

Consequences of Conviction of Offenses Subject to Sex Offender Registration

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Conviction of an offense subject to sex offender registration carries significant consequences—both criminal and civil—beyond the consequences that accompany criminal offenses generally. Some, such as longer criminal sentences and registration and monitoring obligations, are imposed at sentencing in the criminal case. Some arise as a result of the conviction. Violation of these restrictions may result in additional criminal penalties. This paper reviews the consequences and restrictions imposed by North Carolina law as a result of an offense subject to sex offender registration.

Note: Other consequences may apply to convictions of offenses of a sexual nature. Those consequences may be triggered whether or not the statute explicitly refers to sex offender registration. *See, e.g.,* G.S. 14-27.21, 14-27.22 (denying custody and inheritance rights for child conceived from rape) (codified as G.S. 14-27.2 and 14-27.3 for offenses committed before Dec. 1, 2015); G.S. 90-210.25B (prohibiting funeral service board from issuing or renewing license to engage in funeral services to person who has been convicted of a sexual offense against a minor as defined in that statute). For more information about those consequences, which are not covered in this paper, see the UNC School of Government's [Collateral Consequences Assessment Tool \(C-CAT\)](#).

Criminal Sentencing

Length of Imprisonment and Post-Release Supervision

The following sentencing provisions apply to all offenses subject to sex offender registration.

Class B1 through E felonies

For offenses committed *on or after* Dec. 1, 2011 (under [2011 N.C. Sess. Law 307](#)), the maximum sentence of imprisonment is 120% of the applicable minimum, plus 60 months (rather than an additional 12 months as for other Class B1 through E offenses). G.S. 15A-1340.17(f).¹ The defendant is automatically released 60 months early and goes on post-release supervision for 60 months (rather than 12 months of post-release supervision as for other Class B1 through E offenses). G.S. 15A-1368.2(c).

For offenses committed *before* Dec. 1, 2011, the maximum sentence of imprisonment is 120% of the applicable minimum, plus 9 months (the same as for other Class B1 through E offenses). The defendant is automatically released 9 months early and goes on post-release supervision for 60 months (rather than 9 months of post-release supervision as for other Class B1 through E offenses).

Class F through I felonies

For offenses committed *on or after* Dec. 1, 2011 (under [2011 N.C. Sess. Law 192](#)), the maximum sentence of imprisonment is 120% of the applicable minimum, plus 9 months (the same as for other Class F through I offenses). G.S. 15A-1340.17(d). The defendant is automatically released 9 months early and goes on post-release supervision

1. Some Class B1 through E offenses are subject to the 60-month sentence enhancement only if certain factual findings are made beyond the elements of the offense. For example, kidnapping is subject to sex offender registration only if committed against a minor by a person who is not the victim's parent. G.S. 14-208.6(1m). Because these additional facts increase a defendant's sentence beyond the statutory maximum for the offense, it may be necessary for a jury (rather than a judge) to find the additional facts or for the defendant to admit them. *See Blakely v. Washington*, 542 U.S. 296 (2004).

for 60 months (rather than 9 months of post-release supervision as for other Class F through I offenses). G.S. 15A-1368.2(c).

For offenses committed *before* Dec. 1, 2011, the sentencing rules are the same as for other Class F through I offenses. The maximum sentence of imprisonment is 120% of the minimum; there is no post-release supervision.

Conditions of Probation and Post-Release Supervision

Residence restrictions

If the offense involves evidence of sexual abuse of a minor, the defendant may not reside in a household with any minor child during any period of probation or post-release supervision. G.S. 15A-1343(b2)(4) (probation); G.S. 15A-1368.4(b1)(4) (post-release supervision). The courts have held that this probation condition does not violate a person's constitutional right to parent and care for his or her minor child. *See also State v. Strickland*, 169 N.C. App. 193 (2005). Visiting a minor child does not violate the statutory residence restrictions. *See State v. Crowder*, 208 N.C. App. 723 (2010); *cf. State v. Tenant*, 141 N.C. App. 524 (2000) (upholding revocation of probation for contact with victim of offense in violation of probation condition prohibiting contact).

If the offense involves evidence of physical or mental abuse of a minor, the defendant may not reside in a household with any minor child during any period of probation and post-release supervision *unless* the court makes findings allowing residence with a minor child. G.S. 15A-1343(b2)(5) (probation); G.S. 15A-1368.4(b1)(5) (post-release supervision).

Note: The statutory residence restrictions depend on whether the offense involves sexual, physical, or mental abuse of a minor; they do not depend on whether the offense is subject to sex offender registration. Additional residence restrictions may apply to a person subject to sex offender registration, whether or not the person is on probation, discussed below under Additional Restrictions: Residence Restrictions.

Other restrictions

Several other conditions, listed in G.S. 15A-1343(b2) (probation) and 15A-1368.4(b1) (post-release supervision), apply if the offense is subject to sex offender registration *or* involved physical, mental, or sexual abuse of a minor, including:

- not communicate with, be in the presence of, or be found on the premises of the victim;
- submit at reasonable times to warrantless searches by the person's probation officer;
- participate in evaluation and treatment as ordered by the court; and
- submit to satellite monitoring as required by the satellite monitoring statutes (discussed below under Satellite Monitoring).

A person convicted of an offense subject to sex offender registration may not be placed on unsupervised probation. G.S. 15A-1343(b2).

Effect of Violations of Probation and Post-Release Supervision

Restrictions on prehearing release for probation violations

Prehearing release restrictions apply to probationers who (a) are arrested for a violation of probation and (b) have been convicted at any time of an offense subject to sex offender registration requirements (or that would have been subject to registration but for the effective date of the registration requirements). The current probation need not be for an offense subject to sex offender registration. G.S. 15A-1345(b1).

If there is insufficient information about whether the probationer poses a danger, the magistrate or other judicial official holding the initial appearance must delay setting prehearing release conditions. Denial of release for this reason may last up to seven days. If the probationer is found to be a danger, the judicial official must deny release conditions pending the violation hearing. *Id.*²

Revocation of post-release supervision

If a person is on post-release supervision for an offense subject to sex offender registration, any violation is grounds for revocation of the person's post-release supervision and return to prison up to the time remaining on the person's maximum sentence. G.S. 15A-1368.3(c)(1). For offenses not subject to sex offender registration, revocation is permissible for specific violations only, such as commission of a new offense; for other violations, a person may be returned to prison for 90 days for the first two violations. *Id.*

Contempt for violation of post-release supervision

If an offense is subject to sex offender registration and post-release supervision, a willful refusal to accept post-release supervision or comply with the terms of post-release supervision may be punished as a contempt under G.S. 5A-11, with a sentence of imprisonment of up to thirty days. G.S. 15A-1368.2(b). The Post-Release Supervision and Parole Commission is authorized to conduct contempt proceedings for such a violation in accordance with the requirements for plenary contempt proceedings under G.S. 5A-15.³

A person who is imprisoned for contempt under the above provisions is not entitled to credit for time served against the sentence for which the person is subject to post-release supervision. If a person refuses post-release supervision and is not released for that reason, post-release supervision is tolled—that is, the person is still subject to the applicable period of post-release supervision. G.S. 15A-1368.2(b).

The above provisions became effective June 27, 2011, and appear to apply to offenses committed before or after the effective date if the person is on post-release supervision and commits a violation on or after that date. [2011 N.C. Sess. Law 307](#).

Parole

Effective for parole reviews on or after October 1, 2015, G.S. 15A-1371(b)(5) requires parole review every second year instead of every year for inmates convicted of sexually violent offenses. [2015 N.C. Sess. Law 228](#). G.S. 15A-1371(b) has been repealed, but it still applies to sentences for offenses that occurred before October 1, 1994.

Sex Offender Registration

There are two sex offender registration programs. One, which is referred to here as the regular registration program, covers offenses designated as reportable convictions. G.S. 14-208.6(4). The other, referred to here as the

2. Generally, if a preliminary hearing on a probation violation is not held within seven working days of arrest, an in-custody probationer must be released to continue on probation pending a hearing; however, probationers subject to sex offender registration are required to be held until the final violation hearing if they have been denied release on the ground of dangerousness. G.S. 15A-1345(c). In cases in which a preliminary hearing is not timely held, continued detention may conflict with due process principles, which require that probationers be afforded a preliminary hearing "as promptly as convenient after arrest." *Morrissey v. Brewer*, 408 U.S. 471, 485 (1972) (parolees); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (applying principle to probationers).

3. In plenary contempt proceedings, an indigent respondent is entitled to appointed counsel. See G.S. 7A-451(a)(1) (providing for the right to appointed counsel if imprisonment is likely to be imposed); *Hammock v. Bencini*, 98 N.C. App. 510 (1990) (recognizing right to appointed counsel for criminal contempt if imprisonment is likely to be imposed); *McBride v. McBride*, 334 N.C. 124 (1993) (recognizing same right for civil contempt).

aggravated registration program, covers reportable convictions if the offense is an aggravated offense (G.S. 14-208.6(1a)), the person is a recidivist (G.S. 14-208.6(2b)), or the person is found to be a sexually violent predator (G.S. 14-208.6(6)). G.S. 14-208.20 through G.S. 14-208.24.

To be considered an aggravated offense, the offense must have been committed on or after October 1, 2001. To qualify as a recidivist, at least one of the offender's convictions must have been committed on or after October 1, 2001. [2001 N.C. Sess. Law 373](#).

Period of Registration

Regular registration period

Generally, registration is for a minimum of ten years and a maximum of 30 years. G.S. 14-208.6A. A person may petition to terminate registration after ten years if he or she meets the requirements in G.S. 14-208.12A.⁴

Aggravated registration period

Registration is for life. G.S. 14-208.23. Registration terminates only if the conviction is reversed, vacated, or set aside or an unconditional pardon of innocence is granted. G.S. 14-208.6C.

Registration Requirements

Regular requirements

The principal registration requirements are as follows. Unless provided otherwise, a violation of any registration requirement is a Class F felony. G.S. 14-208.11. Registration requirements applicable to particular activities, such as reporting enrollment as a student and providing online identifiers, are described in the parts of this paper discussing those activities.

- A North Carolina resident must initially register with the local sheriff within statutory time limits following conviction or release from imprisonment. G.S. 14-208.7(a). Nonresident students and workers also must register. G.S. 14-208.7(a1). The person's address, photo, and offense are publicly accessible on <http://sexoffender.ncsbi.gov/>.
- A registrant must periodically re-verify the registration information in person at the sheriff's office. People on the regular registration program must re-verify at the end of the first year of registration and every six months thereafter. G.S. 14-208.9A.
- A registrant must provide updated information in person, such as any change of address, within specified time periods. G.S. 14-208.9; *see also* G.S. 14-208.8A (requiring that registrant give notice of employment requiring temporary residence in another county).
- A registrant must appear in person and provide an updated photograph of himself or herself to the sheriff on request. A violation is a Class 1 misdemeanor. G.S. 14-208.9A(c).

4. The petition procedure applies to defendants still required to register on or after December 1, 2006. For defendants whose ten-year registration period expired before December 1, 2006, their registration obligation automatically terminated without the filing of a petition. The meaning of the 30-year registration provisions is not entirely clear. In my opinion, they establish a 30-year maximum. *See* G.S. 14-208.6A (stating that General Assembly's objective is to establish 30-year registration requirement); G.S. 14-208.12A (authorizing petition to terminate 30-year registration requirement after ten years). *But cf.* G.S. 14-208.7(a) (stating that registration must be maintained for at least 30 years unless person successfully petitions to shorten registration period). In my opinion, the 30-year maximum applies to any person still required to register under the regular registration program on or after December 1, 2008, when the 30-year maximum was adopted. [2008 N.C. Sess. Law 117](#).

Aggravated registration requirements

The registration requirements are largely the same as for people on the regular registration program except that people on the aggravated registration program must re-verify registration information in person at the sheriff's office every 90 days. G.S. 14-208.23; *see also* G.S. 14-208.22 (describing additional information that registrant must provide, such as documentation of any treatment for any mental abnormality or personality disorder).

Satellite Monitoring

Satellite monitoring applies to offenders with a reportable conviction who: (1) commit a reportable offense on or after August 16, 2006; (2) are sentenced to an intermediate punishment on or after August 16, 2006; (3) are released from prison by parole or post-release supervision on or after August 16, 2006; or (4) complete a sentence on or after August 16, 2006, and are not on post-release supervision or parole. [2006 N.C. Sess. Law 247 sec. 15\(l\)](#).

Period of Monitoring

Monitoring during period of registration

A person may be required by the sentencing judge to submit to satellite monitoring for up to the period of registration or for a shorter period, such as the period of any probationary sentence, if (a) the person is subject to the regular registration program, (b) the offense of conviction involves physical, mental, or sexual abuse of a minor, and (c) the person requires the highest level of monitoring. *See* G.S. 14-208.40(a)(2). No statute specifically addresses the issue, but a person may be able to make a motion to the court to modify such a requirement. *See generally* G.S. 15A-1344(a) (authorizing court to modify probation).

Lifetime monitoring

A person who is subject to lifetime sex offender registration—that is, a person who has been convicted of an aggravated offense, is a recidivist, or has been found to be a sexually violent predator—is automatically subject to lifetime satellite monitoring. A person convicted of a violation of G.S. 14-27.23 (rape of a child by an adult) or G.S. 14-27.28 (sexual offense against a child by an adult) is also subject to lifetime satellite monitoring.⁵ A person may petition the Post-Release Supervision and Parole Commission for termination of lifetime satellite monitoring if he or she meets the requirements of G.S. 14-208.43.

Violations of Monitoring Requirements

The following violations of satellite monitoring requirements are subject to the indicated punishments. They apply whether the person is subject to the regular or lifetime monitoring program:

- Failing to enroll, a Class F felony. G.S. 14-208.44(a).
- Tampering with, removing, vandalizing, or otherwise interfering with a satellite monitoring device, a Class E felony. G.S. 14-208.44(b).
- Failing to provide necessary information to the Division of Adult Correction or failing to cooperate with Division of Adult Correction guidelines and regulations, a Class 1 misdemeanor. G.S. 14-208.44(c).

5. For offenses committed before Dec. 1, 2015, these statutes were codified as G.S. 14-27.2A and G.S. 14-27.4A. [2015 N.C. Sess. Law 181](#)). For these offenses, a person is also subject to lifetime registration if the offense is an aggravated offense, the person is a recidivist, or the person is found to be a sexually violent predator.

Additional Restrictions

Unless otherwise noted, the following restrictions apply to all offenses subject to sex offender registration.

Residence Restrictions

Distance restrictions

A person subject to sex offender registration may not knowingly reside within 1,000 feet of a school or child care center.⁶ G.S. 14-208.16. A violation is a Class G felony. A violation does not occur if either of the following applies:

- Ownership or use of the nearby property changed after the registrant established residence within the meaning of G.S. 14-208.16(d).
- The registrant established residence within the meaning of G.S. 14-208.16(d) before August 16, 2006. [2013 N.C. Sess. Law 28](#).

These restrictions do not prohibit a person subject to sex offender registration from obtaining visitation rights for a minor child conceived as a result of the offense. *See Bobbitt v. Eizenga*, 215 N.C. App. 378 (2011).

Federal housing restrictions

Federal law bars a person from living in federally assisted housing if subject to a lifetime registration requirement under a state sex offender registration program. 42 U.S.C. 13663.

Homelessness

The inability of a person subject to registration to obtain a suitable place to live, resulting in homelessness, is not a basis for revoking probation. *See State v. Tolbert*, 221 N.C. App. 650 (2012); *State v. Askew*, 221 N.C. App. 659 (2012). A homeless person must notify the sheriff, as part of registration obligations, of changes in his or her residence, even if “a homeless shelter, a location under a bridge or some other place.” *State v. Worley*, 198 N.C. App. 329, 338 (2009); *see also* Jamie Markham, [Sex Offender Case Law Update \(Part II\)](#), N.C. Crim. L., UNC Sch. of Gov’t Blog (July 16, 2009).

Premises Restrictions

Generally

G.S. 14-208.18 prohibits a person from knowingly being at the following locations if the person is subject to sex offender registration under the circumstances described below:

1. on the premises of any place intended primarily for the use, care, or supervision of minors;
2. 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;
3. at any place where minors frequently congregate, including libraries, arcades, amusement parks, recreation parks, and swimming pools, when minors are present; and
4. the State Fairgrounds, Western North Carolina Agricultural Center grounds, and other fairgrounds for agricultural fairs when such fairs are being conducted.

6. Effective for people required to register on or after June 24, 2014, the term “child care center” in G.S. 14-208.16(b) includes a permanent location of an organized Boys and Girls Club of America; the revised definition does not apply to a person who established residence within the meaning of G.S. 14-208.16(d) before June 24, 2014. *See* [2014 N.C. Sess. Law 21](#).

G.S. 14-208.18 contains limited exceptions, such as to vote. A violation is a Class H felony.

In *Doe v. Cooper*, 842 F.3d 833 (4th Cir. 2016), the Fourth Circuit held that the previous version of the second restriction was unconstitutionally overbroad in violation of the First Amendment and that the previous version of the third restriction was unconstitutionally vague. The court enjoined enforcement. Effective for offenses committed on or after September 1, 2016, [2016 N.C. Sess. L. 102](#) (H 1021) revised the premises restrictions to address the ruling; the above list incorporates the revisions.

Under the revised law, the premises restrictions in nos. 1, 3, and 4 apply if the person is required to register for any of the following offenses: an offense under G.S. Ch. 14, Art. 7B, including any degree of rape or sexual offense and misdemeanor sexual battery; a federal offense or offense in another state that is substantially similar to an offense in Art. 7B (effective for violations of G.S. 14-208.18 on or after December 1, 2015, under [2015 N.C. Sess. Law 62](#)); or an offense that involved a victim under 18 (was, under 16 for offenses committed before September 1, 2016), including indecent liberties under G.S. 14-202.1. The premises restriction in no. 2 applies to the following offenses: an offense under G.S. Ch. 14, Art. 7B or a substantially similar federal offense or offense in another state if a finding has been made in any proceeding that the person presents or may present a danger to minors under 18; and an offense that involved a victim under 18. For a further discussion of the changes, see Jamie Markham, [Sex Offender Premises Restrictions Revised in Response to Doe v. Cooper](#), N.C. Crim. L., UNC Sch. of Gov't Blog (Jul. 28, 2016).

Ordinances

Localities may have adopted ordinances imposing additional premises restrictions. See *Standley v. Town of Woodfin*, 362 N.C. 328 (2008) (finding that local ordinance prohibiting people registered as sex offenders from entering town's public parks did not violate constitutional right to intrastate travel), *aff'g*, 186 N.C. App. 134 (2007). A violation of a local ordinance is a Class 3 misdemeanor. G.S. 14-4.

Employment Restrictions

A person subject to sex offender registration may not engage in various types of employment:

- A registrant may not work or volunteer at a place where a minor is present if he or she instructs, supervises, or cares for a minor. A violation is a Class F felony. G.S. 14-208.17.
- A registrant may not provide babysitting services as described in G.S. 14-321.1. A violation is a Class 1 misdemeanor.
- A registrant may not drive a commercial motor vehicle that requires a P or S endorsement. G.S. 14-208.19A. It is a Class F felony for a person to drive a commercial passenger vehicle or school bus if the person does not have a P or S endorsement because he or she is subject to sex offender registration. G.S. 20-27.1. It is a Class I felony for an applicant for a commercial driver's license with a P or S endorsement to make a false affidavit or knowingly swear or affirm that he or she is not subject to sex offender registration. G.S. 20-37.14A.

People subject to sex offender registration are also barred from obtaining licenses for other types of employment. See, e.g., G.S. 131E-159(h) (barring issuance or renewal of emergency medical services credentials). For additional information, consult [C-CAT](#).

Education Restrictions

A local board of education may expel a student who is subject to the premises restrictions in G.S. 14-208.18, described above under Additional Restrictions: Premises Restrictions. G.S. 115C-390.11.

As part of providing registration information to the sheriff, a person subject to sex offender registration must provide updated information, in person and within specified time periods, about enrollment as a student at a post-

secondary public or private educational institution or employment at an institution of higher education. G.S. 14-208.9(c), (d). Effective December 1, 2015, the sheriff must provide on request of an institution of higher education a report of registry information for a registrant who intends to become a student or employee at the institution. G.S. 14-208.15(c) (enacted by [2015 N.C. Sess. Law 44](#)).

Local boards of education must require employers with whom it contracts to conduct an annual check of the state and national sex offender registries for employees who have direct interaction with students. The contract's terms must prohibit employees who are on a registry from having direct interaction with students. G.S. 115C-332.1; *see also* G.S. 115C-332 (requiring local education boards to adopt policies on criminal record checks for their employees).

Internet Restrictions

G.S. 14-202.5 prohibits a sex offender subject to sex offender registration from accessing or maintaining a personal web page on a commercial social networking website if the sex offender knows the site permits minors to become members. The statute does not define the term "sex offender," which may be narrower than registrants generally. A violation is a Class I felony. The court of appeals in *State v. Packingham*, 229 N.C. App. 293 (2013), found this statute facially unconstitutional. The state supreme court reversed the court of appeals' decision and upheld the statute's constitutionality. 368 N.C. 380 (2015). The U.S. Supreme Court has granted review of the state supreme court's decision. *Packingham v. North Carolina*, ___ U.S. ___, 137 S. Ct. 368 (2016); *see also Does v. Cooper*, 148 F. Supp. 3d 477 (M.D.N.C. 2015) (discussing importance of tailoring of sex offender internet restrictions and favorably citing court of appeals' opinion decision and dissenting opinion in supreme court in *Packingham*), *aff'd*, 842 F.3d 833 (4th Cir. 2016).

As part of providing registration information to the sheriff, a person subject to sex offender registration must provide online identifiers and changes in online identifiers, but this information is not publicly accessible. G.S. 14-208.7(b)(7), G.S. 14-208.9(e), G.S. 14-208.9A(a)(3). (The court of appeals observed in *Packingham* that this restriction is more precisely targeted to illicit communication than the above ban on internet usage.) A violation is a Class F felony. G.S. 14-208.11.

Contact Restrictions

At the time of sentencing for any offense subject to sex offender registration, the judge may enter a permanent no-contact order prohibiting the defendant from having any contact with the victim of the offense. A violation of a no-contact order is a Class A1 misdemeanor. G.S. 15A-1340.50; *see also State v. Hunt*, 221 N.C. App. 48 (2012) (upholding constitutionality). G.S. 15A-1340.50 protects the victim of the offense, not third parties, and a judge may not prohibit contact with third parties for their protection; however, on appropriate findings, a judge may prohibit the defendant from indirectly contacting the victim through specifically identified third parties, such as the victim's family. *See State v. Barnett*, ___ N.C. ___, 794 S.E.2d 306 (2016), *rev'g in part*, ___ N.C. App. ___, 784 S.E.2d 188 (2016); John Rubin, [Interpreting Sex Offender Consequence Laws: Contact with Minors](#), N.C. Crim. L., UNC Sch. of Gov't Blog (Feb. 2, 2016); *cf. State v. Mastor*, ___ N.C. App. ___, 777 S.E.2d 516 (2015) (upholding finding of criminal contempt against defendant for violating consent order, which prohibited defendant from allowing convicted sex offender to be in presence of defendant's children).

Ch. 50D (G.S. 50D-1 through G.S. 50D-11), added by [2015 N.C. Sess. Law 91](#), authorizes a civil action for a permanent no-contact order by the victim against a person convicted of an offense subject to sex offender registration. This remedy is available if the victim did not seek a permanent no-contact order at sentencing under G.S. 15A-1340.50. G.S. 50D-5(a)(2). A violation is punishable by contempt or as a Class A1 misdemeanor.

Record Change Restrictions

Expunctions

A person who has been convicted of an offense subject to sex offender registration is not eligible for an expunction under G.S. 15A-145.4 (felonies committed before age 18) or G.S. 15A-145.5 (older felonies and misdemeanors), whether or not the person still must register. A person who has been convicted of a misdemeanor subject to sex offender registration, if committed before age 18, may be eligible for an expunction under G.S. 15A-145. See [Relief from a Criminal Conviction: Frequently Asked Questions](#) (Offenses Subject to Sex Offender Registration) (UNC School of Government).

Name change

A person subject to sex offender registration may not obtain a name change. G.S. 101-6.