

Advanced Probation Violation Issues

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Overview

- Big picture since 2011
- CRV (including terminal CRV)
- New criminal offenses
- Absconding
- Violation hearings after expiration (“discontinued”)
- Satellite-Based Monitoring (SBM)

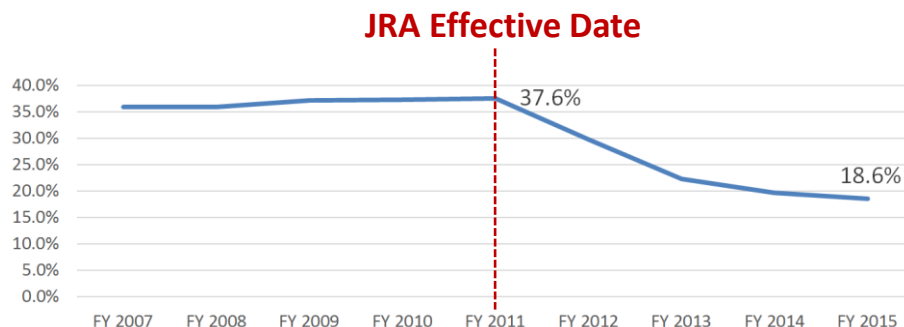
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The Rules Since 2011

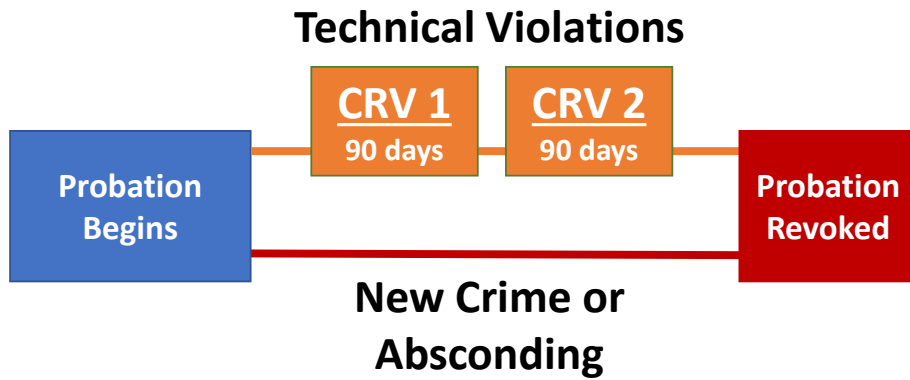
- Court may revoke only for new crimes and absconding
- For technical violations, the court may impose lesser sanctions, including 90-day Confinement in Response to Violation (CRV)
- After two prior CRV's, court may revoke for any violation

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Probation Revocation Rate

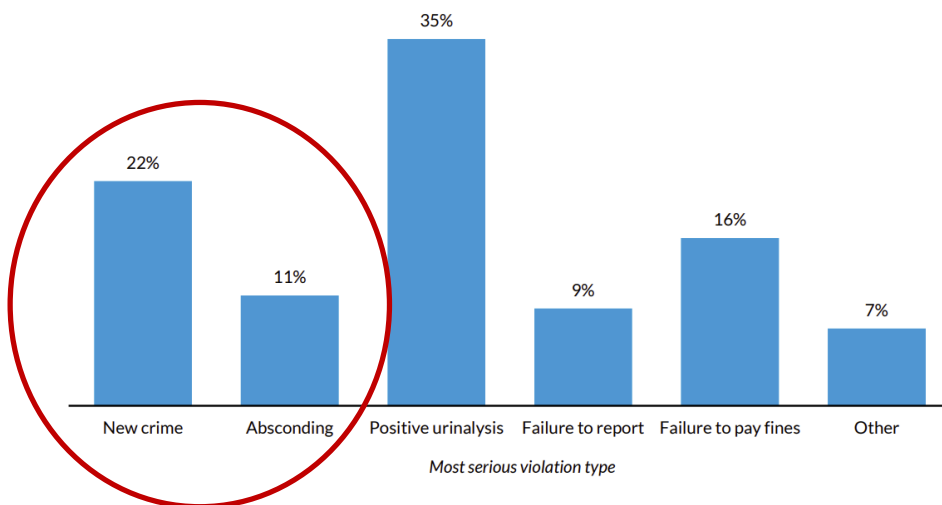


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Most Serious Violation Associated with CRV



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G.S. 15A-1344(d2) Confinement in Response to Violation. - When a defendant under supervision for a felony conviction **has violated a condition of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a)**, the court may impose a period of confinement of 90 consecutive days to be served in the custody of the Division of Community Supervision and Reentry of the Department of Adult Correction.


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Confinement in Response to Violation

- Length:
 - Felony: 90 days (do not apply jail credit)
 - DWI: Up to 90 days
 - No CRV for misdemeanors


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Confinement in Response to Violation

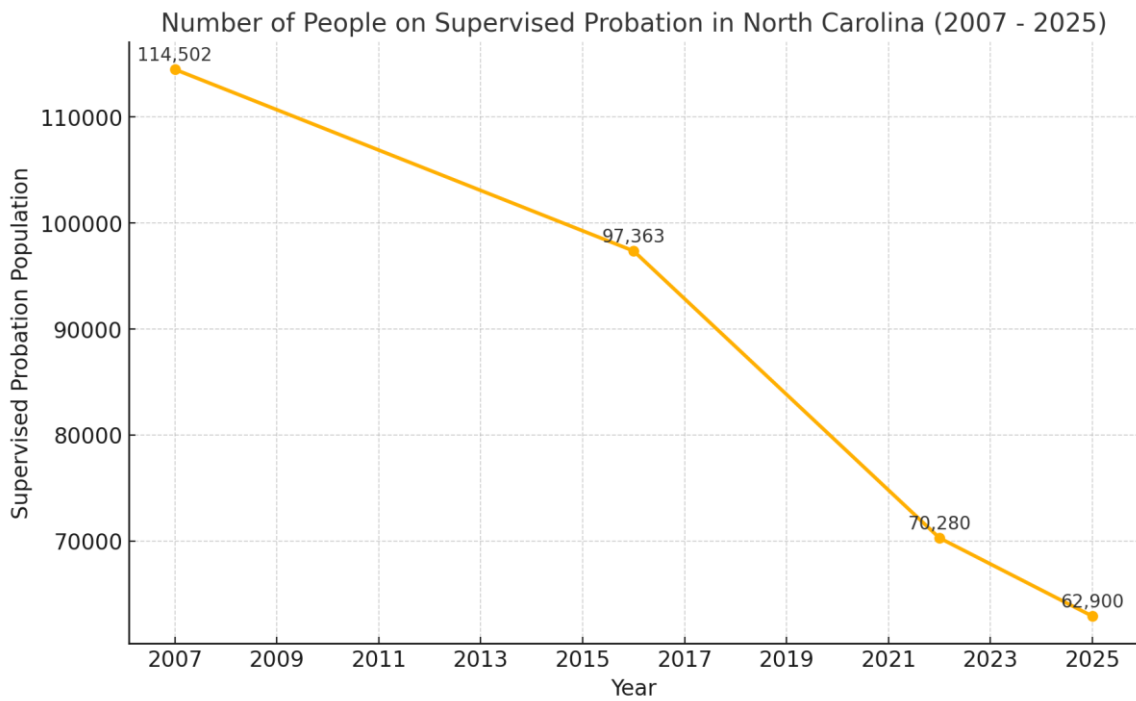
- Must be continuous period (no “weekend CRV”)
 - Must be to proper place of confinement
 - DAC for felonies (Lumberton/N. Piedmont)
 - SMCP for DWI
 - NOT DART Center or Black Mountain
 - CRV periods must run concurrently
 - Maximum of 2 CRVs per case (revocation-eligible after that)
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“Terminal CRV”

- CRV that exhausts the defendant’s suspended sentence
 - CRV that runs out the clock on the defendant’s period of probation
 - CRV followed by the judge’s affirmative termination of probation
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Proper Notice of Violations

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New criminal offense?

Of the conditions of probation imposed in that judgment, the defendant willfully violated:

1. General Statute 15A-1343(b)(1) "Commit no criminal offense in any jurisdiction" in that OFFENDER WAS ARRESTED AND CHARGED WITH FELONY UTTERING A FORGED INSTRUMENT ON 02/28/2022. OFFENSE DATE 08/31/21 AT THE STATE EMPLOYEE'S CREDIT UNION IN WAKE COUNTY CASE 22CR201479.

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Commit No Criminal Offense

- **Conviction** for a new offense, or
- **Independent findings** at probation violation hearing that criminal offense occurred

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New criminal offense?

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State v. Singletary, 290 N.C. App. 540 (2023)

- Reference to pending charge did not “spoil” the violation report
- State presented sufficient evidence to justify probation court’s **independent finding**


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State v. Singletary, 290 N.C. App. 540 (2023)

- Security camera images of defendant at SECU
 - Images of defendant at SECU drive-up ATM
 - Warrants charging the new offenses, which said the attempted deposit was a check on a known closed account belonging to the defendant
 - PPO testified that she talked to a detective who said the photos confirmed defendant was at the credit union, wrote a check, and took funds
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State v. Singletary, 290 N.C. App. 540 (2023)

- “A probation revocation hearing is not a trial, and the State need not present evidence sufficient to convict Defendant nor call as witnesses the investigating officers of the crimes alleged.”
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Notice of Violations

G.S. 15A-1345. (e) Revocation Hearing. - Before revoking or extending probation, the court must, unless the probationer waives the hearing, hold a hearing to determine whether to revoke or extend probation and must make findings to support the decision and a summary record of the proceedings.

The State must give the probationer notice of the hearing and its purpose, including a statement of the violations alleged.

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OF THE CONDITIONS OF PROBATION IN THAT JUDGMENT, THE DEFENDANT HAS WILLFULLY VIOLATED:

1. Sex Offender Special Condition. Per [D]efendant's judgment, he is "not to have any pornography adult or child." On [20 April 2022] [D]efendant admitted to his counselor with C.A.S.A. that he had downloaded child abuse material to his telephone. During a home contact on [22 April 2022], the offender admitted to this officer that he had viewed child pornography on his girlfriend's cellphone (estimated time frame was a month prior). This officer contacted the Forsyth County Sherriff's office about it.

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State v. Bowman, 291 N.C. App. 359 (2023)

- At the violation hearing, the State argued that this was a new criminal offense violation
- Trial court revoked probation based on new criminal offense (third-degree sexual exploitation of a minor)
- COA: Violation report's description of alleged behavior sufficed to give defendant notice of possible revocation

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Absconding

Of the conditions of probation imposed in that judgment, the defendant willfully violated:

1. Regular Condition of Probation: General Statute 15A-1343(b) (3a) "Not to abscond, by willfully avoiding supervision or by willfully making the supervisee's whereabouts unknown to the supervising probation officer" in that, THE DEFENDANT HAS FAILED TO REPORTS AS DIRECTED BY THE OFFICER, HAS FAILED TO RETURN THE OFFICERS PHONE CALLS, AND HAS FAILED TO PROVIDE THE OFFICER WITH A CREDITABLE ADDRESS. THE DEFENDANT HAS FAILED TO MAKE HIMSELF AVAILABLE FOR SUPERVISION AS DIRECTED BY HIS OFFICER, THEREBY ABSCONDING SUPERVISION. THE OFFICERS LAST FACE TO FACE CONTACT WITH THE OFFENDER WAS DURING A HOME CONTACT ON 4/16/18.

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State v. Crompton, 380 N.C. 220 (2022)

- References to technical violations (failure to report; change of address) do not spoil absconding allegation
- “As a practical matter, those conditions laid out in Section 15A-1343(b)(3) make up the necessary elements of “avoiding supervision” or “making [one's] whereabouts unknown.”



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State v. Crompton, 380 N.C. 220 (2022)

“Defendant's probation officer testified that he went to Defendant's last known residence twice, called all of Defendant's references and contact numbers, called the local hospital, checked legal databases to see whether Defendant was in custody, and called the vocational program Defendant was supposed to attend. ... Defendant never made contact with his probation officer, and the officer was completely unaware of Defendant's whereabouts from at least May 14, 2018 to May 23, 2018.”



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State v. Crompton, 380 N.C. 220 (2022)

“The State's evidence was more than sufficient to allow for the reasonable inference that Defendant was not only aware his probation officer was attempting to contact him over the course of ten days, but that Defendant knew how to contact his probation officer and willfully failed to make himself available for supervision. Thus, the evidence was sufficient to reasonably satisfy the trial court, in the exercise of its sound discretion, that Defendant violated Section 15A-1343(b)(3a), a condition upon which probation can be revoked.”

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Discontinued Cases

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“Discontinued” Cases

- The court may act... “[a]t any time prior to the expiration or termination of the probation period.” G.S. 15A-1344(d).
- Court may also act after expiration if violation report filed before probation ends. G.S. 15A-1344(f).
- **You must also find for “good cause shown and stated that the probation should be extended, modified, or revoked.”**

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Vacated for Lack of Good Cause Finding

- State v. Carpenter, 900 S.E.2d 239 (2024)
- State v. Hammond, 900 S.E.2d 417 (2024)
- State v. Leggette, 898 S.E.2d 383 (2024)
- State v. Pratt, 896 S.E.2d 761 (2024)
- State v. Jackson, 291 N.C. App. 116 (2023)
- State v. Black, 290 N.C. App. 679 (2023) (G.S. 90-96 case)
- State v. McSpadden, 290 N.C. App. 553 (2023)
- State v. Parry, 290 N.C. App. 367 (2023)
- State v. Lytle, 287 N.C. App. 657 (2023)

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Good Cause: State v. Geter

Trial court oral finding: "It is clear to the [c]ourt that the State waited until disposition of the underlying offenses alleged before proceeding with the probation violation. The [c]ourt would find that this would constitute good cause."

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Good Cause: State v. Geter

The Court further Orders: (check all that apply)

☐ 1. The Clerk of Superior Court, under G.S. 7A-304(d), shall immediately disburse any undisbursed monies paid by the defendant under the Judgment Suspending Sentence, as provided in that Judgment. In addition, the defendant shall pay to the Clerk the "Total Amount Due" below.

Costs Balance	Fine Balance	Restitution Balance*	Prior Atty Fees This Case	Atty Fees This Proceeding	Appt Fee/Misc	Total Amount Due
\$	\$ 250.00	\$	\$	\$ 0.00	\$ 0.00	\$ 250.00

*See attached "Restitution Update Worksheet, Notice and Findings (Revocation Or Termination Of Probation)," AOC-CR-612, which is incorporated by reference.
NOTE: AOC-CR-612 must be completed whenever Recommendation No. 4 below is checked. Even if Recommendation No. 4 is not checked, AOC-CR-612 must be completed in EVERY CASE in which the defendant was ordered in the original Judgment Suspending Sentence, as a condition of probation, to pay restitution in an amount in excess of \$250 to a Victim's Rights Act victim.

☐ 2. The Court finds just cause to waive costs, as ordered on the attached ☐ AOC-CR-618. ☐ Other:

☒ 3. Any allegation of a violation stated in the Violation Report, Notice or otherwise which is not set forth in Finding No. 3 below is dismissed.

☒ 4. Other: 07/15/2020: COURT FINDS AND CONCLUDES GOOD CAUSE EXISTS TO REVOKE DEFENDANT'S PROBATION DESPITE THE EXPIRATION OF HIS PROBATIONARY PERIOD; JUDGMENT REMANDED FROM COURT OF APPEALS FOR FURTHER FINDINGS; THIS JUDGMENT SHALL BE NUNC PRO TUNC TO 04/04/2019

The Court recommends:

☒ 1. Substance abuse treatment. ☐ 2. Psychiatric and/or psychological counseling. ☐ 3. Work release ☐ should ☐ should not be granted.

☒ 4. Payment as a condition of post-release supervision or from work release earnings, if applicable, of the "Total Amount Due" set out above, ☐ but the Court does not recommend restitution be paid ☐ as a condition of post-release supervision. ☐ from work release earnings.

☒ 5. Other:

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Good Cause?

Costs Balance	Fine Balance	Restitution Balance*	Prior Atty Fees This Case	Atty Fees This Proceeding	Appt Fee/Misc	Total Amount Due
\$	\$	\$	\$	\$	\$	\$
				0.00	0.00	

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☐ 3. Any allegation of a violation stated in the Violation Report, Notice or otherwise which is not set forth in Finding No. 3 below is dismissed.

☒ 4. Other: REMAINING MONIES TO BE PLACED AS A CIVIL JUDGMENT; COURT FINDS GOOD CAUSE TO PROCEED WITH HEARING OUTSIDE PERIOD OF PROBATION.

The Court recommends:

☐ 1. Substance abuse treatment. ☐ 2. Psychiatric and/or psychological counseling. ☐ 3. Work release ☐ should ☐ should not be granted.

☐ 4. Payment as a condition of post-release supervision or from work release earnings, if applicable, of the "Total Amount Due" set out above. ☐ but the Court does not recommend restitution be paid ☐ as a condition of post-release supervision. ☐ from work release earnings.

☐ 5. Other:

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Sufficient Good Cause Finding

"As in *Geter*, the trial court here made an oral finding of good cause: 'I would also find that his probation has expired, but there's good cause to address it following the expiration of his probation.'

State v. Roberts, 897 S.E.2d 42 (N.C. App. 2024)

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“Defendant takes issue with the fact that ‘neither the prosecutor nor the judge stated what the good cause was[,]’ with the trial court only having specified that good cause existed. However, we do not read *Geter, Morgan*, or N.C.G.S. § 15A-1344(f) as requiring that the trial court specify what it found to constitute good cause, only that good cause exist.”

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Tips for “Discontinued” Cases

- Ask the State and Probation to flag them
- If there is good cause, be sure to make a finding
 - Need not be detailed
 - There is no check-box
- We’ve yet to see a finding that was insufficient good cause
 - Violations filed near expiration
 - Pending charges
 - Continuances
 - Absconding

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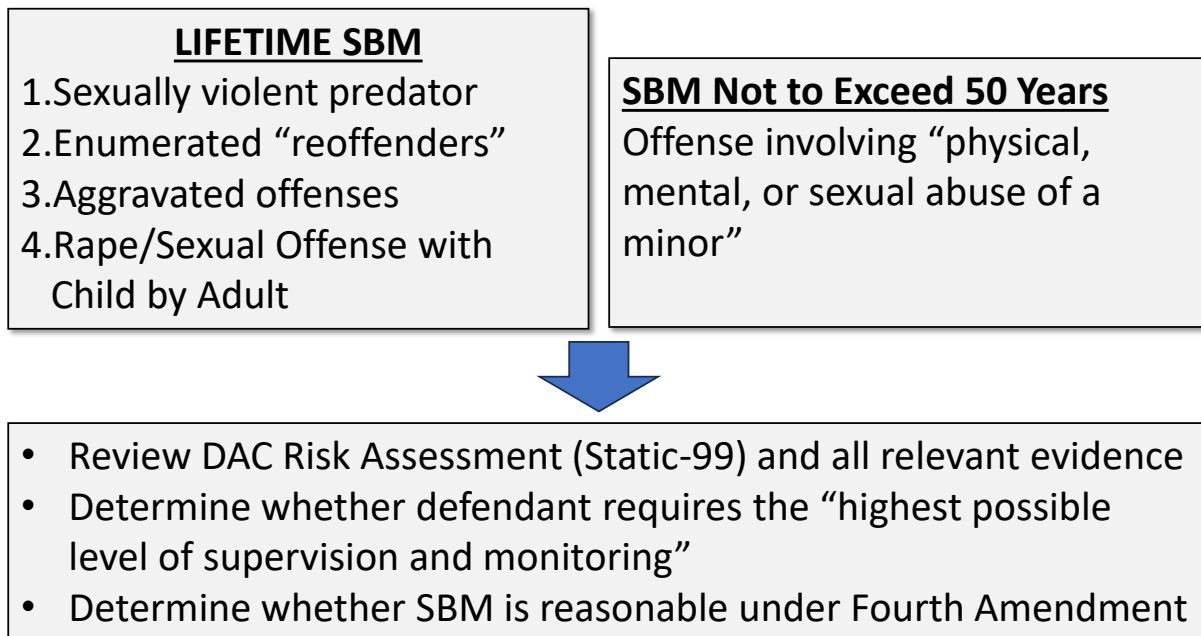
Sex Offenders

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Satellite-Based Monitoring

- Enacted in 2006
- Procedure codified in 2007
- Grady v. North Carolina (2015): SBM is a search
- State v. Grady (2018): Unconstitutional for all recidivists
- Amended 2021 (defendant favorable; no lifetime SBM)
- Amended again 2023 (more rigorous; lifetime returns)
- Current SBM population: ~800

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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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Satellite-Based Monitoring

- 2021: “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).

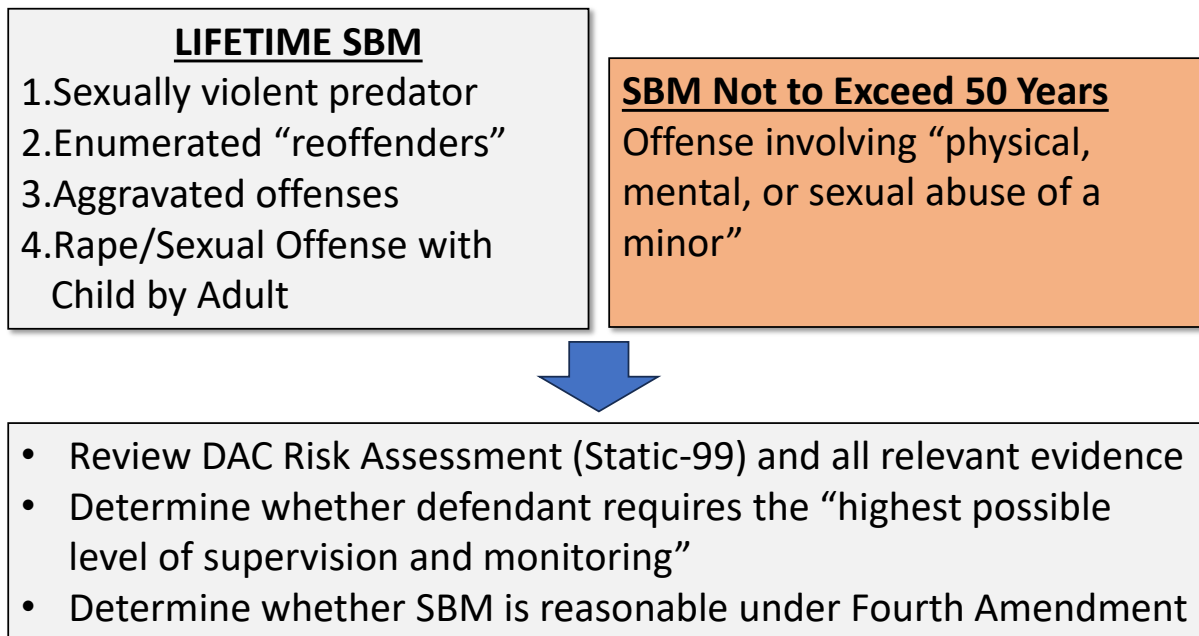
Reoffender. – A person who has two or more convictions for a **felony** that is described in G.S. 14-208.6(4). For purposes of this definition, if an offender is convicted of more than one offense in a single session of court, only one conviction is counted.

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Lifetime-Eligible Reoffenders

- After 2023 amendments, only certain reoffenders get 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

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LIFETIME SBM

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- Review DAC Risk Assessment (Static-99) and all relevant evidence
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“Highest possible level...”

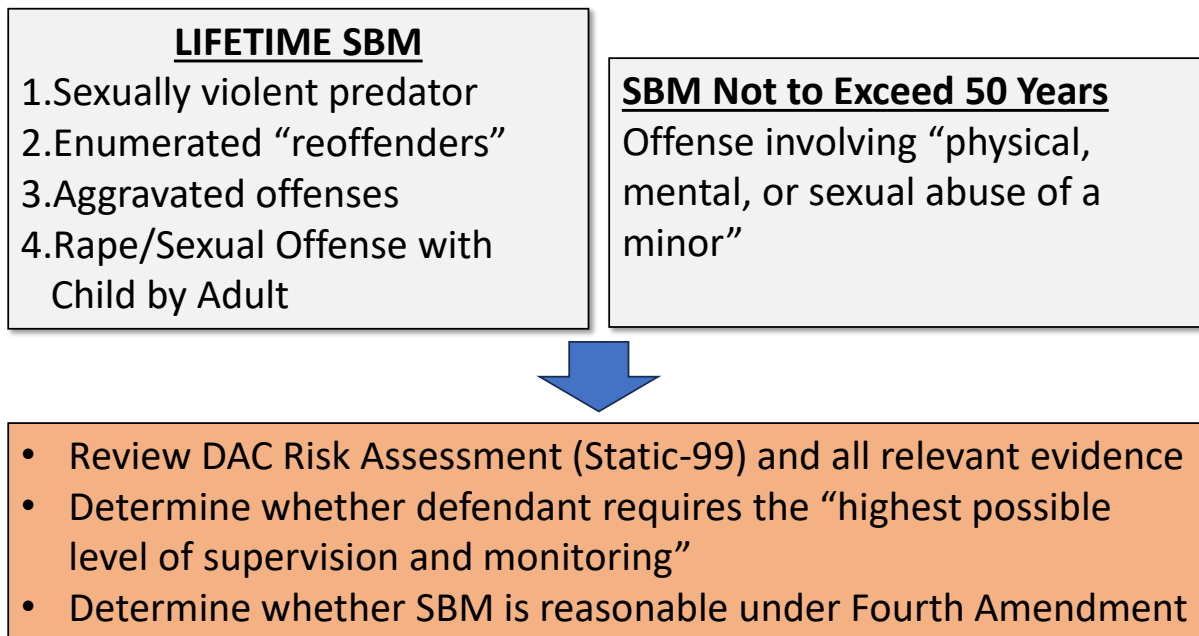
- “High” on Static-99
- Findings sufficient to override an other-than-High Static-99
 - Must not be duplicative of Static-99 factors (e.g., stranger victims, same-sex victims, prior sex crimes)

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“Highest possible level...”

- Approved findings
 - Very young victim
 - Escalating sexual aggressiveness
 - Temporal proximity of offenses
 - Homelessness/use of halfway houses
 - Difficulty locating the person

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Reasonableness Analysis

Nature of the privacy
interest intruded upon.

Character of the intrusion.



Nature, immediacy, and
importance of the
governmental interest.

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Nature of the Intrusion

- “Unlike punitive measures, SBM does not impose a significant affirmative disability or restraint. As the trial court found, 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.”
 - State v. Hilton, 378 N.C. 692 (2021)

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Reasonableness Analysis

Nature of the privacy
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Character of the intrusion.



Nature, immediacy, and
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governmental interest.

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Efficacy: 2021 Legislation

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. G.S. 14-208.39.

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Efficacy: Supreme Court (2021)

- “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)

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Reasonableness

- SBM deemed reasonable in *Hilton* as applied to an aggravated offense (rape)

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ORDER - SATELLITE-BASED MONITORING		
<p>Based on the risk assessment by the Department of Adult Correction, all relevant evidence, and the additional findings on the attached <input type="checkbox"/> AOC-CR-618</p> <p><input type="checkbox"/> Other: _____, incorporated herein by reference, the Court finds:</p> <p><input type="checkbox"/> 1. that the defendant requires the highest possible level of supervision and monitoring, and SBM constitutes a reasonable search of the defendant in this case. The Court therefore ORDERS that upon release from imprisonment, the defendant shall enroll in SBM for the period of:</p> <p style="margin-left: 20px;"><input type="checkbox"/> a. (if Finding No. 1.d. or 3.a. found, or No. 4 or 5 found in the affirmative) his/her natural life,</p> <p style="margin-left: 20px;"><input type="checkbox"/> b. (if Finding No. 6.a. found and either No. 3.b. or 3.c. found, and Nos. 4 and 5 found in the negative, specify a period not to exceed 50 years) _____,</p> <p style="margin-left: 20px;">unless monitoring is terminated or modified pursuant to G.S. 14-208.43.</p> <p style="margin-left: 20px;">The Court further orders that the defendant pay the fee prescribed by G.S. 14-208.45 <input type="checkbox"/> in addition to the monetary obligations set out in the judgment.</p> <p style="margin-left: 20px;"><input type="checkbox"/> as set out in the modified judgment, incorporated herein by reference.</p> <p><input type="checkbox"/> 2. that the defendant should not be required to enroll in SBM and therefore ORDERS that the defendant not be so enrolled, because: (check all that apply)</p> <p style="margin-left: 20px;"><input type="checkbox"/> a. the defendant does not require the highest possible level of supervision and monitoring.</p> <p style="margin-left: 20px;"><input type="checkbox"/> b. SBM would constitute an unreasonable search of the defendant in this case.</p> <p style="margin-left: 20px;"><input type="checkbox"/> c. Other: _____.</p> <p><input type="checkbox"/> 3. Other: _____.</p>		
Date	Name Of Judge (type or print)	Signature Of Judge
<p>Original - File Copy - Sheriff Copy - Department of Adult Correction Combined Records</p> <p>AOC-CR-615, Rev. 10/23, © 2023 Administrative Office of the Courts</p>		

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Reasonableness Procedure

- Don't wait to assess reasonableness—even if defendant is facing a long sentence
- Assess at sentencing and use Rule 60 as needed in the future
 - State v. Strudwick, 379 N.C. 94 (2021)

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SBM Termination

- Formerly done by Parole Commission, now by Superior Court in the county of conviction



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SBM Termination

- For offenders enrolled in SBM before December 1, 2021 for a period of longer than 10 years, G.S. 14-208.46 applies
 - Mandatory conversion to 10 years, or
 - Immediate termination of SBM if offender has already enrolled for 10 years



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SBM Termination

- For offenders enrolled on or after December 1, 2021, G.S. 14-208.43 applies
- After 5 years of enrollment, offender may petition superior court
- 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 the court denies the petition, the person may again petition the court for relief in accordance with this section two years from the date of the denial of the original petition to terminate the satellite-based monitoring requirement.”