

Satellite-Based Monitoring After *Grady v. North Carolina*

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Who is subject to SBM?

- Approximately 800 enrollees
 - 412 are also under probation/parole/post-release supervision
 - 396 are enrolled but not under formal supervision
- Two broad categories:
 - Lifetime
 - “Conditional” – monitoring for a period set by the court
- Lifetime monitoring (four sub-categories)
 - Sexually violent predators (21 offenders in North Carolina)
 - Recidivists
 - Aggravated offenders (determined by reference to elements only)
 - Defendants convicted of Rape/Sexual Offense with a Child by an Adult
- Conditional monitoring (period determined by the court)
 - Offenses that involve the “physical, mental, or sexual abuse of a minor” and
 - The court determines, based on a risk assessment (Static 99), that the offender “requires the highest possible level of supervision and monitoring”
- Removal from monitoring
 - Offenders subject to lifetime monitoring may petition the Post-Release Supervision and Parole Commission for removal one year after completion of their sentence. G.S. 14-208.43.
 - When an offender successfully petitions for termination of registration, SBM is also terminated upon the offender’s request. *Id.*

Grady v. North Carolina, 135 S. Ct. 1368 (2015) (per curiam)

- Lower court had determined that SBM was not a Fourth Amendment search because the regime was civil, not criminal. Supreme Court disagreed.
- The Fourth Amendment’s protection extends beyond the criminal sphere (e.g., a building inspector who enters a home solely to ensure compliance with civil safety regulations nonetheless conducts a search under the Fourth Amendment, *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523 (1967)).
- North Carolina’s SBM regime obtains information through a physical intrusion on a subject’s body; it is a Fourth Amendment search.
- The remaining question, however, is whether the search is *reasonable*.

- Reasonableness depends on the totality of the circumstances, including:
 - The nature and purpose of the search, and
 - The extent to which it intrudes on reasonable privacy expectations
- The Court cited two cases as examples of reasonableness determinations:
 - **Samson v. California**, 547 U.S. 843 (2006) (suspicionless search of parolee reasonable).
 - Framework—Balance (a) intrusion into individual privacy against (b) the degree to which that intrusion is needed to promote a legitimate government interest.
 - **Vernonia School Dist. 47J v. Acton**, 515 U.S. 646 (1995) (random drug testing of student-athletes reasonable).
 - Framework—Three-factor balancing test: (1) the nature of the privacy interest, (2) the intrusiveness of the search, and (3) the nature and immediacy of the government concern.
- Remand for consideration of reasonableness.

Post-Grady cases in North Carolina

- The trial court must consider reasonableness before imposing SBM. It must be more than a summary hearing. The trial court must consider the “totality of the circumstances, including the nature and purpose of the search and the extent to which the search intrudes upon reasonable privacy expectations.” *State v. Morris*, 783 S.E.2d 528 (2016).
- The State bears the burden of showing reasonableness. *State v. Blue*, 783 S.E.2d 524 (2016) (citing *State v. Wade*, 198 N.C. App. 257 (2009), for the principle that warrantless searches are presumptively unreasonable).
- A clerk’s testimony that an offender was a recidivist was an insufficient basis upon which to establish the reasonableness of SBM. *State v. Greene*, __ N.C. App. __ (Oct. 3, 2017).

Cases from other jurisdictions

- *Belleau v. Wall*, 811 F.3d 929 (7th Cir. 2016)—Evaluating the reasonableness of Wisconsin’s monitoring regime as applied to a 73-year-old offender no longer under formal supervision, and concluding that it was not an unreasonable search.
 - Balancing the invasiveness of the search (deemed a slight intrusion) against value to society (high, given the serious problem of child sex offender recidivism, underreporting of sex crimes, and documented effectiveness of GPS monitoring), the court concluded that the search was reasonable.
- *Doe v. Coupe*, 143 A.3d 1266 (Del. Ch. 2016)—Evaluating the reasonableness of Delaware’s monitoring regime as applied to two offenders: a man who raped a 47-year-old woman and a woman convicted of being an accomplice to rape and sodomy. Both were on supervised probation.
 - Applying the three-factor test from *Vernonia*, the court concluded that the GPS monitoring regime was reasonable.

What is the “nature” of SBM in North Carolina?

- See attachment for technical specifications of the device
- System capabilities are largely dictated by statute:
 - **G.S. 15A-101.1(3a):** “Electronic monitoring” or “electronically monitor” or “satellite-based monitoring” means monitoring with an electronic monitoring device that is not removed from a person’s body, that is utilized by the supervising agency in conjunction with a Web-based computer system that actively monitors, identifies, tracks, and records a person’s location at least once every minute 24 hours a day, that has a battery life of at least 48 hours without being recharged, that timely records and reports or records the person’s presence near or within a crime scene or prohibited area or the person’s departure from a specified geographic location, and that has incorporated into the software the ability to automatically compare crime scene data with locations of all persons being electronically monitored so as to provide any correlation daily or in real time. In areas of the State where lack of cellular coverage requires the use of an alternative device, the supervising agency shall use an alternative device that works in concert with the software and records location and tracking data for later download and crime scene comparison.
 - **G.S. 14-208.18(g1):** Notwithstanding any provision of this section, a person subject to subsection (a) of this section who is required to wear an electronic monitoring device shall wear an electronic monitoring device that provides exclusion zones around the premises of all elementary and secondary schools in North Carolina.
- Offender compliance enforced through criminal provisions:
 - **G.S. 14-208.42:** The Division of Adult Correction shall have the authority to have contact with the offender at the offender's residence or to require the offender to appear at a specific location as needed for the purpose of enrollment, to receive monitoring equipment, to have equipment examined or maintained, and for any other purpose necessary to complete the requirements of the satellite-based monitoring program. The offender shall cooperate with the Division of Adult Correction and the requirements of the satellite-based monitoring program until the offender's requirement to enroll is terminated and the offender has returned all monitoring equipment to the Division of Adult Correction.
 - **G.S. 14-208.44(a):** Any person required to enroll in a satellite-based monitoring program who fails to enroll shall be guilty of a Class F felony.
 - **G.S. 14-208.44(b):** Any person who intentionally tampers with, removes, vandalizes, or otherwise interferes with the proper functioning of a device issued pursuant to a satellite-based monitoring program to a person duly enrolled in the program shall be guilty of a Class E felony.
 - **G.S. 14-208.44(c):** Any person required to enroll in a satellite-based monitoring program who fails to provide necessary information to the Division of Adult Correction, or fails to cooperate with the Division of Adult Correction's guidelines and regulations for the program shall be guilty of a Class 1 misdemeanor.

Department of Public Safety Policy on Unsupervised Offenders

Chapter G - Technology and Monitoring Programs

.0306 RESPONSIBILITIES FOR UNSUPERVISED SBM

(a) Field Officer Responsibilities

- (1) Verify any change of address and notify Special Operations
- (2) Provide Technical Support to the local Sheriff's Office
- (3) Conduct inspections of equipment
- (4) Provide emergency response to equipment needs
- (5) Remove equipment as necessary

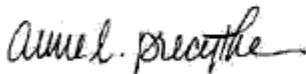
(b) Special Operations' Responsibilities

- (1) Initiate installation
- (2) Monitor equipment
- (3) Notify designated staff in the county of residence when inspection or equipment removal is necessary
- (4) Advise designated staff to notify the Sheriff's Office in the county of residence of any alerts/alarms that need to be investigated
- (5) Ensure the equipment is tracking the offender

(c) Violations shall be reported to the District Attorney and Special Operations.

(d) The Special Operations Office will contact the probation officer with directives. Any and all information having an impact on an unsupervised tracker must be communicated to the Special Operations Office.

APPROVED.



08/01/2016

Director of Community Corrections

Date