

REPORTABLE CRIMES (must also meet effective date criteria)

- SEXUALLY VIOLENT OFFENSES (14-208.6(5))**
- First-degree rape (14-27.2) ❶
 - Rape of a child; adult offender (14-27.2A) ❷
 - Second-degree rape (14-27.3) ❶
 - First-degree sex offense (14-27.4) ❶
 - Sex offense with a child; adult offender (14-27.4A) ❷
 - Second-degree sex offense (14-27.5) ❶
 - Sexual battery (14-27.5A) ❷
 - Attempted rape/sex offense (14-27.6) ❶
 - Intercourse/sex offense w/ certain victims (14-27.7) ❶
 - Statutory rape (13-15 y.o. & D 6+ yrs.older)(14-27.7A(a)) ❸
 - Sexual Servitude (14-43.13) ❸
 - Incest between near relatives (14-178) ❶
 - Employ minor in offense/public morality (14-190.6) ❶
 - Felony indecent exposure (14-190.9(a1)) ❷
 - First-degree sexual exploitation of minor (14-190.16) ❶
 - Second-degree sexual exploitation of minor (14-190.17) ❶
 - Third-degree sexual exploitation of minor (14-190.17A) ❶
 - Promoting prostitution of minor (14-190.18) ❶
 - Participating in prostitution of minor (14-190.19) ❶
 - Taking indecent liberties with children (14-202.1) ❶
 - Solicitation of child by computer (14-202.3) ❷
 - Taking indecent liberties with a student (14-202.4(a)) ❸
 - Parent/caretaker prostitution (14-318.4(a1)) ❸
 - Parent/guardian commit/allow sexual act (14-318.4(a2)) ❸

- OFFENSES AGAINST A MINOR (14-208.6(1m))**
Includes the following crimes, only when the victim is a **minor** and the offender is **not the minor's parent** [biological or adoptive parent, not stepparent, [Stanley](#)]:
Kidnapping (14-39) ❷ Abduction/children (14-41) ❷ Felonious restraint (14-43.3) ❷
- FEDERAL CONVICTIONS (including court-martial) (14-208.6(4)c.)**
Offenses *substantially similar* to NC offense against a minor or sexually violent offense (includes conspiracy, solicitation, and aid/abetting; excludes attempts) ❸
- 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, or are convicted of a felony on/after Oct. 1, 2010. [S.L. 2010-174](#)).
- SECRETLY PEEPING (14-208.6(4)d.)**
Registration for the following only if court decides registration furthers purposes of the registry (14-208.5) & that offender is a danger to community (see Pell):
Felony peeping under 14-202 (d), (e), (f), (g), or (h) ❸; or
Second/subsequent conviction of:
Misdemeanor peeping under 14-202(a) or (c) ❸
Misdemeanor peeping w/ mirror/device under 14-202(a1) ❷
Note: Inchoate and aiding/abetting peeping are not reportable.

- KEY FOR EFFECTIVE DATE CRITERIA:**
- ❶ Convicted/released from penal inst. on/after Jan. 1, 1996. [S.L. 1995-545](#)
 - ❷ Committed on/after Dec. 1, 2005. [S.L. 2005-226](#); [-121](#); [-130](#)
 - ❸ Committed on/after Dec. 1, 2006. [S.L. 2006-247](#)
 - ❹ Committed on/after Dec. 1, 2008. [S.L. 2008-117](#)
 - ❺ Convicted /released on/after Dec. 1, 2008. [S.L. 2008-220](#)
 - ❻ Convicted /released on/after Dec. 1, 2009. [S.L. 2009-498](#)
 - ❼ Committed on/after Apr. 1, 1998 (at a minimum). [S.L. 1997-516](#)
 - ❽ Convicted/released on/after Apr. 3, 1997 (or use effective date of similar NC offense if later). [S.L. 1997-15](#)
 - ❾ Committed on/after Dec. 1, 2003. [S.L. 2003-303](#)
 - ❿ Committed on/after Dec. 1, 2004. [S.L. 2004-109](#)

If an offense is listed in the shaded box above and meets the effective date criteria to the right (and, for peeping crimes and aiding/abetting, the court orders registration), then it is a **REPORTABLE CONVICTION**. The defendant must register for 30 years from the date of initial county registration ([14-208.7](#)), unless lifetime registration applies (use [AOC-CR-615](#) and the flow chart below to determine if it does). 30-year registrants may petition for de-registration after 10 years. [14-208.12A](#). If a defendant receives a non-active sentence, the court should complete [AOC-CR-261](#) (*Notice of Requirement to Register*). The state may also seek a no-contact order under [15A-1340.50](#) (use [AOC-CR-620](#)) [offenses committed on/after Dec. 1, 2009, [S.L. 2009-380](#)]. If the offender falls within the effective date requirements for SBM (see reverse), the court must hold a determination hearing under [14-208.40A/B](#).

EFFECTIVE DATES FOR ATTEMPTS, CONSPIRACIES, SOLICITATIONS, & AID/ABET
Attempt: At a minimum, offenses committed on/after Apr. 1, 1998 (unless target offense has later date). [S.L. 1997-516](#). **Conspiracy/Solicitation:** Committed on/after Dec. 1, 1999 (unless target offense has later date). [S.L. 1999-363](#).
Aiding & Abetting: Committed on/after Dec. 1, 1999 (unless target offense has later date) and **only** if court finds, under 14-208.6(4)(a), that registration furthers the purposes of Article 27A (set out in [14-208.5](#)). [S.L. 1999-363](#)

At the SBM determination hearing the court first considers whether the offender falls into one of the categories below.

if any apply, the court orders...

LIFETIME REGISTRATION (14-208.23) (discontinued only if conviction reversed/vacated/pardoned ([14-208.6C](#))); and **LIFETIME SBM (14-208.41)**. Offender may petition Parole Commission to terminate SBM one year after completion of sentence and any supervision period. [14-208.43](#)

- SEXUALLY VIOLENT PREDATOR (SVP) (14-208.6(6))**
A person convicted of a sexually violent offense who suffers from an abnormality or disorder, as determined by the court after examination by an expert panel under [14-208.20](#); [Zinkand](#). Note: Relatively rare; ~20 SVPs in NC.
- RECIDIVIST (14-208.6(2b))**
A person with a prior conviction for an offense described in [14-208.6\(4\)](#). A prior conviction need not itself be reportable (based on effective date). [Wooten](#). 2nd/subsequent offense must be committed on/after Oct. 1, 2001. [S.L. 2001-373](#).
- COMMITTED AN AGGRAVATED OFFENSE (14-208.6(1a))**
Offense that includes a sexual act involving vaginal, anal, oral penetration (a) through force or threat of serious violence; or (b) with a victim under 12. Only offenses committed on/after Oct. 1, 2001 can be aggravated. [S.L. 2001-373](#). Court can look only at **elements** of conviction offense. [Davison](#). *Sample case law:* **Aggravated:** 1d stat. rape. [Clark](#); 2d Rape. [McCravey](#). **Not aggravated:** 1d sex. off., [Treadway](#); indec. libs., [Singleton](#); child abuse, [Phillips](#); sex. battery, [Brooks](#).
- COMMITTED RAPE OR SEX OFFENSE WITH MINOR BY ADULT (14-27.2A; -27.4A)**
These crimes (created by [S.L. 2008-117](#)) automatically require lifetime SBM.

if none apply, the court considers whether...

THE OFFENDER COMMITTED AN OFFENSE INVOLVING THE PHYSICAL, MENTAL, OR SEXUAL ABUSE OF MINOR. If yes, court orders a DOC risk assessment (Static-99), to determine if the offender requires the **"highest possible level of supervision and monitoring."** If yes, the offender must enroll in SBM for the period specified by the court. [Notes: (1) "Abuse of a minor" is undefined; the following have been deemed sex abuse of a minor: stat. rape, [Smith](#); indec. libs., [Morrow](#); solic./indec. libs., [Cowan](#). (2) No lifetime monitoring in this category. [Cowan](#). (3) HIGH Static score not req'd to order SBM if court makes additional findings, such as especially young victim or defendant failed to obtain sex offender treatment. [Morrow](#); [Green](#).]

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SBM EFFECTIVE DATES

Under the effective date language of [S.L.2006-247 § 15\(f\)](#) and [State v. Cowan](#), SBM applies to otherwise eligible offenders who:

- Commit a reportable offense on/after Aug. 16, 2006; or
- Are sentenced to intermediate punishment on/after Aug. 16, 2006; or
- Are released from prison by parole or post-release supervision on/after Aug. 16, 2006; or
- Complete a sentence on/after Aug. 16, 2006 and are not on post-release supervision or parole.

For defendants sentenced for a reportable conviction on or after Dec. 1, 2007, the court should hold an SBM determination hearing at sentencing. [G.S. 14-208.40A](#), [S.L. 2007-484 §42\(b\)](#). Use AOC-CR-615.

PROCEDURE FOR “BRING-BACK” HEARINGS

When an offender is convicted of a reportable conviction and there has been no determination by a court on whether the offender shall be required to enroll in SBM, DOC makes an initial determination on whether the offender falls into a category requiring monitoring. If so, the district attorney, representing the Department, schedules a hearing (often referred to as a “bring-back” hearing) in superior court in the offender’s county of residence ([S.L. 2009-387](#)) (note that bring-back hearings are always in superior court, regardless of the crime of conviction, *see State v. Miller*, __ N.C. App. __, (Feb. 1, 2011)). DOC gives the offender notice of the hearing by certified mail sent to the offender’s registration address (*but see State v. Wooten* below). The hearing must be scheduled at least 15 days from the date the notification is mailed. Upon the court’s determination that the offender is indigent and entitled to counsel, the court shall assign counsel to represent the offender at the hearing pursuant to rules adopted by IDS. [14-208.40B](#).

SUMMARY OF SBM CASE LAW

Constitutional Issues

- SBM is civil in nature and thus does not implicate the *Ex Post Facto* Clause. *State v. Bowditch*, 364 N.C. 335 (2010).
- Because SBM is civil in nature, it does not violate double jeopardy. *State v. Wagoner*, 683 S.E.2d 391, *aff’d*, 364 N.C. 422 (2010).
- Because SBM is civil in nature, it does not increase the maximum penalty for a crime, and thus does not implicate or violate a defendant’s Sixth Amendment rights under *Apprendi/Blakely*. *State v. Hagerman*, 685 S.E.2d 153, *aff’d*, 364 N.C. 423 (2010).
- The statutory definition of an aggravated offense in G.S. 14-208.6(1a) is not unconstitutionally vague for failure to define the term “use of force.” *State v. McCravey*, 692 S.E.2d 409 (May 4, 2010).

SBM Determination Hearing Procedure

- A failure to follow the precise letter of the SBM statute’s notice provisions was not a jurisdictional error. It was permissible to give an inmate in-person notice of an SBM determination hearing under G.S. 14-208.40B, even though the statute mentions only notice by certified mail. *State v. Wooten*, 194 N.C. App. 524 (2008).
- Requiring enrollment in the SBM program deprives an offender of a significant liberty interest, triggering procedural due process protections. Under G.S. 14-208.40B, DOC must notify an offender, in advance of an SBM hearing, of the SBM category (e.g., recidivist or aggravated offender) into which it believes the offender falls and must give the offender a brief summary of the reasons for that determination. *State v. Stines*, 200 N.C. App. 193 (2009).
- In determining whether the offender requires the highest possible level of supervision and monitoring (and thus SBM), the trial court is not limited to the DOC’s risk assessment. If, however, the risk assessment is other than HIGH and the court nonetheless believes SBM is required, it needs to make specific findings about why the offender requires monitoring. *State v. Morrow*, 200 N.C. App. 123 (2009), *aff’d*, 364 N.C. 424 (2010).
- G.S. 14-208.40B(c) requires the trial court to set a determinate period of time for non-lifetime SBM enrollment; it was error to order a range of “7-10 years.” *State v. Morrow*, 200 N.C. App. 123 (2009), *aff’d*, 364 N.C. 424 (2010).

Appeals

- The court of appeals has jurisdiction to consider appeals from SBM monitoring determinations under G.S. 7A-27. *State v. Singleton*, 689 S.E.2d 562 (Jan. 5, 2010).
- Because an SBM hearing is a civil matter, oral notice of appeal pursuant to Rule 4(a)(1) of the Rules of Appellate Procedure is insufficient to confer jurisdiction on the court of appeals. A defendant must instead give written notice of appeal pursuant to Rule 3(a). *State v. Brooks*, 693 S.E.2d 204 (May 18, 2010).