

Welcome to the 2023 First Quarter SBI SOR Unit Webinar January 24, 2023



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Disclaimer:

This presentation is not to be construed as creating an attorney-client relationship and should not be relied upon as legal advice. This training is considered informational in nature and you should consult with the legal advisor for your agency or the local District Attorney's office regarding specific offenders and related legal matters.



Agenda

- Legal Corner--update on case law or statutory changes
 - State v. Fuller (NC Supreme Court March 12, 2021)
 - Convictions Requiring Judicial Findings Before Registration is Required
 - State v. Lamp (update from NC Supreme Court December 16, 2022)
 - Statutory Changes (Session Law 2021-182)
- International Travel Review and NC Duty to Register Addendum for Notice of International Travel
- Feedback, questions and topics for future webinars
- 2nd Quarter Topics



Legal Corner

- At each webinar, new appellate decisions and new or amended laws will be discussed

State v. Fuller

376 N.C. 862 (2021)

- In September 2018, Defendant was indicted on 3 counts of secret peeping in Wake County.
- In October 2018, Defendant pled guilty to 1 count of secret peeping.
- A hearing was held, and the sentencing court ordered that the defendant register for a period of 30 years on the NC Sex Offender and Public Protection Registry.
- Defendant appealed to NC Court of Appeals who upheld the order requiring registration.



Review:

- Why did the trial court have to enter an order requiring registration? In other words, why wasn't the requirement to register automatically upon conviction?
- Certain convictions also require a court to enter an order that the person is required to register based upon additional considerations.
 - For example: secret peeping



State v. Fuller

- Review of Secret Peeping registration provisions:

A conviction of Secret Peeping is a registerable offense if:

- It is a final conviction for a violation of G.S. 14-202(d), (e), (f), (g), or (h), (all of which are the secret peeping felony offenses) or a second or subsequent conviction for a violation of G.S. 14-202(a), (a1), or (c) (misdemeanor offenses) and only if the court sentencing the individual issues an order pursuant to G.S. 14-202(l) requiring the individual to register.



State v. Fuller

- Review of Secret Peeping registration provisions:
- 14-202(l) provides that the sentencing court shall consider
 1. Whether the person is a danger to the community
 - AND**
 2. Whether requiring the person to register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of that Article as stated in G.S. 14-208.5.

If the sentencing court rules that the person is a danger to the community and that the person shall register, then an order shall be entered requiring the person to register.



State v. Fuller

Facts presented

- Defendant lived with the Smith family that he had known for 10 years.
- One day, Mr. Smith was watching tv in his living room. He stepped away and when he returned, he saw on image on his tv of his wife undressing. Ms. Smith was not at home, and it didn't appear to be a live feed.
- Defendant was watching the video.
- Mr. Smith confronted defendant and ordered him to leave the house.



State v. Fuller

Facts presented

- Apex PD investigated and consensually searched defendant's phone and computer.
- Defendant had placed a camera in the Smith's home and moved it from the bedroom to the bathroom in order to obtain images of Ms. Smith.
- Defendant was questioned and admitted to using the camera to obtain images of Ms. Smith because he "had developed feelings for [her] at some point in the course of their friendship."



State v. Fuller

Question on Appeal

- What evidence is necessary to establish that a person convicted of secret peeping is a danger to the community?
- Present danger to the community
- Based on conduct in the recent past there is a reasonable probability of similar conduct in the near future



State v. Fuller

Ruling

- The Static-99 assessment is not dispositive of whether a person is a danger to the community
- Considerations of the likelihood of recidivism is not dispositive of whether the person is a danger to the community
- Court should consider all evidence presented



State v. Fuller

Holding

- The trial court properly held that defendant was a danger to the community based on these considerations:
 1. defendant's willingness to take advantage of a close personal relationship
 2. defendant's use and execution of a sophisticated scheme intended to avoid detection
 3. the extended time in which defendant deployed the hidden camera and obtained images of the victim
 4. defendant's ability and decision to repeatedly invade the victim's privacy
 5. defendant's ability and willingness to cause significant and lasting emotional harm to the victim
 6. the ease in which defendant could commit similar crimes in the future
 7. defendant's lack of remorse (in this case this was not considered by the NC Supreme Court)



Convictions requiring additional findings before registration

- Aiding and Abetting a reportable offense: only if the sentencing court finds that registration furthers the purposes of the registry
- Unlawful sale, surrender or purchase of a minor (NCGS 14-43.14) only if the court issues an order per NCGS 14.43.14 (e) which requires the court find the person is a danger to the community and that registration furthers the purposes of the registry



Review: Purposes of the Registry NCGS 14-208.5

- To assist law enforcement agencies' efforts to protect communities by requiring persons who are convicted of sex offenses or of certain other offenses committed against minors to register with law enforcement agencies,
- To require the exchange of relevant information about those offenders among law enforcement agencies, and
- To authorize the access to necessary and relevant information about those offenders.



Legal Corner continued

- State v. Lamp- we discussed this case last year when it was heard in the NC Court of Appeals
- The defendant appealed to the NC Supreme Court who issued its opinion on December 16, 2022.

State v. Lamp

- In 1999, Defendant was charged with second-degree rape but pled guilty to second-degree kidnapping.
- The sentencing court found that the offense was a reportable conviction involving a minor under N.C. Gen. Stat. § 14-208.6 and ordered that Lamp register as a sex offender.
- * review Kidnapping, Abduction of Children and Felonious Restraint are offenses against a minor that require registration.
- Effective date of April 1, 1998
- When the defendant is not the minor's parent (biological parent or adoptive parent with parental rights)



State v. Lamp

- On June 25, 2019, defendant submitted a Sex Offender Change of Information Form to the Iredell County Sheriff's Office.
- Defendant indicated on the form that his address was 1010 Foxcroft Lane, **Building 604**, Apartment A6 from June 21, 2019 to June 25, 2019.
- Prior to that time, defendant had been homeless. On the same date he updated his info to indicate he had been living at the Foxcroft lane address, he said that again he was homeless.

State v. Lamp

Evidence at Trial

- The property manager testified that defendant was not a tenant, but that she saw him at **Building 602**, Apartment A6 on one occasion.
- On that occasion, she went to that apartment and defendant answered the door. He was not on the lease. The manager notified defendant that eviction process had been undertaken and the locks would be changed the following day.
- Defendant said he knew and would be gone by then.



State v. Lamp

Evidence at Trial

- On the following day, a deputy visited Building 604, Apartment A6 to verify that defendant had lived there from June 19-25, 2019.
- A gentlemen answered the door and stated that defendant did not live there.

State v. Lamp

- Defendant was indicted for submitting false information to the Iredell County Sheriff's Office concerning his address for the date of June 25, 2019 in violation of 14-208.11(a)(4) and for obtaining the status of habitual felon.



State v. Lamp

Statute

§ 14-208.11. Failure to register; falsification of verification notice; failure to return verification form; order for arrest.

- (a) A person required by this Article to register who willfully does any of the following is guilty of a Class F felony:
 - (4) Forges or submits under false pretenses the information or verification notices required under this Article.

State v. Lamp

A person is guilty of submitting false information per §14-208.11 (a)(4) if:

The person stands convicted of a sexual offense requiring him to register as a sex offender on the NC Sex Offender and Public Registry

AND

Submits information under false pretenses to the sex offender registry

State v. Lamp

NC Court of Appeals' analysis

- A false pretense had been defined as an untrue representation calculated and intended to deceive.
- Deceptive intent is seldom proven by direct evidence.
- When a person is required to register as a sex offender, providing an incorrect address on the forms used by the Sheriff's Office to record and monitor compliance with the requirement to register is a misrepresentation that constitutes circumstantial evidence of deceptive intent, as well as the mental state of willfulness.



State v. Lamp

- The Court of Appeals upheld the denial of Defendant's motion to suppress and upheld defendant's conviction.
- Defendant then appealed to the NC Supreme Court and the following is that Court's opinion reversing the decision of the Court of Appeals which in essence reverses the defendant's conviction.



Defendant's argument on appeal at NC Supreme Court

- Defendant argues that if a person moves from address A to address B, their "new" address is B. But, before they report this change to the sheriff's office within three business days, they move again, to address C. Defendant argues that only address C is a "new" address, and that address B is an "old" address that does not need to be reported.
- In response, the State argues that addresses B and C are both "new" addresses, and both must be reported, and the NC Supreme Court agrees but still overturns the conviction.



NC Supreme Court Holding: conviction overturned

- We agree with defendant that the evidence presented at trial is insufficient to support an inference of deceptive intent.
- The heightened level of intent required by the statute is no accident. The General Assembly increased the required level of intent so that only "willful" registration violations were criminalized. The word "willful," when used in a criminal statute, "means something more than an intention to do a thing."

Legal Corner- Statutory changes (new laws or amendments)



Session Law 2021-180- amendments

- Changes several statutes to address the split of Adult Corrections from the NC Department of Public Safety.
- NCGS §14-208.22 Additional information for Sexually Violent Predators: **(Effective January 1, 2023)**
- (c) ~~The Division of Adult Correction and Juvenile Justice of the Department of Public Safety~~ The Division of Prisons of the Department of Adult Correction shall also obtain the additional information set out in subsection (a) of this section and shall include this information in the prerelease notice forwarded to the sheriff or other appropriate law enforcement agency.

International Travel Review



International Megan's Law

- On February 8, 2016, President Barack Obama signed the International Megan's Law to Prevent Child Exploitation and Other Sexual Crimes through Advanced Notification of Traveling Sex Offenders, more commonly referred to as “International Megan’s Law” (IML).



34 U.S.C. §20914 (a)(7): Travel Outside of the United States

(a) The sex offender shall provide:

- (7) Information relating to intended travel of the sex offender outside the United States including:
 - Any anticipated dates and places of departure, arrival, or return
 - Carrier and flight numbers for air travel
 - Destination country and address or other contact information therein
 - Means and purpose of travel
 - Any other itinerary or other travel-related information required by the Attorney General



18 U.S.C. §2250(a)(2)(B): Fail to Register

(b) International travel reporting violations. Whoever—

(1) is required to register under the Sex Offender Registration and Notification Act (42 U.S.C. 16901 et seq.);

(2) knowingly fails to provide information required by the Sex Offender Registration and Notification Act relating to intended travel in foreign commerce; and

(3) engages or attempts to engage in the intended travel in foreign commerce;

shall be fined under this title, imprisoned not more than 10 years, or both.

IMPORTANT TO NOTE

Reporting travel does not authorize entry into the destination country. If one wishes to learn more about entry requirements in another country, one may contact the local embassy of one's destination country prior to one's departure to determine whether entry will be authorized upon one's arrival.



Who and When to Notify When Traveling

- The IML and the relevant Sex Offender Registration and Notification Act (SORNA) guidelines require that **all** registered sex offenders report international travel to their respective sex offender registry at least 21 days prior to departure from the United States. Emergency travel must be reported as soon as travel is scheduled.



Sex Offender International Travel Form

<https://app.alea.gov/Documents/Forms/SOForm-InternationalTravel.pdf>



Date Submitted:

Notification of International Travel of Sex Offender

Subject Information

Last Name: First Name: Middle Name:

Aliases (if any):

Date of Birth: Sex: FBI # (internal use only):

Citizenship:

Passport #: Country of Issuance:

Travel Information

Purpose of Travel: Means of Travel:

Date Departing U.S.: Departure Location:

Date Returning to U.S.: Arrival Location:

Destination Country: Address:

Criminal Record

Date(s) of Conviction: City and State or Jurisdiction of Conviction:

Sex Offense(s) of which Convicted:

Victim information:

Age/gender/relationship:

Jurisdiction(s) of Current Registry:

Other

Contact information in Destination Country:

Other information, (i.e. itinerary; visa information; explain "other" responses above):

Submitter's Information (internal use only)

Name: Agency:

Phone #: E-mail:

Please send to IOD.NSOTC@usdoj.gov
With Subject : Sex Offender Travel Notification

V1.0 (Feb 2012)

Instructions and Clarifications for the Notification of International Travel of Sex Offender Form

Note: All blocks with drop-down menus also allow text entry. If the answer you need is not in the drop-down menu, please type in the correct information. If you choose "Other" please provide that information in the "Other Information" box

- Aliases - should include nicknames, aliases, maiden or married names, tribal and ethnic names by which they are commonly known (as opposed to sacred), pseudonyms
- Date of Birth - Actual DOB. Any "additional" dates of birth should be included in "Other Information"
- FBI # - if available. This is for U.S. law enforcement purposes only, for example, to better identify the offender in NCIC, and will not be sent internationally.
- Citizenship - country or countries of citizenship
- Passport # - also can be used for Passport cards
- Purpose of Travel - drop-down menu includes Business, Vacation, Military, Relocation, Deportation, and Other. Like all drop-down menus, you can type additional options.
- Means of Travel - drop-down menu includes Air, Bus, Car, Ship, Train, and Other. Like all drop-down menus, you can type additional options.
- Departure Location - If from a specific airport, port, or bus or train station, please specify, with city and state, otherwise city and state.
- Date Returning to U.S. - when known
- Arrival Location - Upon returning to U.S., if to a specific airport, port, or bus or train station, please specify, with city and state, otherwise city and state.
- Address - If available, within destination country. Please be as specific as possible. If you need more space, use the "Other Information" box.
- Date(s) of Conviction: Only include convictions for which the offender needs to register
- City and State or Jurisdiction of Conviction: Includes state, local, tribal, territorial, foreign, federal, military, and any other courts of conviction.
- Sex Offense(s) of which Convicted: Include crime name rather than just the code number (e.g., Sexual Abuse rather than 18 U.S.C. §2242)
- Victim Information: when available, please include age
- Jurisdiction(s) of Current Registry: If multiple (residence, employment, school) please include all
- Contact information in Destination Country - phone numbers, email address, geographic address
- Other information - any specifics about itinerary (airline & flight number, ship name, date/times of arrival and departure, multiple stops or layovers); visa information; explanations for any "other" responses in drop-down menus; anything that needed more space than the above boxes allowed
- Submitter's information - for internal use only if the U.S. Marshals or INTERPOL (US) needs more information, and will not be sent internationally

V1.0 (Feb 2012)



NC update

- NC SBI has created an addendum to the Duty to Register form to include the specific notice that a registered sex offender must make regarding international travel.

Addendum to Duty to Register

OFFENDER ACKNOWLEDGEMENT

NOTICE: Addendum to Duty to Register (January 2023)

Instructions

- Agencies with responsibilities under North Carolina General Statutes, Article 27A, Sex Offender and Public Protection Registration Programs may choose to use this document to assist the agency with their requirements in this area.
- This form may be used in conjunction with CIIS - 59, North Carolina Sex Offender Registration Card.
- Read carefully. Print legibly.

TO BE COMPLETED BY AGENCY

Date: _____ NC SRN #: _____ Agency Official signature _____ Copy to the offender _____	Notifying Agency: _____ Offender Name: _____ Agency official Signature: _____ Yes or No _____
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MUST BE INITIALED BY THE OFFENDER.

_____ I understand that I must inform the Sheriff in the County in which I am registered 21 days in advance if I intend to travel outside of the United States (per federal law 34 U.S.C. § 20914(a)(7) and 18 U.S.C. 2250(a)(2)(B))). Failure to do so may result in being criminally charged and prosecuted for a federal crime. If I take emergency travel, I must report that as soon as the travel is scheduled.

OFFENDER ACKNOWLEDGEMENT:

1. I have read and understand the rules outlined in this document regarding my duty to notify of international travel.
2. A copy of this document has been provided to me by the notifying agency.
3. I understand that I should not depend solely on this notice to meet my travel notice requirements.

TO BE COMPLETED BY OFFENDER

Print Name: _____
Signature: _____

North Carolina State Bureau of Investigation



Contact

- Joy Strickland jstrickland@ncsbi.gov
- SBI Sex Offender Unit sorhelp@ncsbi.gov

Coming Soon: Future Trainings

SORNA webinar on January 31, 2023 from 2:00pm-3:00pm.

NC SBI Webinar April 2023; July 2023 and October 2023

4th Annual NC SBI Managing the Sex Offender and Public Protection Registry Conference (anticipated holding in 2 locations in Fall 2023)????

