Robert L. Farb
School of Government
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Fourth Circuit Court of Appeals
(Note: You may access the court's opinion by clicking on the case name)

Court Rules Unconstitutional Both N.C.G.S. 14-208.18(a)(2) and N.C.G.S. 14-208.18(a)(3), Which Restrict the Movement of Certain Sex Offenders Concerning Locations Where Minors May Be Present

Doe v. Cooper, ___ F.3d ___, 2016 WL 6994223 (4th Cir. November 30, 2016). Plaintiffs, convicted sex offenders, filed a lawsuit in a North Carolina federal district court that challenged the constitutionality of North Carolina General Statutes 14-208.18(a)(2) and (a)(3). The district court ruled that (a)(2) was unconstitutionally overbroad, and (a)(3) was unconstitutionally vague. The fourth circuit affirmed the district court rulings. (G.S. 14-208.18(a)(1) was also challenged as unconstitutional, but the district court upheld that subdivision, and the plaintiffs did not appeal that ruling.).

Subdivision (a)(2) provides that two categories of sex offenders are prohibited within 300 feet of any location intended primarily for the use, care, or supervision of minors when the place is located on premises that are not intended primarily for the use, care, or supervision of minors, including, but not limited to, places described in subdivision (a)(1) that are located in malls, shopping centers, or other property open to the general public. The court concluded that (a)(2) was unconstitutionally overbroad because it applies to all of these sex offenders, not just those who pose a danger to minors or are likely to pose such a danger.

The court noted that (a)(3) states that these sex offenders may not "knowingly be . . . [a]t any place where minors gather for regularly scheduled educational, recreational, or social programs." It said that two principal problems compel the conclusion that (a)(3) is unconstitutionally vague. In particular, a reasonable person, whether a sex offender or a law enforcement officer, cannot reasonably determine (1) whether a program for minors is "regularly scheduled," or (2) what places qualify as those "where minors gather."

[Author's note: This lawsuit involved the version of these provisions that existed before they were later changed by S.L. 2016-102, effective for offenses committed on or after September 1, 2016. For a discussion of the 2016 session law and the federal district court ruling mentioned above, see Jamie Markham, *Sex Offender Premises Restrictions Revised in Response to Doe v. Cooper*, North Carolina Criminal Law Blog (UNC School of Government, July 28, 2016), http://nccriminallaw.sog.unc.edu/sex-offender-premises-restrictions-revised-response-doe-v-cooper/.]