

# Crimes Related to Sex Offender Registration

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## A. Is the Person Required to Register?

For most crimes related to sex offender registration, a threshold question is whether the person is required to register. The attached chart shows all of the North Carolina crimes that require registration as a sex offender. Be sure to pay careful attention to the effective date clause applicable to each reportable offense.

**Sex offender registries online.** If a person is already registered he or she should appear on one of the following registry Web sites:

- North Carolina: <http://sexoffender.ncsbi.gov/>
- National (FBI): <http://www.nsopw.gov>

## B. Failure to Register

There are multiple ways to commit the crime of “failure to register” under G.S. 14-208.11, three of which are discussed below. They are all Class F felonies. A complete list of all failure to register crimes can be found in *North Carolina Crimes*, p. 268–69.

- **Release from subsequent incarceration.** When a sex offender who is already registered is incarcerated for a new charge, the facility in which the person is incarcerated becomes that person’s address for registration purposes, and the person must comply with G.S. 14-208.9 (the “change of address” statute) upon his or her release from incarceration. G.S. 14-208.7, the statute requiring a person to register with the sheriff within three days of release from a penal institution, applies only to the person’s initial registration upon conviction. *State v. Crockett*, 368 N.C. 717 (2016); *State v. Barnett*, 368 N.C. 710 (2016).
- **Return of verification form.** In order to be convicted for failure to return the verification form, a defendant must have actually received the verification form. *State v. Braswell*, 203 N.C. App. 736 (2010). Also, if the offender fails to return the verification form, the sheriff shall make a reasonable attempt to verify that the person is residing at the registered address before initiating charges. *Id.*; *State v. Moore*, \_\_\_ N.C. App. \_\_\_, 770 S.E.2d 131 (2015).
- **Homeless offenders.**
- **Fail to notify last registering sheriff of a change of address (G.S. 14-208.11(b)).**
  - *Timeline.* When a registrant changes address he or she must report in person to the sheriff with whom he had last registered within three business days to provide written notice of the new

address. G.S. 14-208.9(a). If the move is to another county, the person must also report in person to the sheriff of the new county to provide written notice of the new address not later than the tenth day after the change of address. G.S. 14-208.9(a).

- *The meaning of address.* As used in the sex offender registration law, “address” means “residence,” the “actual place of abode where [the registrant] lives, whether permanent or temporary” where “certain activities of life occur.” *State v. Abshire*, 363 N.C. 322 (2009); *see also State v. Worley*, 198 N.C. App. 329 (2009) (a registrant cannot avoid the obligation to register by “drifting” or by being homeless; for purposes of the sex offender registration statutes, everyone does, at all times, have an address of some sort, even if it is a “homeless shelter, a location under a bridge or some similar place”). A defendant was deemed to have changed addresses when he stayed in his girlfriend’s apartment every day and evening, and when his father (with whom he had been living previously) said the defendant no longer lived with him. *State v. Fox*, \_\_\_ N.C. App. \_\_\_, 716 S.E.2d 261 (2011).
- *Required investigation.* If a person fails to report in person and provide a written verification indicating whether he or she still resides at the last reported address or has a new address, the sheriff shall make a reasonable attempt to verify that the person is residing at the registration address. If the person cannot be found at the registered address, he or she is subject to the penalties in the failure to register statute, unless he or she reports in person to the sheriff and proves that he or she has not moved. G.S. 14-208.9A(a)(4).

- **Fail to return a verification notice** (G.S. 14-208.9A(c)).

- Every 6 months or, in the case of lifetime registrants, every 90 days, the SBI mails a nonforwardable verification form to a registrant’s last reported address. The offender must return it in person to the sheriff within three business days after receipt.
- If the person never actually received the form, he or she cannot be convicted for failing to return it. *State v. Braswell*, 203 N.C. App. 736 (2010).

## C. Restrictions on Registrants

### 1. Residential Restrictions (G.S. 14-208.16, Class G felony)

- Registered sex offenders cannot knowingly reside within 1,000 feet of a *school* or *childcare center*.
  - “School” does not include home schools as they are defined in G.S. 115C-563 or institutions of higher education.
  - “Child care center” is defined in G.S. 110-86(3) as “an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care.” “Child care” is defined as a “program or arrangement where three or more children less than 13 years old, who do not reside where the care is provided, receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day from persons other than their guardians or

full-time custodians, or from persons not related to them by birth, marriage, or adoption.” The definition of child care excludes many types of care that some might otherwise think of as child care, such as: arrangements operated in the home of any child receiving care if all of the children in care are related to each other and no more than two additional children are in care; recreational programs operated for less than four consecutive months in a year; drop-in or short-term care provided while parents participate in activities that are not employment related and where the parents are on the premises or otherwise easily accessible, such as drop-in or short-term care provided in health spas, bowling alleys, shopping malls, resort hotels, or churches; and cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment. The law also excludes child care centers that are located on or within 1,000 feet of the property of an institution of higher education where the registrant is a student or is employed. G.S. 14-208.16(c).

- Exceptions
  - *Offenders who established a residence before Aug. 16, 2006.* This offense does not apply to offenders who established a residence before Dec. 1, 2006 by (1) purchasing or entering into a specifically enforceable contract to purchase the residence; (2) entering into a written lease contract for the residence, for as long as the offender is lawfully entitled to remain on the premises; or (3) residing with an immediate family member—defined as a parent, grandparent, legal guardian, spouse, or child or sibling 18 years of age or older—who established residence as provided by the law. S.L. 2006-247, sec. 11(c).
  - *Changes in use of surrounding property.* Registrants do not violate the law if the ownership or use of a property within 1,000 feet of their residence changes to become a school or child care center after the registrant had established the residence. G.S. 14-208.16(d).
- Note: There is no general restriction against a registered sex offender living in a household with children, although some *probationers and post-release supervisees* may be subject to a condition of supervision that prohibits them from living with any minor child, including their own. The constitutionality of that condition has been upheld. *See State v. Strickland*, 169 N.C. App. 193 (2005).

## 2. Premises Restrictions (G.S. 14-208.18, Class H felony)

- Certain registered sex offenders may not knowingly be:
  - (a) On the premises of any place intended primarily for the use, care, or supervision of minors, including but not limited to schools, children’s museums, child care centers, nurseries, and playgrounds.

- (b) Within 300 feet of any location intended primarily for the use, care, or supervision of minors when the place is located on premises that are not intended primarily for the use, care, or supervision of minors, including, but not limited to, places described in (a) that are located in malls, shopping centers, or other property open to the general public.
- (c) At any place where minors gather for regularly scheduled education, recreational, or social programs.
- *Applicability.* This provision only applies to offenders required to register for:
  - Any offense in Article 7A of Chapter 14 of the General Statutes (rape, sexual offense, sexual battery, intercourse and sexual offense by a custodian or school personnel, statutory rape); or
  - Any offense where the victim of the offense was under age 16 at the time of the offense.
- *Exceptions.* The law contains exceptions for (1) certain parents who are on school property for specified purposes (provided they have permission from the principal and are supervised); (2) voting; (3) attending school; and (4) obtaining medical care for a covered juvenile.
- *Issues*
  - *Prohibited radius.* Subsection (a) does not place a prohibited radius around the listed premises. Thus, there generally is no radius around a building like a school, which is primarily for minors. The 300 foot radius of subsection (b) applies only to locations intended primarily for minors that are located on broader premises that are not intended primarily for minors, such as a play area at a shopping mall.
  - *Constitutionality.* Subdivision G.S. 14-208.18(a)(3) was deemed unconstitutionally vague as applied to a defendant accused of (a) being in “close to the parking lot area” at a county park that had a youth softball field and (b) playing softball on an adult softball field adjacent to a youth tee ball field. The court of appeals held that it would not be clear to a reasonable person that these areas were “places where minors gather” within the language of G.S. 14-208.18(a)(3), and thus held the law to be unconstitutionally vague. *State v. Daniels*, \_\_ N.C. App. \_\_ (Dec. 31, 2012).
  - *First Amendment/Religion Issues.* North Carolina’s appellate courts have not yet decided a case on the issue of whether this prohibition violates the First Amendment by prohibiting a covered offender from attending religious services (because, for example, the church has a nursery around which a 300-foot prohibited radius applies, or regularly scheduled youth programs).

### 3. Work Restrictions

- **Working or volunteering in activities involving minors** (G.S. 14-208.17(a), Class F felony)
  - No registered sex offender may work or volunteer, with or without compensation, at any place where a minor is present and the registrant’s responsibilities would include instruction, supervision, or care of a minor or minors.
- **Caring for a minor when a sex offender resides in the same location** (G.S. 14-208.17(b), Class F felony)
  - No person may conduct any activity where he or she accepts a minor or minors into his or her care or custody from another knowing that a person who resides at the same location is required to register as a sex offender.
  - Note that the law applies to minors accepted “from another,” and does not generally bar a registrant from living with minors.
- **Babysitting service** (G.S. 14-321.1, Class 1 misdemeanor for first offense, Class H felony for second and subsequent offenses)
  - No person may provide babysitting services—defined in G.S. 14-321.1(a) as providing, for profit, supervision or care of a minor child under 13 who is unrelated to the provider by blood, marriage, or adoption, for more than two hours per day while the child’s parents or guardian are not on the premises—in a home where a registered sex offender resides, or when a registered offender is a provider of the service.

4. **Social Networking Restrictions** (G.S. 14-202.5, Class F felony)

- No person required to register as a sex offender may access a commercial social networking Web site, knowing that the site permits minor children to become members or to create or maintain personal Web pages.
- A commercial social networking Web site is defined as an Internet site that meets all of the following requirements: (1) Is operated by someone who derives revenue; (2) facilitates social introduction between two or more persons; (3) allows users to create pages or profiles that contain information like nicknames, photographs, and personal information; and (4) provides users or visitors with mechanisms to communicate with one another, such as message boards, chat rooms, email, or instant messages. The definition excludes sites that either (1) provide only one of the following discrete services: photo-sharing, email, instant messaging, or chat room/board; or (2) have as their primary purpose the facilitation of commercial transactions involving goods or services between its members or visitors.
- Constitutionality pending before N.C. Supreme Court. *State v. Packingham*, \_\_\_ N.C. \_\_\_, 749 S.E.2d 842 (2013).

**D. Crimes related to satellite-based monitoring (SBM)**

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

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

**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
- 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)) 14
- Prostitution of minor/mentally disabled child (14-205.3(b)) 14
- 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. (13-15yo/D 6+ yrs. older) (14-27.7A(a)) 3
- Former promoting prostitution of minor (14-190.18) 1
- Former participating in prostitution of minor (14-190.19) 1

**Reportable Convictions**

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**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. 7 (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). 13

**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. 13

**FEDERAL CONVICTIONS (14-208.6(4)c.)**

Offenses *substantially similar* to a North Carolina “offense against a minor” or “sexually violent offense” (includes conspiracy, solicitation, and aiding/abetting; excludes attempts) 8

*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).

**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(4)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) 9; or
- Second/subsequent conviction of:
- Misd. peeping under 14-202(a) or (c) 9
- Misd. peeping w/ mirror/device under 14-202(a1) 10

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

**SALE OF A CHILD (14-208.6(4)e.) 11**

**Reportable only if the sentencing court rules under G.S. 14-43.14(e) that the person is a danger to the community.**

**KEY FOR EFFECTIVE DATE:**

- 1 Convicted/released from prison on/after Jan. 1, 1996. [S.L. 1995-545](#)
- 2 Committed on/after Dec. 1, 2005. [S.L. 2005-226; -121; -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. 3, 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. 2012-153](#)
- 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](#)

**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

[AOC-CR-620](#). Order may apply only to victim (not, e.g., victim and her children). *Barnett*, 784 S.E.2d 188, *temp. stay and rev. allowed*. 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.

An offender with a reportable conviction must register for 30 years (reducible to 10 in some cases by petition under 14-208.12A), unless lifetime registration applies. 14-208.7. Lifetime registration applies to recidivists, offenders convicted of an aggravated offense, and sexually violent predators. 14-208.23. See reverse for case law related to those categories.

## Satellite-Based Monitoring (SBM)

**Effective date.** SBM applies to offenders with a reportable conviction who: (1) Commit a reportable offense on/after Aug. 16, 2006; (2) are sentenced to intermediate punishment on/after Aug. 16, 2006; (3) are released from prison by parole/post-release supervision on/after Aug. 16, 2006; or (4) complete a sentence on/after Aug. 16, 2006 and are not on PRS or parole. [S.L.2006-247 § 15\(l\)](#). Use [AOC-CR-615](#).

If the defendant falls into the one of the four categories set out below, the court must order SBM for life. 14-208.40A(c).

**1. SEXUALLY VIOLENT PREDATOR (SVP) (14-208.6(6)).** A person convicted of a sexually violent offense who suffers from an abnormality/disorder; determined by court after examination by expert panel. Must follow procedure in [14-208.20](#). *Zinkand*, 190 N.C. App. 765.

**2. 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 date) to qualify a person as a recidivist. *Wooten*, 194 N.C. App. 524 (2008).
- At least one of the offender's convictions must be committed on/after Oct. 1, 2001 for him or her to qualify as a recidivist. [S.L. 2001-373](#).

**3. COMMITTED AN AGGRAVATED OFFENSE (14-208.6(1a)).** An offense committed on/after 10/1/01 ([S.L. 2001-373](#)) that includes:

(1) Engaging in a sexual act involving vaginal, anal, or oral penetration;

(2) (a) With a victim of any age through the use of force or the threat of serious violence, or

(b) With a victim who is less than 12 years old.

- To determine whether an offense is aggravated, the court may look only at the elements of the conviction offense, not the underlying facts of what might have happened in a particular case. *Davison*, 201 N.C. App. 354 (2009).

AGGRAVATED: 1st-deg. stat. rape (victim under 13, 14-27.2(a)(1)). *Clark*, 211 N.C. App. 60 (2011).

Stat. rape (victim 13, 14, 15/def. 6 yrs. older, 14-27.7A(a)). *Sprouse*, 217 N.C. App. 230 (2011).

2nd-deg. rape (forcible, 14-27.3(a)(1)). *McCravey*, 203 N.C. App. 627 (2010).

2nd-deg. rape (mentally disabled victim, 14-27.3(a)(2)). *Oxendine*, 206 N.C. App. 205 (2010).

2nd-deg. rape (physically helpless victim, 14-27.3(a)(2)). *Talbert*, 233 N.C. App. 403 (2014).

NOT AGGRAVATED: Attempted second-degree rape. *Barnett*, 784 S.E.2d 188, *temp. stay and rev. allowed*.

Any sexual offense. *Mann*, 214 N.C. App. 155 (2011) (substitute parent); *Green*, 229 N.C. App. 121 (2013) (forcible); *Treadway*, 208 N.C. App. 286 (2010) (statutory); *Boyett*, 224 N.C. App. 102 (2012) (second degree).

Child abuse by sexual act (14-318.4(a2)). *Phillips*, 203 N.C. App. 326 (2010).

Indecent liberties with a child. *Singleton*, 201 N.C. App. 620 (2010); *Sprouse*, 217 N.C. App. 230 (2011).

Sexual battery. *Brooks*, 204 N.C. App. 193 (2010).

Any offense committed before 10/1/2001. *Davis*, 767 S.E.2d 565 (2014) (first-degree rape from Sept. 2001).

**4. CONVICTED OF STATUTORY RAPE OR SEXUAL OFFENSE WITH CHILD BY ADULT (14-27.23, -27.28, or former 14-27.2A and -27.4A).**

**If the court finds that the defendant does not fit into any of the four lifetime categories set out above, it must determine whether the offender committed an "offense that involved the physical, mental, or sexual abuse of a minor." 14-208.40A(d).**

"Physical, mental, or sexual abuse of a minor" is undefined. The following have been deemed abuse of a minor: Indecent liberties, *Jarvis*, 214 N.C. App. 84 (2011); Solicitation to commit indecent liberties, *Cowan*, 207 N.C. App. 192 (2010); Statutory rape, *Jones*, 234 N.C. App. 239 (2014). Other crimes may also qualify.

**If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, it must order DAC to do a risk assessment (Static-99R, or OTI for women). DAC shall have 30-60 days to complete the assessment (although it can sometimes be completed in a matter of hours). Upon receipt of the assessment, the court determines whether the offender requires the "highest possible level of supervision and monitoring." If so, the court shall order SBM for a period determined by the court. 14-208.40A(d)-(e).**

If the Static-99 is HIGH, the court may order SBM for a specified period. If the result is less than HIGH, the court may nonetheless order SBM if it makes additional factual findings related to the defendant's dangerousness. *Morrow*, 364 N.C. 424 (2010).

- **Findings that may trump a non-HIGH Static-99:** Victim especially young; failure to complete treatment, *Green*, 211 N.C. App. 599 (2011). Position of trust/victim vulnerability, *Jarvis*, 214 N.C. App. 84 (2011). Temporal proximity of multiple crimes; all victims young girls; escalating sexual aggressiveness; crimes in public and during residential break-in, *Smith*, 769 S.E.2d 838 (2015). Number, frequency, and character of prior probation violations. *King*, 204 N.C. App. 198 (2010).
- **Findings that may not trump a non-HIGH Static-99:** Prior dismissed indecent liberties charge, *Smith*. *Alford* plea signaled lack of remorse, *Jarvis*. Old prior sex crime already incorporated into Static-99; unsworn statement about victim's emotional trauma, *Thomas*, 225 N.C. App. 631 (2013). Prior non-reportable assault on female, *Jones*, 234 N.C. App. 239 (2014).
- The court should order a discrete time for SBM (e.g. "3 yrs."), *not* a range (e.g. "7-10 yrs."). *Morrow*, 200 N.C. App. 123 (2009).
- The trial court may not order lifetime SBM for a defendant in this category. *Cowan*, 207 N.C. App. 192 (2010).

**Bring-back hearings.** If no SBM determination made at sentencing, DAC makes an initial determination as to whether SBM applies and notifies the offender. Notice must state the expected SBM eligibility category & a brief statement of factual basis for that determination. *Stines*, 200 N.C. App. 193 (2009); *Cowan*, 207 N.C. App. 192 (2010). DAC not req'd to file a civil complaint. *Self*, 217 N.C. App. 638 (2011). The DA schedules a hearing in superior court (never district court, *Miller*, 209 N.C. App. 466 (2011)) in the county of residence (this relates to venue, not jurisdiction, *Mills*, 232 N.C. App. 460 (2014)). 15 days notice req'd. Indigent offenders entitled to counsel. [14-208.40B](#). Use [AOC-CR-616](#).

**Constitutional issues.** SBM is civil and thus does not violate the Ex Post Facto Clause, *Bowditch*, 364 N.C. 335 (2010); double jeopardy, *Wagoner*, 364 N.C. 422 (2010); or *Blakely*, *Hagerman*, 364 N.C. 423 (2010). SBM does not infringe on interstate travel, *Manning*, 221 N.C. App. 201 (2012). Though civil, SBM is a search. *Grady*, 575 U.S. \_\_\_ (2015). State has burden of proving SBM reasonable under Fourth Amendment; judge must consider search's purpose and D's reasonable expectation of privacy. *Blue*, 783 S.E.2d 524 (2016); *Morris*, 783 S.E.2d 528 (2016).

**Appeals.** Because SBM is civil in nature, defendants must note their appeal of an SBM determination in writing pursuant to Rule 3(a) of the N.C. Rules of Appellate Procedure; oral notice is insufficient. *Brooks*, 204 N.C. App. 193 (2010).