"> Under subsection (a)(1): forcible, and thus comparable to 18 U.S.C. § 2241(a) Under subsection (a)(2): comparable to either 18 U.S.C. 2241 (physically helpless or mentally incapacitated) or 18 U.S.C. § 2242 (mentally disabled)
Former sexual battery (G.S. 14-27.5A)		I	<ul style="list-style-type: none"> Not punishable by imprisonment for more than one year
Former attempted rape/sexual offense (G.S. 14-27.6)		III	<ul style="list-style-type: none"> Comparable to 18 U.S.C. § 2241(a) (forcible) For victims under 12, comparable to 18 U.S.C. § 2241(c) For 12-year-old victims, comparable to 18 U.S.C. § 2244, via 18 U.S.C. § 2243(a)
Former intercourse/sexual offense with certain victims (G.S. 14-27.7)	Victim under 13	III	<ul style="list-style-type: none"> For victims under 12, comparable to 18 U.S.C. § 2241(c) For 12-year-old victims, comparable to 18 U.S.C. § 2244, via 18 U.S.C. § 2243(a)
	Victim 13, 14, or 15, if defendant is at least 4 years older than the victim	II	<ul style="list-style-type: none"> Comparable to 18 U.S.C. § 2244, via 18 U.S.C. § 2243(a)
	Other victims	I	<ul style="list-style-type: none"> Not clearly comparable to any category defined as Tier II or Tier III
Former statutory rape or sexual offense with a victim who is 13, 14, or 15 years old by defendant who is more than 6 years older than the victim (G.S. 14-27.7A(a))		II	<ul style="list-style-type: none"> Comparable to 18 U.S.C. § 2244, via 18 U.S.C. § 2243(a)
Former promoting the prostitution of a minor (G.S. 14-190.18)		II	<ul style="list-style-type: none"> Involves the use of minors in prostitution
Former participation in the prostitution of a minor (G.S. 14-190.19)		II	<ul style="list-style-type: none"> Involves the use of minors in prostitution