

Welcome to the 2021 First Quarter SBI SOR Unit Webinar



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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.

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Agenda

- Session Law 2020-83
 - Background regarding lawsuits
 - What the sheriffs are required to do
 - What must the offender do
 - What the District Attorneys are required to do
 - What does a Superior Court Judge have to do
 - What the SBI is required to do
 - Next Steps
- Postal Service Certified letter issue
- Questions
- 2nd Quarter Topics

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How did we get here?????

- Two civil lawsuits filed in Federal Court
- Second suit is a class action lawsuit including offenders who registered in NC for an out of state conviction prior to December 1, 2006
- Basis of the lawsuit is that these offenders should have had the opportunity for a judge to determine if they must register instead of the Sheriff's Office
- Judge ruled for Plaintiffs, case appealed and dismissed on appeal b/c of Session Law 2020-83

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Why offenders registered before 12/1/2006?

- When the registry was enacted, offenders from out of state only registered if they had a conviction from out of state that was substantially similar to a NC registerable offense (sexually violent offense or an offense against a minor)
- That changed in 2006

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What changed in 2006?

As of December 1, 2006, there were 2 ways in which a person moving to NC would be required to register:

1. For a substantially similar offense as described before
or
2. If the person moved to NC on or after December 1, 2006 and had a conviction that required registration.

This second category of people were not included in either of the lawsuits.

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Lawsuit

- Class of offenders challenged the requirement to register for a substantially similar determination made by a Sheriff's Office instead of at a hearing by a Judicial Official
- Constitutional Due Process claim

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New law: Session Law 2020-83

- Created a new statute 14-208.12B entitled: Registration Requirement review

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What are the Sheriffs required to do?

- Review the offender's criminal history and registry from out of state to determine if the person is required to register for an out of state or federal conviction
 - If the answer is no, does the person have a substantially similar offense to a NC sexually violent offense or an offense against a minor?
 - If yes, give notice to the offender that he/she can petition the court for a hearing

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Examples of Notice

- Cumberland County
- Mecklenburg County

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What must the offender do?

- Complete AOC petition for hearing
 - AOC CR 259 form
- File the petition for hearing in the county where he/she resides
- Serves the petition on the Sheriff and the District Attorney

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AOC CR 259

- <https://www.nccourts.gov/assets/documents/forms/cr259.pdf?By.VZ.C0JmzMYu3vFsSNDzrG5UywDK9d>

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What are the District Attorneys required to do?

- The District Attorney represents the State of NC at the registration review hearings
- Has the burden to prove by a preponderance of the evidence that the person is required to register in NC
- Must show that the person was convicted of an offense (either out of state or federal conviction) that if committed in NC would be substantially similar to a NC sexually violent offense or an offense against a minor

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What are Superior Court Judges required to do?

- If the judge determines the person's conviction is substantially similar to a NC sexually violent offense or offense against a minor, the judge orders the person to register in NC
- If the judge determines the person's conviction is NOT substantially similar to a NC sexually violent offense or offense against a minor, the judge prepares a written order indicating the person is not required to register. The DA and Sheriff should be provided with a copy of the order
- Order is on the AOC CR 259 form

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What is the SBI required to do?

- To notify offenders who are required to register for a substantially similar offense, that they have the right to have such a hearing.
- The SBI will need your help in identifying these persons as the registry only indicates registered for an out of state offense. We will coordinate with your offices to complete this task.

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Final Provisions

Requirement for Sheriffs to give notice under the new law only applies to offenders moving to NC after August 1, 2020

and

the hearing process only applies if the offender is registering for an out of state or federal offense that is substantially similar to NC sexually violent offense or offense against a minor

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Next Steps

- Will keep you posted if the new statute is challenged
- SBI will reach out to you determine which offenders who moved to NC after 12/1/2006 are registered for substantially similar convictions

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Postal Service- certified letters

- Some post offices are leaving the certified mail in the person's mailbox and not requiring a signature on the green card
- Why is this important? Service starts the time for the person to report to verify their info
- Speak to your legal advisor and/or DA to discuss options such as:
 - Calling the post office to ask if they will make an exception and serve these letters
 - Calling the offenders to determine if they have been served; document this phone call

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QUESTIONS?



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