

Welcome to the 2021 Second 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.



Agenda

- Record Retention of SOR records
- Offender reporting requirement when released from custody
- 1000-foot residential rule
- Session Law 2020-83
 - What the sheriffs are required to do
 - What the SBI is required to do
 - Next Steps
- Questions
- 3rd Quarter Topics

Sex Offender Record Retention Period

- NC records are governed by the NC Department of Natural and Cultural Resources; Division of Archives and Records
- Records maintained by the Sheriffs are generally governed by the Schedule labelled Local Government, County Sheriff's Office in:
STANDARD-8. PROGRAM OPERATIONAL RECORDS:
SHERIFF RECORDS, item # 84

Sex Offender Record Retention Period

84.	SEXUAL OFFENDER RECORDS Records concerning sexual offenders living within jurisdiction.	a) Destroy in office records of persons registered in the "Sex Offender and Public Protection Program" after court petition and review by the State; or after 30 years or length of court order, whichever is greater; or when individual is known dead. b) Destroy in office records of persons registered in the "Sexually Violent Predator Program" when individual is known dead or after 90 years.	Authority: G.S. § 14-208 Retention: G.S. § 14-208.6A
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Offender Reporting- custody release

- When does the offender have to report when being release from custody:
 - For initial registration
 - To update change of address after release from custody when already registered

Offender Reporting- custody release

Initial County Registration per NCGS 14-208.7

Resident offenders must register within three (3) business days of release from a penal institution or arrival in a county to live.

Offender Reporting – custody release

- Per 14-208.9
- Generally, have 3 business days to report change of address
- State v. Crockett, 368 N.C. 717 (2016)

Offender Reporting- custody release

14-208.11 (c) A person who is unable to meet the registration or verification requirements of this Article shall be deemed to have complied with its requirements if:

- (1) The person is incarcerated in, or is in the custody of, a local, State, private, or federal correctional facility,
- (2) The person notifies the official in charge of the facility of their status as a person with a legal obligation or requirement under this Article and
- (3) The person meets the registration or verification requirements of this Article no later than 10 days after release from confinement or custody.

Residency Restriction 14-208.16

A registered offender is prohibited from knowingly residing within 1,000 feet of the property on which any public or nonpublic **school** or **child care center** is located.

- “**School**” does not include home schools or institutions of higher education, such as colleges or universities.
- “**School**” does include any construction project designated for use as a public school if the governing body has notified the sheriffs with jurisdiction within 1,000 feet of the construction project of the public school.

Child care definition

- “**Child care center**” has the same definition as “child care facility” and also includes “Boys and Girls Clubs.”
- NCGS 110-86(3) Child care facility definition
- This prohibition does not apply to 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

Residency Restriction continued

- Changes in ownership or use of property within 1,000 feet of an offender's registered address which occur after the offender establishes residency will not result in a violation.

Residency Restriction continued

Residency is established when the offender:

- Purchases the residence or enters into a contract to purchase the residence.
- Enters into a written lease contract.
- Resides with an **immediate family member**. (child or sibling 18 years or older, parent, grandparent, legal guardian or spouse of the registrant)

Residency Restriction continued

- NOTE: The residency restriction does not apply to an offender who established residency at the registered address prior to August 16, 2006.



Residency Restriction continued

- The restriction surrounding the Boys and Girls Clubs of America does not apply to an offender who established residency prior to June 19, 2014.



Residency Restriction continued

- Pending Bill at General Assembly
 - Senate Bill 52 has proposed amendment to clarify measurement

For additional guidance see the Institute of government blog by Jamie Markham <https://nccriminallaw.sog.unc.edu/measure-1000-feet-sex-offender-residential-restriction/>

New law: Session Law 2020-83

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



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 yes, the person is required to register
 - 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

AOC CR 259

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

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 compete this task.

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

Next Steps

- This new statute has been challenged in a new lawsuit that has been recently filed
- SBI will reach out to you determine which offenders who moved to NC after 12/1/2006 are registered for substantially similar convictions



QUESTIONS



- Topics for next quarter

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