

Satellite-Based Monitoring Update

Jamie Markham
Professor of Public Law & Government

October 2021



UNC
SCHOOL OF GOVERNMENT

www.sog.unc.edu

1

Satellite-Based Monitoring

- Enacted in 2006
- Hearing procedure codified in 2007
- Approximately 800 enrollees today
 - 400 supervised (probation, PRS, parole)
 - 450 unsupervised

2

Existing Law

Reportable Conviction

Lifetime SBM

1. Sexually violent predator
2. Recidivist
3. Aggravated offense
4. Rape/Sexual Offense with Child by Adult

SBM for Period Set by Court

Offense involving "physical, mental, or sexual abuse of a minor"
+
Court determines offender "requires the highest possible level of supervision and monitoring" based on risk assessment / findings

No SBM

3

Reportable Conviction

Lifetime SBM

1. Sexually violent predator
2. Recidivist
3. Aggravated offense
4. Rape/Sex Offense with Child by Adult

SBM for Period Set by Court

"Conditional Offenders"
Offense involving "physical, mental, or sexual abuse of a minor"

+
Court determines offender "requires the highest possible level of supervision and monitoring" (Static-99 + findings)

4



UNC
SCHOOL OF GOVERNMENT

Grady v. North Carolina

- Recidivist sex offender argued that SBM violated Fourth Amendment rights
 - Court of appeals upheld SBM, on theory that it was civil
- Supreme Court of the United States reversed
 - SBM is a search, but remand to determine reasonableness

5

Reasonableness Analysis

Nature of the privacy
interest intruded upon



Nature, immediacy, and
importance of the
governmental interest

Character of the intrusion

6

State v. Grady (N.C., 2019) (*Grady III*)

- Satellite-Based Monitoring (SBM) is facially unconstitutional for all recidivists once supervision (probation/parole/PRS) ends
 - No individualized risk assessment
 - No judicial discretion at termination or removal
 - The device requires tethering to the wall for charging
 - There is no empirical evidence of efficacy

7

Recurring Issues

- Failure to conduct any reasonableness analysis at all
- No evidence of efficacy
- Future uncertainty
 - “The State, however, provides no indication that the monitoring device currently in use will be the same as—or even similar to—the device that will be employed approximately two decades from now.” *State v. Gordon*, 270 N.C. App. 468 (2020).

8

State v. Hilton (Sept. 2021)

- Defendant convicted of first-degree statutory rape and first-degree statutory sexual offense
- Ordered to lifetime SBM for conviction of an **aggravated offense**
- Trial court: Lifetime SBM reasonable
- Court of Appeals: Reversed under Grady
- Supreme Court: Lifetime SBM is reasonable as applied to the aggravated offender category and does not violate the Fourth Amendment

9

Reasonableness Analysis

Nature of the privacy
interest intruded upon



Character of the intrusion

Nature, immediacy, and
importance of the
governmental interest

10

State v. Hilton (Sept. 2021)

- “Unlike the recidivist category, the aggravated offender category applies only to a small subset of individuals who have committed the most heinous sex crimes.” ¶ 21.
- Based on testimony from another pending SBM case, “we conclude that the SBM program assists law enforcement agencies in solving crimes.” ¶ 26.

11

State v. Hilton (cont.)

- “SBM’s efficacy as a deterrent is supported by empirical data.” ¶ 28.
 - Philip Bulman, *Sex Offenders Monitored by GPS Found to Commit Fewer Crimes*
 - Susan Turner, et al., *Does GPS Improve Recidivism among High Risk Sex Offenders? Outcomes for California’s GPS Pilot for High Risk Sex Offender Parolees*
- “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.” ¶ 28

12

Reasonableness Analysis

Nature of the privacy
interest intruded upon

Character of the intrusion



Nature, immediacy, and
importance of the
governmental interest

13

State v. Hilton (cont.)

- Sex offender registration requirements also manifest a diminished expectation of privacy. ¶ 31.
- SBM “does not impose a significant affirmative disability or restraint.” ¶ 32.
- “The ankle monitoring device is light weight, small in size, can be adjusted for comfort and is of little intrusion to the person wearing the device.” ¶ 32.
- “[A]s GPS devices become smaller and batteries last longer, any affirmative restraint imposed by [SBM] will, over time, become less and less burdensome.” ¶ 32.

14

Reasonableness Analysis

Nature of the privacy
interest intruded upon

Character of the intrusion



Nature, immediacy, and
importance of the
governmental interest

Lifetime SBM is reasonable as applied to the aggravated offender category and does not violate the Fourth Amendment

15

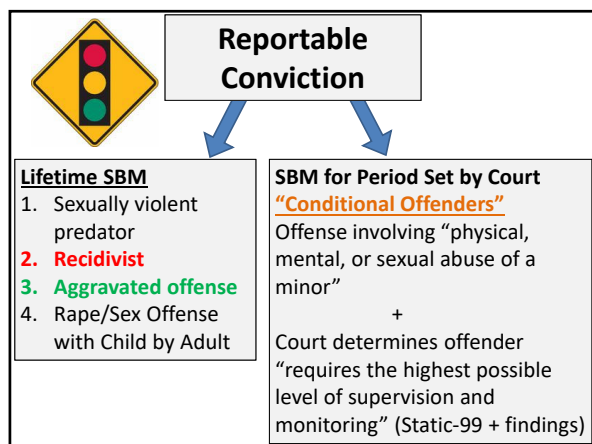
Satellite-Based Monitoring

- State v. Thompson, N.C. App. (Oct. 6, 2020)
 - 10-year SBM for abuse-of-a-minor offense was reasonable
 - Individualized assessment
 - “Not significantly burdensome and lengthy, especially given that the defendant will subject to [PRS] for half that period.”

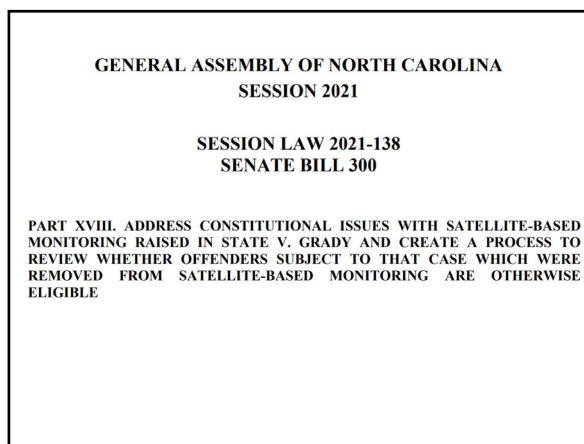
16



UNC
SCHOOL OF GOVERNMENT



17



18

S.L. 2021-138

- Legislative finding of efficacy

The General Assembly finds that empirical and statistical reports such as the 2015 California Study, "Does GPS Improve Recidivism among High Risk Sex Offenders? Outcomes for California's GPS Pilot for High Risk Sex Offender Parolees," show that sex offenders monitored with the global positioning system (GPS) are less likely than other sex offenders to receive a violation for committing a new crime, and that offenders monitored by GPS demonstrated significantly better outcomes for both increasing compliance and reducing recidivism.

19

S.L. 2021-138

- "Recidivist" replaced by "Reoffender"

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

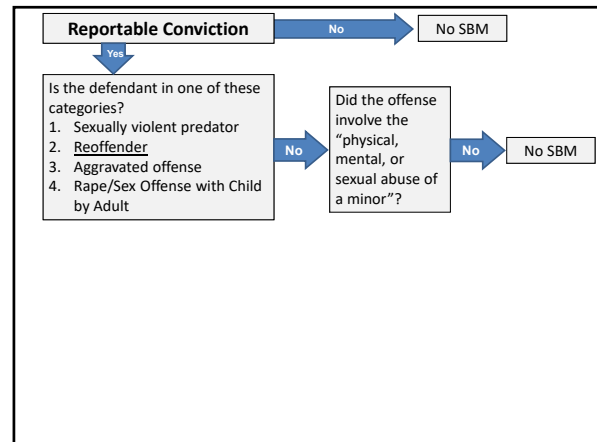
Reoffender. - A person who has two or more convictions for a **felony** that is described in G.S. 14-208.6(4). For purposes of this definition, if an offender is convicted of more than one offense in a single session of court, only one conviction is counted.

20

S.L. 2021-138

- “Recidivist” still applies for **registration** purposes
- Effective date for “Reoffender” includes convictions before, on, or after December 1, 2021

21

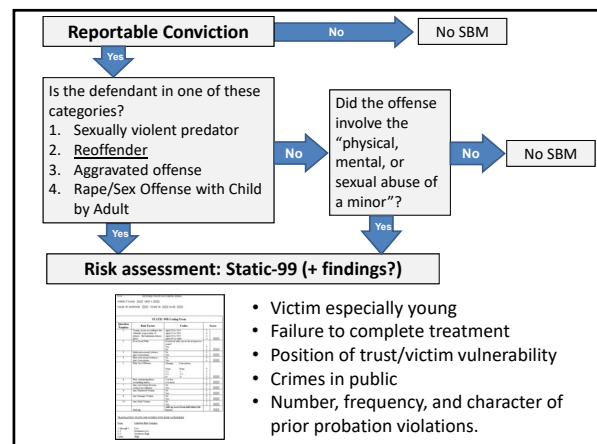


22

Individualized Determination

- Risk assessments and judicial determinations for everyone

23

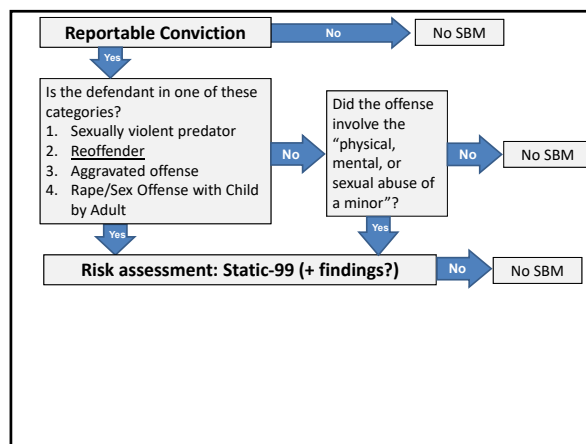


24

Individualized Determination

- Ultimate question: Based on the risk assessment (and any findings), does the defendant require the highest possible level of supervision and monitoring?

25

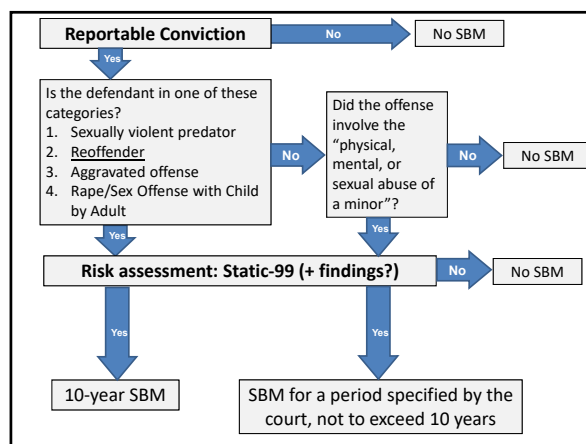


26

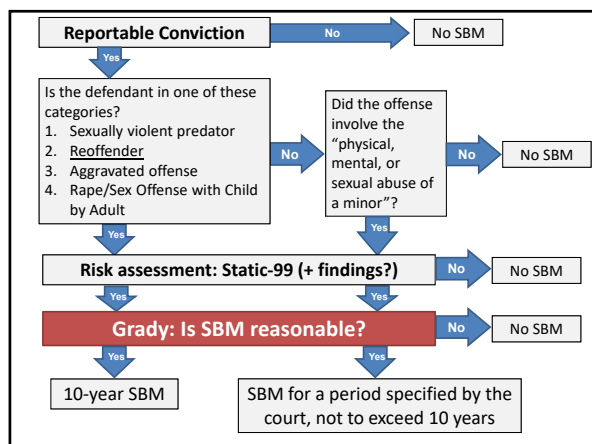
No More Lifetime SBM

- Duration of SBM capped at 10 years
 - 10-years for former lifetime categories
 - Not to exceed 10 years for abuse-of-a-minor enrollees

27



28



29

Reasonableness after *Hilton*

Nature of the privacy interest intruded upon

- Diminished



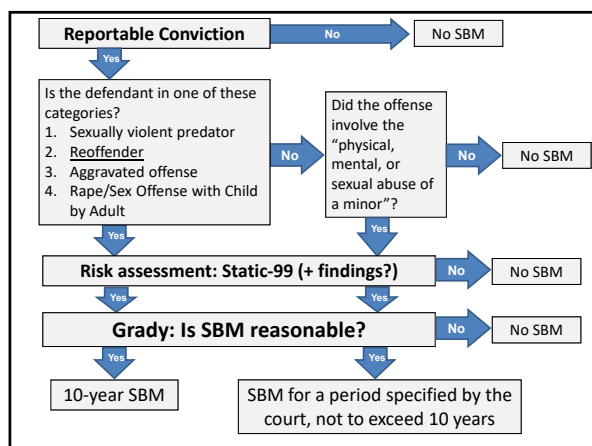
Nature, immediacy, and importance of the governmental interest

- Protect the public, especially children
- Studies show it is effective to that end

Character of the intrusion

- Not physically intrusive
- Getting smaller and less burdensome
- Capped at 10 years
- Extends only 5 years beyond PRS

30



31

Removal Process

- Amend G.S. 14-208.43, for defendants enrolled on or after Dec. 1, 2021
- Judicial review replaces Post-Release Supervision and Parole Commission review
 - 10-year enrollees may petition after 5 years
 - Superior court in the county of conviction
 - District attorney must receive notice 3 weeks before hearing
 - Parties may present evidence
 - Victim may appear and be heard (in person, in writing, or through audio/video statement)
 - Judge must ask if victim is present and wishes to be heard

32

Removal Process

- If the court finds the defendant no longer requires the highest possible level of supervision and monitoring, it can:
 - Terminate SBM immediately
 - Order enrollment for a specified time not to exceed 10 years
- If the court denies the petition, the defendant may petition again in two years

33

Modification of Existing Cases

- Add new G.S. 14-208.46, for defendants already enrolled in lifetime SBM as of Dec. 1, 2021
- Offender may petition superior court in the county of conviction
- Mandatory conversion from life to 10 years, or immediate termination if 10 years have already elapsed

34

Review of *Grady* Defendants

- Previously, no authority to reconsider SBM for Grady-affected defendants (recidivists no longer on probation/PRS). State v. Billings, 2021-NCCOA-306 (July 2021)
- Uncodified provision in S.L. 2021-138, sec. 18.(o), instructs DACJJ to provide list of all recidivists to elected District Attorneys
 - DA makes preliminary determination as to whether defendant might fall into another SBM category
 - If so, schedule for hearing
 - Court conducts hearing under revised framework
 - (DA may ask the AG to handle these cases)

35

Cases Still Pending

- State v. Gordon, N.C. App. (Mar. 17, 2020) (stayed)
 - In the absence of information about the nature and efficacy of SBM 15-20 years from now, SBM an unreasonable search for an aggravated offender
- State v. Griffin, N.C. App. (Mar. 6, 2020) (stayed)
 - In the absence of evidence about the efficacy of SBM, it is an unreasonable search for a “conditional offender” ordered to enroll for 30 years
- State v. Strudwick, N.C. App. (Oct. 6, 2020) (stayed)
 - State did not demonstrate the reasonableness of a search that won’t happen for 30 years due to the defendant’s prison sentence

36

STATE OF NORTH CAROLINA		 _____ Governor
County _____		In the General Court of Justice Chapter 17 Taxpayer Court Order
STATE VERIFICATION		JUDICIAL FINDINGS AND ORDER FOR SEX OFFENDERS - ACTIVE PUNISHMENT
Case No. (if available) _____ NCJD-17-00000000		NCJD-17-00000000 NCJD-17-00000000
NOTE: This form is used to verify a finding of an active punishment for a sex offender who is currently on probation or parole. It is to be completed by the AOC staff or the court clerk.		
I, the undersigned, being duly qualified in the above-captioned case, find that:		FINDINGS
1. The defendant has been convicted of a sexual offense under G.S. 14-202(a) specifically such as sexual offense under G.S. 14-202(a) or 14-202(b) or 14-202(c) or 14-202(d) or 14-202(e) or 14-202(f) or 14-202(g) or 14-202(h) or 14-202(i) or 14-202(j) or 14-202(k) or 14-202(l) or 14-202(m) or 14-202(n) or 14-202(o) or 14-202(p) or 14-202(q) or 14-202(r) or 14-202(s) or 14-202(t) or 14-202(u) or 14-202(v) or 14-202(w) or 14-202(x) or 14-202(y) or 14-202(z) or 14-202(aa) or 14-202(ab) or 14-202(ac) or 14-202(ad) or 14-202(ae) or 14-202(af) or 14-202(ag) or 14-202(ah) or 14-202(ai) or 14-202(aj) or 14-202(ak) or 14-202(al) or 14-202(am) or 14-202(an) or 14-202(ao) or 14-202(ap) or 14-202(aq) or 14-202(ar) or 14-202(as) or 14-202(at) or 14-202(au) or 14-202(av) or 14-202(aw) or 14-202(ax) or 14-202(ay) or 14-202(az) or 14-202(ba) or 14-202(bb) or 14-202(bc) or 14-202(bd) or 14-202(be) or 14-202(bf) or 14-202(bg) or 14-202(bh) or 14-202(bi) or 14-202(bj) or 14-202(bk) or 14-202(bl) or 14-202(bm) or 14-202(bn) or 14-202(bo) or 14-202(bp) or 14-202(bq) or 14-202(br) or 14-202(bs) or 14-202(bt) or 14-202(bu) or 14-202(bv) or 14-202(bw) or 14-202(bx) or 14-202(by) or 14-202(bz) or 14-202(ca) or 14-202(cb) or 14-202(cc) or 14-202(cd) or 14-202(ce) or 14-202(cf) or 14-202(cg) or 14-202(ch) or 14-202(ci) or 14-202(cj) or 14-202(ck) or 14-202(cl) or 14-202(cm) or 14-202(cn) or 14-202(co) or 14-202(cp) or 14-202(cq) or 14-202(cr) or 14-202(cs) or 14-202(ct) or 14-202(cu) or 14-202(cv) or 14-202(cw) or 14-202(cx) or 14-202(cy) or 14-202(cz) or 14-202(da) or 14-202(db) or 14-202(dc) or 14-202(dd) or 14-202(de) or 14-202(df) or 14-202(dg) or 14-202(dh) or 14-202(di) or 14-202(dj) or 14-202(dk) or 14-202(dl) or 14-202(dm) or 14-202(dn) or 14-202(do) or 14-202(dp) or 14-202(dq) or 14-202(dr) or 14-202(ds) or 14-202(dt) or 14-202(du) or 14-202(dv) or 14-202(dw) or 14-202(dx) or 14-202(dy) or 14-202(dz) or 14-202(ea) or 14-202(eb) or 14-202(ec) or 14-202(ed) or 14-202(ee) or 14-202(ef) or 14-202(eg) or 14-202(eh) or 14-202(ei) or 14-202(ej) or 14-202(ek) or 14-202(el) or 14-202(em) or 14-202(en) or 14-202(eo) or 14-202(ep) or 14-202(eq) or 14-202(er) or 14-202(es) or 14-202(et) or 14-202(eu) or 14-202(ev) or 14-202(ew) or 14-202(ex) or 14-202(ey) or 14-202(ez) or 14-202(fa) or 14-202(fb) or 14-202(fc) or 14-202(fd) or 14-202(fe) or 14-202(ff) or 14-202(fg) or 14-202(fh) or 14-202(fi) or 14-202(fj) or 14-202(fk) or 14-202(fl) or 14-202(fm) or 14-202(fn) or 14-202(fo) or 14-202(fp) or 14-202(fq) or 14-202(fr) or 14-202(fs) or 14-202(ft) or 14-202(fu) or 14-202(fv) or 14-202(fw) or 14-202(fx) or 14-202(fy) or 14-202(fz) or 14-202(ga) or 14-202(gb) or 14-202(gc) or 14-202(gd) or 14-202(ge) or 14-202(gf) or 14-202(gg) or 14-202(gh) or 14-202(gi) or 14-202(gj) or 14-202(gk) or 14-202(gl) or 14-202(gm) or 14-202(gn) or 14-202(go) or 14-202(gp) or 14-202(gq) or 14-202(gr) or 14-202(gs) or 14-202(gt) or 14-202(gu) or 14-202(gv) or 14-202(gw) or 14-202(gx) or 14-202(gy) or 14-202(gz) or 14-202(ha) or 14-202(hb) or 14-202(hc) or 14-202(hd) or 14-202(he) or 14-202(hf) or 14-202(hg) or 14-202(hi) or 14-202(hj) or 14-202(hk) or 14-202(hl) or 14-202(hm) or 14-202(hn) or 14-202(ho) or 14-202(hp) or 14-202(hq) or 14-202(hr) or 14-202(hs) or 14-202(ht) or 14-202(hu) or 14-202(hv) or 14-202(hw) or 14-202(hx) or 14-202(hy) or 14-202(hz) or 14-202(ia) or 14-202(ib) or 14-202(ic) or 14-202(id) or 14-202(ie) or 14-202(if) or 14-202(ig) or 14-202(ih) or 14-202(ii) or 14-202(ij) or 14-202(ik) or 14-202(il) or 14-202(im) or 14-202(in) or 14-202(io) or 14-202(ip) or 14-202(iq) or 14-202(ir) or 14-202(is) or 14-202(it) or 14-202(iu) or 14-202(iv) or 14-202(iw) or 14-202(ix) or 14-202(iy) or 14-202(iz) or 14-202(ja) or 14-202(jb) or 14-202(jc) or 14-202(jd) or 14-202(je) or 14-202(jf) or 14-202(jg) or 14-202(jh) or 14-202(ji) or 14-202(jj) or 14-202(jk) or 14-202(jl) or 14-202(jm) or 14-202(jn) or 14-202(jo) or 14-202(jp) or 14-202(jq) or 14-202(jr) or 14-202(js) or 14-202(jt) or 14-202(ju) or 14-202(jv) or 14-202(jw) or 14-202(jx) or 14-202(jy) or 14-202(jz) or 14-202(ka) or 14-202(kb) or 14-202(kc) or 14-202(kd) or 14-202(ke) or 14-202(kf) or 14-202(kg) or 14-202(kh) or 14-202(ki) or 14-202(kj) or 14-202(kk) or 14-202(kl) or 14-202(km) or 14-202(kn) or 14-202(ko) or 14-202(kp) or 14-202(kq) or 14-202(kr) or 14-202(ks) or 14-202(kt) or 14-202(ku) or 14-202(kv) or 14-202(kw) or 14-202(kx) or 14-202(ky) or 14-202(kz) or 14-202(la) or 14-202(lb) or 14-202(lc) or 14-202(ld) or 14-202(le) or 14-202(lf) or 14-202(lg) or 14-202(lh) or 14-202(li) or 14-202(lj) or 14-202(lk) or 14-202(lm) or 14-202(ln) or 14-202(lo) or 14-202(lp) or 14-202(lq) or 14-202(lr) or 14-202(ls) or 14-202(lt) or 14-202(lu) or 14-202(lv) or 14-202(lw) or 14-202(lx) or 14-202(ly) or 14-202(lz) or 14-202(ma) or 14-202(mb) or 14-202(mc) or 14-202(md) or 14-202(me) or		

