

Crimes Related to Sex Offender Registration

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I. **Who must register?** For most crimes related to sex offender registration, a threshold question is whether the person is required to register.

a. The following persons must register in North Carolina if they have a reportable conviction under G.S. 14-208.6(4) or, in the case of nonresident students or workers, are required to register in their state of residency:

North Carolina residents. North Carolina residents who have a reportable conviction must register with the sheriff of the county where they reside. If an offender with a reportable conviction moves to North Carolina from another state, he or she must register within 3 business days of establishing residence here or whenever he or she has been in North Carolina for 15 days, whichever comes first. Offenders who move to North Carolina from other states need not receive actual notice of their obligation to register here in order for the registration requirements to apply. *State v. Bryant*, 359 N.C. 554 (2005). Offenders convicted of a reportable crime in North Carolina who serve a sentence of active imprisonment must register within three business days of release from a penal institution or arrival in a county to live outside a penal institution. Offenders not sentenced to active imprisonment must register immediately upon conviction. G.S. 14-208.7.

Nonresident students. A nonresident student is a person who is not a resident of North Carolina but who is enrolled in any type of school in North Carolina on a part-time or full-time basis. G.S. 14-208.6(1k).

Nonresident workers. A nonresident worker is a person who is not a resident of North Carolina, but who carries on a vocation here for more than 14 (presumably consecutive) days, or for an aggregate period exceeding 30 days in a calendar year. Both part-time and full-time workers are covered, regardless of whether they receive compensation or any government or educational benefit. G.S. 14-208.6(1l).

b. **Reportable conviction:** The attached chart lists all the offenses that require registration (known as “reportable convictions”) in North Carolina. It is important to look at the statutory effective date applicable to a particular crime when determining whether it is reportable.

c. **Sex offender registries online.**

If a person is already registered he or she should appear on one of the following registry Web sites:

1. North Carolina: <http://sexoffender.ncdoj.gov>

2. National (FBI): <http://www.nsopw.gov>

II. **Failure to register as a sex offender** (G.S. 14-208.11, Class F felony). There are multiple ways to commit the crime of “failure to register.”

It is a Class F felony for:

(1) A person required to register

(2) To willfully

(3) (a) Fail to register as required by law. [*This could be an outright failure to register, or a failure to provide or update the sheriff with the registration information set out in G.S. 14-208.7(a1) and (b), and, for lifetime registrants, G.S. 14-208.22(a).*]

(b) Fail to notify the last registering sheriff of a change of address as required by law. [*When a registrant changes address he or she must report in person to the sheriff with whom he had last registered within three business days to provide written notice of the new address. If the move is to another county, the person must also report in person to the sheriff of the new county to provide written notice of the new address not later than the tenth day after the change of address. G.S. 14-208.9(a).*]

When a registrant intends to move to another state, the person must report in person to the sheriff of the county of current residence at least three business days before the date he or she intends to leave the state to provide certain information to the sheriff. G.S. 14-208.9(b).

As used in the sex offender registration law, "address" means "residence," the "actual place of abode where [the registrant] lives, whether permanent or temporary" where "certain activities of life occur." State v. Abshire, 363 N.C. 322 (2009); see also State v. Worley, 198 N.C. App. 329 (2009) (a registrant cannot avoid the obligation to register by "drifting" or by being homeless; for purposes of the sex offender registration statutes, everyone does, at all times, have an address of some sort, even if it is a "homeless shelter, a location under a bridge or some similar place").

If a person fails to report in person and provide a written verification indicating whether he or she still resides at the last reported address or has a new address, the sheriff shall make a reasonable attempt to verify that the person is residing at the registration address. If the person cannot be found at the registered address, he or she is subject to the penalties in the failure to register statute, unless he or she reports in person to the sheriff and proves that he or she has not moved. G.S. 14-208.9A(a)(4).

(c) Fail to return a verification notice as required under G.S. 14-208.9A. [*Every 6 months or, in the case of lifetime registrants, every 90 days, the state Department of Justice mails a nonforwardable verification form to a registrant's last reported address. The offender must return it in person to the sheriff within three business days after receipt. If the person fails to return the form within three business days after receipt, the person is subject to the penalties in the failure to register statute. If the person never actually received the form, he or she cannot be convicted for failing to return it. State v. Braswell, ___ N.C. App. ___ (May 4, 2010).*]

(d) Forge or submit under false pretenses the information or verification notices required by law.

(e) Fail to inform the registering sheriff of enrollment or termination of enrollment as a student. [*Changes to academic status must be reported to the sheriff in person within three business days under G.S. 14-208.9(c).*]

(f) Fail to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education. [*Changes in employment status with respect to an institution of higher education must be reported to the sheriff in person within three business days under G.S. 14-208.9(d).*]

(g) Fail to report in person to the sheriff's office as required by G.S. 14-208.7, 14-208.9, and 14-208.9A.

(h) Report his or her intent to reside in another state or jurisdiction but remain in this State without reporting to the sheriff in the manner required by G.S. 14-208.9.

(i) Fail to notify the registering sheriff of out-of-county employment if temporary residence is established as required under G.S. 14-208.8A. [A registrant who carries on a vocation in a North Carolina county other than his or her county of residence for more than 10 business days within a 30-day period, or for an aggregate period exceeding 30 days in a calendar year, on a part-time or full-time basis and with or without compensation, and also establishes a temporary residence there (including a hotel, motel, or other transient lodging place), must, within 72 hours of knowing that he or she will work and temporarily reside in another county, notify the sheriff in his or her county of registration. G.S. 14-208.8A.]

(j) Fail to inform the registering sheriff of any new or changes to existing online identifiers that the person uses or intends to use. [An online identifier is defined in G.S. 14-208.6(1n) as an “electronic mail address, instant message screen name, user ID, chat or other Internet communication name,” but the definition excludes a registrant’s “social security number, date of birth, or pin number.” Changes to online identifiers or new online identifiers must be reported in person to the sheriff within 10 days.]

III. Harboring a sex offender (G.S. 14-208.11A, Class H felony)

It is a Class H felony for:

- (1) Any person
- (2) Who has reason to believe that an offender is in violation of the sex offender registration laws, and
- (3) Intends to assist the offender in eluding arrest, and
- (4) (a) Withholds information from or fails to notify a law enforcement agency about the offender’s noncompliance and, if known, whereabouts;

(b) Harbors the offender;

(c) Conceals the offender; or

(d) Provides knowingly false information about the offender to law enforcement.

IV. Violations of restrictions on offenders

a. Residency restriction (G.S. 14-208.16, Class G felony)

It is a Class G felony for:

- (1) Any person required to register as a sex offender
- (2) Knowingly to reside
- (3) Within 1,000 feet [*the statute does not say how the distance should be measured—for instance, residence to building, property line to property line, as the crow flies, or along accessible pathways*] of the property on which is located any:

(a) Public or nonpublic school [*“School” does not include home schools as they are defined in G.S. G.S. 115C-563 or institutions of higher education.*]

(b) Child care center [The restriction does not apply to child care centers located on or within 1,000 feet of the property of an institution of higher education where the registrant is a student or is employed.

“Child care center” is defined in G.S. 110-86(3) as “an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care.” “Child care” is defined as a “program or arrangement where three or more children less than 13 years old, who do not reside where the care is provided, receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption.”

The definition of child care excludes 11 types of care that some might otherwise think of as child care, such as: arrangements operated in the home of any child receiving care if all of the children in care are related to each other and no more than two additional children are in care; recreational programs operated for less than four consecutive months in a year; drop-in or short-term care provided while parents participate in activities that are not employment related and where the parents are on the premises or otherwise easily accessible, such as drop-in or short-term care provided in health spas, bowling alleys, shopping malls, resort hotels, or churches; and cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment.]

Exceptions:

1. Offenders who established a residence before Dec. 1, 2006. This offense does not apply to offenders who established a residence before Dec. 1, 2006 by (1) purchasing or entering into a specifically enforceable contract to purchase the residence; (2) entering into a written lease contract for the residence, for as long as the offender is lawfully entitled to remain on the premises; or (3) residing with an immediate family member—defined as a parent, grandparent, legal guardian, spouse, or child or sibling 18 years of age or older—who established residence as provided by the law. S.L. 2006-247, sec. 11(c).
2. Changes in use of surrounding property. Registrants do not violate the law if the ownership or use of a property within 1,000 feet of their residence changes to become a school or child care center after the registrant had established the residence. G.S. 14-208.16(d).

b. Premises restrictions (G.S. 14-208.18, Class H felony)

It is a Class H felony for:

- (1) A person required to register as a sex offender for (1) a crime set out in Article 7A of Chapter 14 of the General Statutes [*rape, sexual offense, sexual battery, intercourse and sexual offense by a custodian or school personnel, statutory rape*] or (2) an offense where the victim was under 16 years old at the time of the offense
- (2) To knowingly
- (3) Be at any of the following locations:
 - (a) On the premises of any place intended primarily for the use, care, or supervision of minors, including but not limited to schools, children’s museums, child care centers, nurseries, and playgrounds [Note that this provision does not place a prohibited radius around the covered places; the offender simply may not go on the premises themselves.]
 - (b) 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 (a) that are located in malls, shopping centers, or other property open to the general public. [Note that this provision applies only to specified locations within places. Issues related to this portion of the law are discussed on the North Carolina Criminal Law Blog, “The 300-Foot Rule,” Mar. 10, 2011, at <http://soqweb.sog.unc.edu/blogs/ncclaw/?p=2026>.]

(c) At any place where minors gather for regularly scheduled education, recreational, or social programs. [It is unclear whether this restriction prohibits covered offenders from being at such a place at all times, or whether it only applies during the times when minors are actually gathered for programs.]

Exceptions: The law contains exceptions for (1) certain parents who are on school property for specified purposes (provided they have permission and are supervised); (2) voting; (3) attending school; and (4) obtaining medical care for a covered juvenile.

c. Work restrictions

1. Working or volunteering in activities involving minors (G.S. 14-208.17, Class F felony)

It is a Class F felony for:

- (1) Any person required to register as a sex offender
- (2) To work or volunteer, with or without compensation
- (3) At any place where a minor is present and the registrant’s responsibilities would include instruction, supervision, or care of a minor or minors. [The statute does not say, but “minor” in this context probably means a person under 18 years of age under the general definition of a minor in G.S. 48A-2.]

2. Caring for a minor when a sex offender resides in the same location (G.S. 14-208.17, Class F felony)

It is a Class F felony for:

- (1) Any person
- (2) To conduct any activity at his or her residence
- (3) Where the person accepts a minor or minors into his or her care or custody from another
- (4) Knowing that a person who resides at the same location is required to register as a sex offender.

3. Babysitting service (G.S. 14-321.1, Class 1 misdemeanor for first offense, Class H felony for second and subsequent offenses)

No person may:

- (1) Provide babysitting services [defined in G.S. 14-321.1(a) as providing, for profit, supervision or care of a minor child under 13 who is unrelated to the provider by blood, marriage, or adoption, for more than two hours per day while the child’s parents or guardian are not on the premises]
- (2) (a) In a home where a registered sex offender resides, or
(b) When a registered offender is a provider of the service.

4. Driving a commercial passenger vehicle or school bus without appropriate license (G.S. 20-27.1, Class F felony)

It is a Class F felony for:

- (1) A person to drive a commercial passenger vehicle or school bus
- (2) When the person does not have a valid commercial drivers license with a P or S endorsement because the person is a registered sex offender and therefore unable to get such a license under G.S. 14-208.19A and G.S. 20-37.13(f).

d. Use of a commercial social networking Web site (G.S. 14-202.5, Class I felony)

It is a Class I felony for:

- (1) A person required to register as a sex offender
- (2) To access
- (3) A commercial social networking Web site [*defined as an Internet site that meets all of the following requirements: (1) Is operated by someone who derives revenue; (2) facilitates social introduction between two or more persons; (3) allows users to create pages or profiles that contain information like nicknames, photographs, and personal information; and (4) provides users or visitors with mechanisms to communicate with one another, such as message boards, chat rooms, email, or instant messages. The definition excludes sites that either (1) provide only one of the following discrete services: photo-sharing, email, instant messaging, or chat room/board; or (2) have as their primary purpose the facilitation of commercial transactions involving goods or services between its members or visitors.*]
- (4) Knowing that the site permits minor children to become members or to create or maintain personal Web pages.

V. Crimes related to satellite-based monitoring (SBM)

Since 2007 North Carolina has had a program for monitoring certain sex offenders with satellite-based technology. Only a judge can order an offender to participate in the program, either at sentencing or at a hearing conducted under G.S. 14-208.40B (when, for example, a covered offender is released from prison). The court will most likely use Form AOC-CR-615 or -616 to set out its SBM order.

- a. Failure to enroll** (G.S. 14-208.44(a), Class F felony)
- b. Tampering with an SBM device** (G.S. 14-208.44(b), Class E felony)
- c. Failing to cooperate with the Department of Correction regarding SBM** (G.S. 14-208.44(c), Class 1 misdemeanor)