

# Sex Offender Registration, Satellite-Based Monitoring, and Special Sentencing Rules

Defending Sexual Assault Cases



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Professor of Public Law and Government

# Overview

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- Sex offender registration
- Satellite-based monitoring
- Special sentencing rules for sex offenders

# What We're Not Covering

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- Petitions to terminate registration

# Registration



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# Sex Offender Registry

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- Total registrants: ~28,000

- OUT OF STATE	7,385	- GATES	35
- INCARCERATED	3,181	- MITCHELL	34
- MECKLENBURG	1,148	- GRAHAM	25
- GUILFORD	1,009	- TYRRELL	17
- WAKE	837	- ALLEGHANY	17
- CUMBERLAND	732	- CAMDEN	12
- FORSYTH	564	- HYDE	12
- GASTON	487		
- DURHAM	481		

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

First-degree forcible rape (14-27.21) 15

Second-degree forcible rape (14-27.22) 15

Statutory rape of a child by an adult (14-27.23) 15

First-degree statutory rape (14-27.24) 15

Statutory rape of person ≤ 15 by D 6+ yrs. older (14-27.25(a)) 15

First-degree forcible sexual offense (14-27.26) 15

Second-degree forcible sexual offense (14-27.27) 15

Statutory sexual offense w/ child by an adult (14-27.28) 15

First-degree statutory sexual offense (14-27.29) 15

Stat. sexual offense w/ person ≤ 15 by D 6+ yrs. older (14-27.30(a)) 15

Sexual activity by a substitute parent or custodian (14-27.31) 15

Sexual activity with a student (14-27.32) 15

Sexual battery (14-27.33) 15

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

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)) 10

Prostitution of minor/mentally disabled child (14-205.3(b)) 10

Parent/caretaker prostitution (14-318.4(a1)) 5

Parent/guardian commit/allow sexual act (14-318.4(a2)) 5

Former first-degree rape (14-27.2) 1

Former rape of a child by an adult offender (14-27.2A) 4

Former second-degree rape (14-27.3) 1

Former first-degree sexual offense (14-27.4) 1

Former sexual offense with a child by an adult offender (14-27.4A) 4

Former second-degree sexual offense (14-27.5) 1

Former sexual battery (14-27.5A) 2

Former attempted rape/sexual offense (14-27.6) 1

Former intercourse/sexual offense w/ certain victims (14-27.7) 1

Former stat. rape/sexual off. (13-15)(a)(6)+ yrs. older (14-27.7A(b)) 3

Former promoting prostitution of minor (14-190.18) 1

Former participating in prostitution of minor (14-190.19) 1

**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, 226 N.C. App. 311 (2013).

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

**SECRETLY PEEPING (14-208.6(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 (2011).

- Felony peeping under 14-202 (d), (e), (f), (g), or (h) 3; or
- Second/subsequent conviction of:
  - Misc. peeping under 14-202(a) or (c) 4
  - Misc. peeping w/ mirror/device under 14-202(a1) 10

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

**SALE OF A CHLD (14-208.6(4e)) 1**  
Reportable only if the sentencing court rules under G.S. 14-43.14(e) that the person is a danger to the community.

**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. 4 (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). 1

**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. 1

**FEDERAL CONVICTIONS (14-208.6(d)c.)**

Offenses substantially similar to a North Carolina "offense against a minor" or "sexually violent offense" (includes conspiracy, solicitation, and aiding/abetting; excludes attempts) 3

**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 required 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:**

- 1 Convicted/released from prison on/after Jan. 1, 1996. [S.L. 1995-945](#)
- 2 Committed on/after Dec. 1, 2005. [S.L. 2005-225 -125 -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. 2, 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. 2012-151](#)
- 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](#)
- 15 Committed on/after Dec. 1, 2015. [S.L. 2015-181](#)
- 16 Effective Dec. 1, 2015. [S.L. 2017-102](#)

**NO-CONTACT ORDER.** DA may ask the court to issue a permanent no-contact order for any defendant convicted of a reportable offense. 15A-1340.50. Use [ADC-CR-620](#). The order may prohibit direct contact with the victim and indirect contact with the victim through third parties. *Barnett*, 794 S.E.2d 306 (2016). A similar civil no-contact order is available under G.S. Chapter 50D for victims who did not seek a no-contact order at sentencing.

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# Sex Offender Registration

## Crimes Requiring Registration

### Sexually Violent Offenses (G.S. 14-208.6(5))

<b>Statute (G.S.)</b>	<b>Offense</b>	<b>Effective Date</b>
14-27.21	First-degree forcible rape	Committed on/after 12/1/2015
14-27.22	Second-degree forcible rape	Committed on/after 12/1/2015
14-27.23	Statutory rape of a child by an adult	Committed on/after 12/1/2015
14-27.24	First-degree statutory rape	Effective 12/1/2015 and, at a minimum, applicable to offenses committed on or after that date
14-27.25(a)	Statutory rape of a person who is 15 years of age or younger	Committed on/after 12/1/2015

# “Final Conviction”

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- Registration is required only for a “final conviction” of an eligible offense
  - Does not include PJC. *Walters v. Cooper*, 367 N.C. 117 (2013)
  - Does not include deferred prosecution
  - Likely does not include conditional discharge
  - Does not include district court conviction on appeal for trial de novo. *See State v. Sparrow*, 276 N.C. 499 (1970)
  - Includes conviction on appeal to appellate division. *State v. Smith*, 230 N.C. App. 387 (2013)

# Effective Dates

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- Offenses committed on/after . . .
- Convicted or released from penal institution on/after . . .
- **Note 2015 recodification**
  - **Applies to offenses committed on/after 12/1/2015**
  - **Older offenses committed under the “former” statutes continue to require registration. State v. Mack, 277 N.C. App. 505 (2021).**

# Effective Dates

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- Common error:
  - Former rape/sexual offense of a 13, 14, or 15 year old by a defendant who is more than 6 years older
  - Offenses committed on/after 12/1/2006

# Categories of Registration

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- Automatic
- Contingent on additional facts
- Discretionary
- Out-of-state offenses

# Automatic Registration

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- Most reportable offenses require registration based on conviction alone

# Contingent Registration

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- “Offense against a minor”
  - Kidnapping
  - Abduction of children
  - Felonious restraint
- Reportable only when
  - Committed against a minor (under 18)
  - And the defendant is not the minor’s parent

# Contingent Registration

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- Human trafficking (G.S. 14-43.11) only when
  - Victim is less than 18, or
  - Offense committed with intent to hold in sexual servitude

STATE OF NORTH CAROLINA

County Seat of Court In The General Court Of Justice District Superior Court Division

STATE VERSUS

Name Of Defendant

Race Sex Date Of Birth

Attorney For State Def. Found Not Indigent Def. Waived Attorney

JUDGMENT AND COMMITMENT ACTIVE PUNISHMENT - FELONY (STRUCTURED SENTENCING) (For Convictions On Or After Jan. 1, 2012)

G.S. 15A-1301, -1340.13

The defendant was found guilty/responsible, pursuant to plea pursuant to Afford of no contest trial by judge trial by jury of

Table with columns: File No.(s), Off., Offense Description, Offense Date, G.S. No., F/M, CL, Pun. CL

\*NOTE: Enter punishment class if different from underlying offense class... PRIOR RECORD LEVEL: I II III IV V VI

- The Court (NOTE: Block 1 or 2 MUST be checked): 1. makes no written findings because the term imposed is: (a) in the presumptive range... 2. finds the Determination of aggravating and mitigating factors... 3. adjudges the defendant to be a habitual felon... 4. adjudges the defendant to be a habitual breaking and entering status offender... 5. adjudges the defendant to be an armed habitual felon... 6. finds enhancement pursuant to: G.S. 90-95(e)(3) (drugs), G.S. 14-3(c) (hate crime), G.S. 50B-4.1 (domestic violence).

(Class A-E felony committed prior to Oct. 1, 2013) 60 months. (Class A-E felony comi

(Class F or G felony committed on or after Oct. 1, 2013) 36 months. (Class H or I felony cor

8. finds the above-designated offense(s) is a reportable conviction under G.S. 14-208.6 (chec a. and therefore makes the additional findings and orders on the attached AOC-CR-615

- 14. did not grant a conditional discharge under G.S. 90-96(a) because (check all that apply) the defendant refused to consent. offenses committed on or after Dec. 1, 2013, only the Court finds, with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense. 15. finds that the defendant used or displayed a firearm while committing the felony, G.S. 15A-1382.2. 16. finds that the offense involved child abuse or assault or an act defined in G.S. 50B-1(a) against a minor, G.S. 15A-1382.1(a1). 17. imposes sentence pursuant to G.S. 90-95(h)(5a) and the Court's findings on the attached AOC-CR-618. Other:

The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be sentenced (check only one) to Life Imprisonment Without Parole for Class A Felony, Class B1 Felony, Violent Habitual Felon, in the custody of: NC DAC, Other: to Life Imprisonment With Parole, pursuant to G.S. Chapter 15A, Article 81B, Part 2A, Other: for a minimum term of: and a maximum term of: ASR term (Order No. 4, Side Two) months to Death (see attached Death Warrant and Certificates)

The defendant shall be given credit for days spent in confinement prior to the date of this Judgment as a result of this charge(s). The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below.

Table with columns: File No., Offense, County, Court, Date

# Contingent Registration

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- Additional facts can permissibly trigger registration
- **Sentencing consequences?**
  - Inflated maximum?
  - Longer PRS?
  - **Additional facts that trigger increased punishment would trigger Sixth Amendment jury trial right**

# Discretionary Registration

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- Aiding and abetting a sexually violent offense or offense against a minor
- Secretly peeping
- Sale, surrender, or purchase of a child
- **Reportable only if the court rules that the defendant is a danger to the community**
  - Findings are not limited to the Static-99 risk assessment.  
**State v. Fuller, 376 N.C. 862 (2021)**

# Offenses that Don't Require Registration

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- Statutory rape/sexual offense of defendant 15 years of age or younger and defendant is more than 4 but less than 6 years older than the victim
  - Has NEVER required registration
- Crime against nature
- Indecent liberties by certain school personnel less than 4 years older than the victim
- Failure to register as a sex offender

# Length of Registration

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- Baseline: 30 years
- Lifetime
  - Recidivists
  - Aggravated offenses
  - Sexually violent predator

# Recidivist

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- Having a prior offense described in G.S. 14-208.6(4)
- At least one offense must have occurred on/after 10/1/2001
- Different from “reoffender” for SBM purposes

# Aggravated Offense

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- Penetration with a victim under 12, or by force with a victim of any age
- Must have occurred on/after 10/1/2001

# Aggravated Offense

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- Aggravated: Completed rape offenses only
- Not aggravated:
  - Attempts
  - Sexual offense
  - Indecent liberties
  - Sexual battery
  - Any offense committed before 10/1/2001
  - Watch out for out-of-state offenses

# Sexually Violent Predator

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- Sexually violent offenses only
- District attorney must initiate the process
- Requires PSI and consideration by board of experts at DAC
- Sentencing judge makes ultimate determination

<u>ARNETT,CHARLES KALEB DAKOTA</u>	Yes	724 ARNETT RD	BANNER ELK	AVERY
<u>BEAVER,JEFFREY S</u>	Yes	906 GRINDSTONE ROAD	MURPHY	CHEROKEE
<u>BELANGIA,NICKOLAS ROBERT</u>	Yes	336 WILLOUGHBY RD	AHOSKIE	HERTFORD
<u>BELL,TAWANN LASHAW</u>	Yes	NC DEPT OF CORRECTION	RALEIGH	LENOIR
<u>BROOKS,KAMERON</u>	Yes	HOMELESS	UNKNOWN	WILSON
<u>BUTLER,NATHANIEL MAURICE</u>	Yes	NC DEPT OF CORRECTION	RALEIGH	CUMBERLAND
<u>CALHOUN,JAMES PHILLIP</u>	Yes	137 STEVEN CLANS LANE	CHEROKEE	JACKSON
<u>CAVAZOS,MANUEL</u>	Yes	100 WILLIAM PLACE	MARS HILL	MADISON
<u>CHASTAIN,CHRISTOPHER NEIL</u>	Yes	801 E 4TH ST	CHARLOTTE	MECKLENBURG
<u>EARLE,JONATHAN</u>	Yes	1020 HEMLOCK DR	FAYETTEVILLE	CUMBERLAND
<u>ENGLISH,TONY MICHAEL</u>	Yes	NC DEPT OF CORRECTION	RALEIGH	CUMBERLAND
<u>FINLEY,WALTER</u>	Yes	204 MERCER COURT	GOLDSBORO	WAYNE
<u>GIBSON,BRODERICK</u>	Yes	736 ROWAN RD	LUMBERTON	ROBESON
<u>GRUBB,WILLIAM F</u>	Yes	917 HOPEWELL CHURCH ROAD	BOONE	WATAUGA
<u>HYMAN,KEVIN RASHAWN</u>	Yes	405 RAILROAD STREET	SHARPSBURG	WILSON
<u>KNIGHT,ANTHONY LEVONE</u>	Yes	610 RESERVOIR ST	DURHAM	DURHAM
<u>LEMM,OWEN M</u>	Yes	201 GRABTOWN RD	WINDSOR	BERTIE
<u>MESSER,JESSE</u>	Yes	1056 CARTER LANE	CREEDMOOR	GRANVILLE
<u>PEARSON,ANTWAN J</u>	Yes	NC DEPT OF CORRECTION	RALEIGH	BLADEN
<u>PHIPPS,MICHAEL LEE</u>	Yes	118 KNOTT STREET	WINSTON SALEM	FORSYTH
<u>SHOEMAKER,JOSHUA</u>	Yes	188 JOHNNY WHALEY RD	BEULAVILLE	DUPLIN
<u>SIMMS,GLENAL</u>	Yes	400 MANOR WAY APT. 446	SANFORD	LEE
<u>SLEDGE,DENIS</u>	Yes	133 ARROWHEAD CIRCLE LOT A-24	COMO	HERTFORD
<u>TRIPLETT,DENNIS D</u>	Yes	1497 HOODS CREEK RD	LENOIR	CALDWELL
<u>VANN,ANTHONY WAYNE</u>	Yes	916 N ACADEMY STREET	AHOSKIE	HERTFORD

# Out-of-State Convictions

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- Federal and court martial
  - Reportable if “substantially similar” to a North Carolina “offense against a minor” or “sexually violent offense”

# Out-of-State Convictions

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- Other states: Two pathways
  - Substantially similar to a North Carolina “offense against a minor” or “sexually violent offense,” or
  - Requires registration under the sex offender registration statutes of the state of conviction

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# Requires Registration in Other State

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- “[A] final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state.”
- Generally determined by the sheriff’s office
- Juvenile adjudications? Look to the law of the other state
  - State v. Jackson, 300 N.C. App. 95 (2025) (Delaware juvenile adjudication triggered adult registration in Delaware, and thus requires adult registration here)
- Watch effective date issues for those who moved to NC before 12/1/2006

# Requires Registration in Other State

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- The “third state” problem
  - Person is convicted of a sex crime in Pennsylvania and has to register there
  - Moves to Virginia, has to register there based on PA conviction
  - Removed from PA registry and no longer has to register in PA (remains on VA registry)
  - Moves to North Carolina
- “[A] final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state.”

# Out-of-State Convictions

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- Other states: Two pathways
  - Substantially similar to a North Carolina “offense against a minor” or “sexually violent offense,” or
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# Substantial Similarity

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- Previously, determined by sheriffs' offices
- Grabarczyk v. Stein, 2020 WL 2441418, at \*6 (E.D.N.C. May 12, 2020)
  - Is it hereby ORDERED, ADJUDGED, and DECREED that defendants...
    - (1) SHALL REMOVE plaintiffs and the class members' names and other information from the North Carolina Sex Offender Registry, and are further
    - (2) ENJOINED from prosecuting plaintiff or the class members for any offenses applicable only to registered sex offenders based upon their registration on the North Carolina Sex Offender Registry solely because of a prior determination that their out-of-state offense committed before December 1, 2006, is substantially similar to a North Carolina offense requiring sex offender registration.



# Substantial Similarity

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- Process applies when registration is solely based on substantial similarity
- Use AOC-CV-656
- County of residence
- Right to counsel
- State has burden to prove substantial similarity
- Compare the elements

# Substantial Similarity

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- Note that out-of-state **attempts** are not covered under the substantial similarity pathway

# Time on Another State's Registry

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- Registration in another state does not start the clock
- “The legislature’s purposes in protecting the public and ensuring public safety are not served if sex offenders can avoid registering or maintaining registry in North Carolina as a result of time spent on another state’s sex offender registry. It is an offender’s registration in North Carolina—not in other jurisdictions—that protects North Carolina citizens.”

State v. Fritsche, 385 N.C. 446, 450 (2023)

# Satellite-Based Monitoring (SBM)



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# Satellite-Based Monitoring

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- Enacted in 2006
- Procedures added in 2007
- Grady v. North Carolina (2015): SBM is a search
- Amended 2021 (lifetime SBM removed)
- Amended 2023 (lifetime SBM returns)

### LIFETIME SBM

1. Sexually violent predator
2. Enumerated “reoffenders”
3. Aggravated offenses
4. Rape/Sexual Offense with Child by Adult

### SBM Not to Exceed 50 Years

Offense involving “physical, mental, or sexual abuse of a minor”



- Review DAC Risk Assessment (Static-99) and all relevant evidence
- Determine whether defendant requires the “highest possible level of supervision and monitoring”
- Determine whether SBM is reasonable under Fourth Amendment

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# Recidivist → “Reoffender”

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- 2021 legislative amendment

**Recidivist.** - A person who has a prior conviction for an offense that is described in G.S. 14-208.6(4).

**Reoffender.** – A person who has two or more convictions for a **felony** that is described in G.S. 14-208.6(4). For purposes of this definition, if an offender is convicted of more than one offense in a single session of court, only one conviction is counted.

# Lifetime-Eligible Reoffender

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- 2023 amendment: Only certain reoffenders eligible for lifetime SBM
  - Rape
  - Sexual offense
  - Human trafficking
  - Sexual servitude
  - Incest (with young victim and requisite age range)
  - First-degree sexual exploitation of a minor
  - Patronizing a prostitute with a mental disability
  - Promoting prostitution of a minor or person with a mental disability
  - Child abuse by prostitution or sexual act

## LIFETIME SBM

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# Physical, Mental, or Sexual Abuse of a Minor

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- Undefined by statute
- Indecent liberties
- Sexual offense involving a minor
- Sexual activity by substitute parent or custodian (?)
- Employing/permitting minor . . . in obscenity (?)
- Promoting prostitution of a minor (?)
- Sexual exploitation of a minor (?)

# Physical, Mental, or Sexual Abuse of a Minor

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- Look to G.S. 7B-101 (“abused juvenile)
- Does not include
  - Third-degree sexual exploitation of a minor
  - Solicitation of child by computer

### LIFETIME SBM

1. Sexually violent predator
2. Enumerated “reoffenders”
3. Aggravated offenses
4. Rape/Sexual Offense with Child by Adult

### SBM Not to Exceed 50 Years

Offense involving “physical, mental, or sexual abuse of a minor”



- Review DAC Risk Assessment (Static-99) and all relevant evidence
- Determine whether defendant requires the “highest possible level of supervision and monitoring”
- Determine whether SBM is reasonable under Fourth Amendment

# “Highest possible level . . .”

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- “High” on Static-99R
  - Offender Traits Inventory-Revised for women, and for men under 18

### Static-99R Coding Form

Question Number	Risk Factor	Codes	Score										
1	Young	Aged 18 to 34.9 Aged 35 to 39.9 Aged 40 to 59.9 Aged 60 or older	1 0 -1 -3										
2	Ever Lived With	Ever lived with lover for at least two years? Yes No	0 1										
3	Index non-sexual violence - Any Convictions	No Yes	0 1										
4	Prior non-sexual violence - Any Convictions	No Yes	0 1										
5	Prior Sex Offences	<table border="0"> <thead> <tr> <th>Charges</th> <th>Convictions</th> </tr> </thead> <tbody> <tr> <td>None</td> <td>None</td> </tr> <tr> <td>1-2</td> <td>1</td> </tr> <tr> <td>3-5</td> <td>2-3</td> </tr> <tr> <td>6 +</td> <td>4+</td> </tr> </tbody> </table>	Charges	Convictions	None	None	1-2	1	3-5	2-3	6 +	4+	0 1 2 3
Charges	Convictions												
None	None												
1-2	1												
3-5	2-3												
6 +	4+												
6	Prior sentencing dates (excluding index)	3 or less 4 or more	0 1										
7	Any convictions for non-contact sex offences	No Yes	0 1										
8	Any Unrelated Victims	No Yes	0 1										
9	Any Stranger Victims	No Yes	0 1										
10	Any Male Victims	No Yes	0 1										
	<b>Total Score</b>	<b>Add up scores from individual risk factors</b>											

#### Translating Static-99R scores into risk categories

##### Score      Label for Risk Category

-3 through 1    =    Low  
 2, 3            =    Low-Moderate  
 4, 5            =    Moderate-High  
 6 plus         =    High

## “Highest possible level . . .”

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- “High” on Static-99
  - Offender Traits Inventory-Revised for women and men under 18
- Findings sufficient to override an other-than-High risk score
  - Things not already included in Static-99 score
  - Very young victim, escalating aggressiveness, homelessness, uncertain location

### LIFETIME SBM

1. Sexually violent predator
2. Enumerated “reoffenders”
3. Aggravated offenses
4. Rape/Sexual Offense with Child by Adult

### SBM Not to Exceed 50 Years

Offense involving “physical, mental, or sexual abuse of a minor”



- Review DAC Risk Assessment (Static-99) and all relevant evidence
- Determine whether defendant requires the “highest possible level of supervision and monitoring”
- Determine whether SBM is reasonable under Fourth Amendment

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# Fourth Amendment Reasonableness

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- “SBM’s efficacy as a deterrent is supported by empirical data.”
- “Since we have recognized the efficacy of SBM in assisting with the apprehension of offenders and in deterring recidivism, there is no need for the State to prove SBM’s efficacy on an individualized basis.”

- State v. Hilton, 378 N.C. 692 (2021)



# Fourth Amendment Reasonableness

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- The court should not wait to establish reasonableness
- Assess at sentencing, and then use Rule 60 as needed in the future. *State v. Strudwick*, 379 N.C. 94 (2021)

# Exercise

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- Convicted of indecent liberties
- Prior conviction for indecent liberties
- What category for registration?
- What category for SBM?

# SBM Appeals

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- As a civil matter, must be noted in writing. Rule 3(a).

# SBM Termination

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- For persons enrolled before December 1, 2021 for any period longer than 10 years, G.S. 14-208.46 applies
  - Petition in county of conviction
  - Mandatory conversion to 10 years
  - Mandatory immediate termination of SBM if person has already enrolled for 10 years

# SBM Termination

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- For persons enrolled on or after December 1, 2021, G.S. 14-208.43 applies
- After 5 years of enrollment, offender may petition superior court in the county of conviction
- If court finds defendant no longer requires the highest possible level of supervision and monitoring, the court may:
  - Terminate SBM immediately, or
  - Order enrollment for a reduced period
- If unsuccessful, may petition again after two years

# Sentencing Issues



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# Consequences of a Reportable Offense

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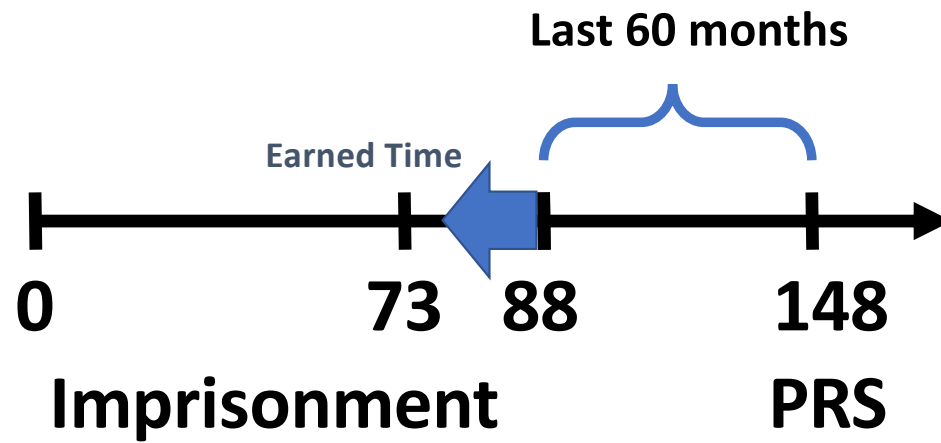
- Class B1-E felony sex crimes: Inflated maximum sentence
- All felony sex crimes: 5-year PRS supervision period

# Class B1-E Sex Crime

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- Second-Degree Forcible Rape (Class C)





**PRS period is 5 years**

# Contingent Registration

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- “Offense against a minor”
  - Kidnapping
  - Abduction of children
  - Felonious restraint
- Reportable only when
  - Committed against a minor (under 18)
  - And the defendant is not the minor’s parent

# Consecutive Sentences

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$$\begin{array}{r} 73 \text{ to } 148 \\ + 73 \text{ to } 148 \\ \hline 146 \text{ to } 296 \\ \text{minus } 60 \text{ (purge "extra" built into both maximums)} \\ \hline 146 \text{ to } 236 \end{array}$$

Practical result: 146 months in prison  
A single 5-year term of PRS  
60 months hanging overhead

# Class F-I Sex Crime

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- Indecent liberties with a child (Class F)

Felony Offenses Committed on or after October 1, 2013

MINIMUM SENTENCES AND DISPOSITIONAL OPTIONS

OFFENSE CLASS	PRIOR RECORD LEVEL						DISPOSITION
	I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts	
<b>A</b> Max. Death or Life w/o Parole	Death or Life without Parole Defendant under 18 at Time of Offense: Life with or without Parole						
<b>B1</b> Max. Life w/o Parole	A 240-300 192-240 144-192	A 276-345 221-276 166-221	A 317-397 254-317 190-254	A 365-456 292-365 219-292	A Life w/o Parole 336-420 252-336 190-254	A Life w/o Parole 386-483 290-386 219-292	Aggravated PRESUMPTIVE Mitigated
<b>B2</b> Max. 484 (532)	A 157-196 125-157 94-125	A 180-225 144-180 108-144	A 207-258 165-207 124-165	A 238-297 190-238 143-190	A 273-342 219-273 164-219	A 314-393 251-314 189-251	
<b>C</b> Max. 231 (279)	A 73-92 58-73 44-58	A 83-104 67-83 50-67	A 96-120 77-96 58-77	A 110-138 88-110 66-88	A 127-159 101-127 76-101	A 146-182 117-146 87-117	
<b>D</b> Max. 204 (252)	A 64-80 51-64	A 73-92 59-73	A 84-105 67-84	A 97-121 78-97	A 111-139 89-111	A 128-160 103-128 77-103	
<b>E</b> Max. 88	A 8-48 0-38 3-30	I/A 19-23 15-19 11-15	A 84-105 67-84 3-30	A 97-121 78-97 26-35	A 111-139 89-111 6-8	A 128-160 103-128 77-103	
<b>F</b> Max.	A 5-31 0-25 5-20	I/A 19-23 15-19 11-15	A 5-31 0-25 5-20	A 5-31 0-25 5-20	A 5-31 0-25 5-20	A 5-31 0-25 5-20	
<b>G</b> Max.	A 9-24 5-19 1-15	I/A 19-23 15-19 11-15	A 9-24 5-19 1-15	A 9-24 5-19 1-15	A 9-24 5-19 1-15	A 9-24 5-19 1-15	
<b>H</b> Max. 39	A 6-8 5-6 4-5	A 8-10 6-8 4-6	A 10-12 8-10 6-8	A 11-14 9-11 7-9	A 15-19 12-15 9-12	A 20-25 16-20 12-16	
<b>I</b> Max. 24	A 6-8 4-6 3-4	A 6-8 4-6 3-4	A 6-8 4-6 3-4	A 6-8 4-6 3-4	A 6-8 4-6 3-4	A 6-8 4-6 3-4	

Note: Numbers shown are in months. The number shown below each offense class reflects the maximum possible sentence for that class of offense (the highest maximum sentence from the aggravated range in prior record level VI). The maximum sentence for a defendant convicted of a reportable Class B1 through E sex crime is indicated in parentheses.

- A—Active Punishment
- I—Intermediate Punishment
- C—Community Punishment
- Extraordinary Mitigation (possible eligibility). See page 10.
- Advanced Supervised Release (possible eligibility). See page 10.

MAXIMUM SENTENCES

The tables below show the maximum sentence that corresponds to each minimum sentence. For minimum sentences of 340 months or more, the maximum sentence is 120 percent of the minimum sentence, rounded to the next highest month, plus 12 additional months. G.S. 15A-1340.17(e). Sex Crimes: The maximum sentence for a Class B1 through E felony subject to the registration requirements of G.S. Chapter 14, Article 27A is 120 percent of the minimum sentence, rounded to the next highest month, plus 60 additional months, as indicated in parentheses below. G.S. 15A-1340.17(f).

FOR OFFENSE CLASSES B1 THROUGH E [Minimum Sentence → Corresponding Maximum (Sex Crimes)]

15+30 (78)	56+80 (128)	97+129 (177)	138+178 (226)	179+227 (274)	220+276 (324)	261+326 (374)	302+375 (423)
16+32 (80)	57+81 (129)	98+130 (178)	139+179 (227)	180+228 (276)	221+278 (326)	262+327 (375)	303+376 (424)
17+33 (81)	58+82 (130)	99+131 (179)	140+180 (228)	181+230 (278)	222+279 (327)	263+328 (376)	304+377 (425)
18+34 (82)	59+83 (131)	100+132 (180)	141+182 (230)	182+231 (279)	223+280 (328)	264+329 (377)	305+378 (426)
19+35 (83)	60+84 (132)	101+134 (182)	142+183 (231)	183+232 (280)	224+281 (329)	265+330 (378)	306+380 (428)
20+36 (84)	61+86 (134)	102+135 (183)	143+184 (232)	184+233 (281)	225+282 (330)	266+332 (380)	307+381 (429)
21+38 (86)	62+87 (135)	103+136 (184)	144+185 (233)	185+234 (282)	226+284 (332)	267+333 (381)	308+382 (430)
22+39 (87)	63+88 (136)	104+137 (185)	145+186 (234)	186+236 (284)	227+285 (333)	268+334 (382)	309+383 (431)
23+40 (88)	64+89 (137)	105+138 (186)	146+188 (236)	187+237 (285)	228+286 (334)	269+335 (383)	310+384 (432)
24+41 (89)	65+90 (138)	106+140 (188)	147+189 (237)	188+238 (286)	229+287 (335)	270+336 (384)	311+386 (434)
25+42 (90)	66+92 (140)	107+141 (189)	148+190 (238)	189+239 (287)	230+288 (336)	271+338 (386)	312+387 (435)
26+44 (92)	67+93 (141)	108+142 (190)	149+191 (239)	190+240 (288)	231+290 (338)	272+339 (387)	313+388 (436)
27+45 (93)	68+94 (142)	109+143 (191)	150+192 (240)	191+242 (290)	232+291 (339)	273+340 (388)	314+389 (437)
28+46 (94)	69+95 (143)	110+144 (192)	151+194 (242)	192+243 (291)	233+292 (340)	274+341 (389)	315+390 (438)
29+47 (95)	70+96 (144)	111+146 (194)	152+195 (243)	193+244 (292)	234+293 (341)	275+342 (390)	316+392 (440)
30+48 (96)	71+98 (146)	112+147 (195)	153+196 (244)	194+245 (293)	235+294 (342)	276+344 (392)	317+393 (441)
31+50 (98)	72+99 (147)	113+148 (196)	154+197 (245)	195+246 (294)	236+296 (344)	277+345 (393)	318+394 (442)
32+51 (99)	73+100 (148)	114+149 (197)	155+198 (246)	196+248 (296)	237+297 (345)	278+346 (394)	319+395 (443)
33+52 (100)	74+101 (149)	115+150 (198)	156+200 (248)	197+249 (297)	238+298 (346)	279+347 (395)	320+396 (444)
34+53 (101)	75+102 (150)	116+152 (200)	157+201 (249)	198+250 (298)	239+299 (347)	280+348 (396)	321+398 (446)
35+54 (102)	76+104 (152)	117+153 (201)	158+202 (250)	199+251 (299)	240+300 (348)	281+350 (398)	322+399 (447)
36+56 (104)	77+105 (153)	118+154 (202)	159+203 (251)	200+252 (300)	241+302 (350)	282+351 (399)	323+400 (448)
37+57 (105)	78+106 (154)	119+155 (203)	160+204 (252)	201+254 (302)	242+303 (351)	283+352 (400)	324+401 (449)
38+58 (106)	79+107 (155)	120+156 (204)	161+206 (254)	202+255 (303)	243+304 (352)	284+353 (401)	325+402 (450)
39+59 (107)	80+108 (156)	121+158 (206)	162+207 (255)	203+256 (304)	244+305 (353)	285+354 (402)	326+404 (452)
40+60 (108)	81+110 (158)	122+159 (207)	163+208 (256)	204+257 (305)	245+306 (354)	286+356 (404)	327+405 (453)
41+62 (110)	82+111 (159)	123+160 (208)	164+209 (257)	205+258 (306)	246+308 (356)	287+357 (405)	328+406 (454)
42+63 (111)	83+112 (160)	124+161 (209)	165+210 (258)	206+260 (308)	247+309 (357)	288+358 (406)	329+407 (455)
43+64 (112)	84+113 (161)	125+162 (210)	166+212 (260)	207+261 (309)	248+310 (358)	289+359 (407)	330+408 (456)
44+65 (113)	85+114 (162)	126+164 (212)	167+213 (261)	208+262 (310)	249+311 (359)	290+360 (408)	331+410 (458)
45+66 (114)	86+116 (164)	127+165 (213)	168+214 (262)	209+263 (311)	250+312 (360)	291+362 (410)	332+411 (459)
46+68 (116)	87+117 (165)	128+166 (214)	169+215 (263)	210+264 (312)	251+314 (362)	292+363 (411)	333+412 (460)
47+69 (117)	88+118 (166)	129+167 (215)	170+216 (264)	211+266 (314)	252+315 (363)	293+364 (412)	334+413 (461)
48+70 (118)	89+119 (167)	130+168 (216)	171+218 (266)	212+267 (315)	253+316 (364)	294+365 (413)	335+414 (462)
49+71 (119)	90+120 (168)	131+170 (218)	172+219 (267)	213+268 (316)	254+317 (365)	295+366 (414)	336+416 (464)
50+72 (120)	91+122 (170)	132+171 (219)	173+220 (268)	214+269 (317)	255+318 (366)	296+368 (416)	337+417 (465)
51+74 (122)	92+123 (171)	133+172 (220)	174+221 (269)	215+270 (318)	256+320 (368)	297+369 (417)	338+418 (466)
52+75 (123)	93+124 (172)	134+173 (221)	175+222 (270)	216+272 (320)	257+321 (369)	298+370 (418)	339+419 (467)
53+76 (124)	94+125 (173)	135+174 (222)	176+224 (272)	217+273 (321)	258+322 (370)	299+371 (419)	
54+77 (125)	95+126 (174)	136+176 (224)	177+225 (273)	218+274 (322)	259+323 (371)	300+372 (420)	
55+78 (126)	96+128 (176)	137+177 (225)	178+226 (274)	219+275 (323)	260+324 (372)	301+374 (422)	

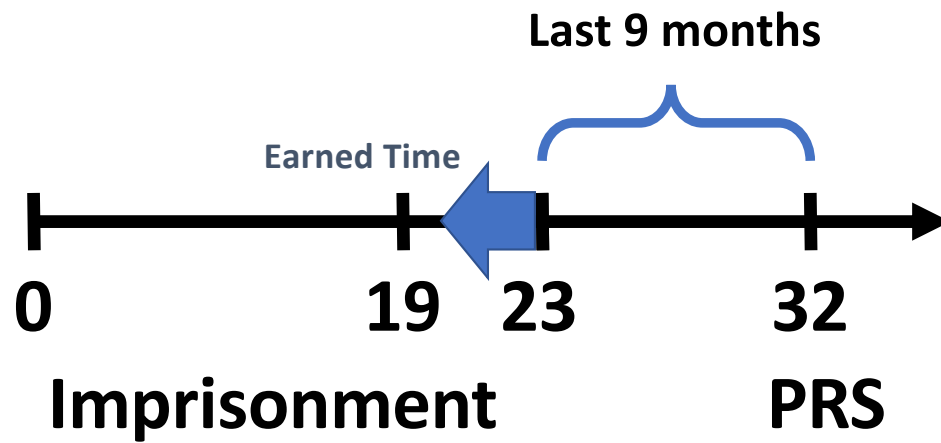
FOR OFFENSE CLASSES F THROUGH I [Minimum Sentence → Corresponding Maximum]

3+13	7+27	11+31	15+35	19+39	23+43	27+47	31+51	35+55	39+59	43+63
4+14	8+28	12+32	16+36	20+40	24+44	28+48	32+52	36+56	40+60	44+64
5+15	9+29	13+33	17+37	21+41	25+45	29+49	33+53	37+57	41+61	45+65
6+17	10+30	14+34	18+38	22+42	26+46	30+50	34+54	38+58	42+62	46+66
7+18	11+31	15+35	19+39	23+43	27+47	31+51	35+55	39+59	43+63	47+67
8+19	12+32	16+36	20+40	24+44	28+48	32+52	36+56	40+60	44+64	48+68

Length of Probation  
The original period of probation for a felony sentenced under Structured Sentencing must fall within the following limits:  
-Community—12 to 30 months  
-Intermediate—18 to 30 months  
The court may depart from those ranges with a finding that a longer or shorter period is required. The maximum permissible period with a finding is 5 years. G.S. 15A-1343.2.

Post-Release Supervision  
Class F-I felony—9 months  
Class B1-E felony—12 months  
Crimes requiring sex offender registration—5 years

Fines  
Any felony sentence may include a fine. Unless otherwise provided for a specific offense, the amount of the fine is in the discretion of the court. G.S. 15A-1340.17(b).



**PRS period is 5 years**

# Advising about PRS?

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- State v. Spry, 297 N.C. App. 641 (2025) (*cert. allowed*)

The five years of post-release supervision to which Defendant was subjected, as opposed to the nine months to which he agreed, were a “direct consequence” of his guilty plea, because those additional months had a “definite, immediate and largely automatic effect on the range of the defendant's punishment.” . . . Without being aware of the direct consequences of his guilty plea, Defendant cannot be said to have made his plea “voluntarily, intelligently and understandingly.” For Defendant's plea to be knowing and voluntary, and thus valid, Defendant must have been made aware of “the actual value of any commitments made to him by the court.”

State v. Spry, 297 N.C. App. 641 (2025) (*cert. allowed*)

# Habitualized Sex Crimes

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- State v. Essick, 282 N.C. App. 150
  - Third-degree sexual exploitation of a minor (Class H)
  - Sentenced under habitual felon law (→ Class D)
  - Does the inflated maximum sentence apply?
  - Court of Appeals: No. Use +12 (not +60)
    - Note: 5-year term of PRS still applies

# Probation Rules for Sex Offenders

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- No unsupervised probation
- Special conditions
  - (4) Not reside in a household with any minor child if the offense is one in which there is evidence of **sexual abuse** of a minor.
  - (5) Not reside in a household with any minor child if the offense is one in which there is evidence of **physical or mental abuse** of a minor, **unless** the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.

Questions?





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