

Welcome to the 2023 Second Quarter SBI SOR Unit Webinar April 18, 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
- Premise Restrictions
 - Emergency Shelters
 - Churches
- Feedback, questions and topics for future webinars
- 3rd Quarter Topics



Legal Corner

- At each webinar, new appellate decisions and new or amended laws will be discussed.
- There are a couple of bills pending at the general assembly that may change some sex offender provisions. If they are enacted, we will include in the next webinar.

Question #1

- Are registered sex offenders allowed to stay at an emergency shelter in NC?
- There is no state statute that specifically says that a registered offender can't stay in an emergency shelter but there are laws in place that have to be considered . . .



What About Registered Sex Offenders in Emergency Shelters?

- Do the following restrictions apply?
 - Residential restrictions in N.C.G.S. § 14-208.16
 - Premise restrictions set forth in N.C.G.S. § 14-208.18
 - Work prohibitions in N.C.G.S. § 14-208.17
 - Probation or Parole conditions
- The answer is maybe.



What About Registered Sex Offenders in Emergency Shelters?

Residential restriction set forth in N.C.G.S. § 14-208.16

- The first question to be addressed is whether the temporary shelter is the person's "residence" at all.
- Second is there a defense to a violation? Possibly the defense of necessity.
- This should be discussed with the local District Attorney.



What About Registered Sex Offenders in Emergency Shelters?

Premise restriction set forth in N.C.G.S. § 14-208.18 (a)(1)

- Unlawful for any registered individual to be on the premises of any place intended primarily for the use, care, or supervision of minors (Schools, nurseries, childcare centers, playgrounds, children's museums, etc.)
- In an emergency situation, is a shelter (even if it is on the premises of a school) intended to be used primarily for the use, care, or supervision of a minors?
 - Many would argue no during the period of the emergency
 - As with residential restrictions already discussed, the defense of necessity may apply so discuss with the local District Attorney.



N.C.G.S. § 14-208.18 (a) (1) Sex offender unlawfully on premises.

Remember that the premises restrictions do not apply to all registered offenders.

- **Applies to Offenders convicted of:**

- An offense under Article 7B of Chapter 14 of the North Carolina General Statutes, any offense (federal or out-of-state) which is substantially similar to an Article 7B offense; or
- An offense where the victim was under the age of 18 years at the time of offense; or
- First, second, or third degree sexual exploitation of a minor (or substantially similar federal offenses or substantially similar offenses in another state), even if the victim in the case was not a minor (such as an undercover law enforcement officer posing as a minor).



Review: N.C.G.S. § 14-208.18 (a) (2)

Premise restrictions

- Unlawful for any registered individual to be within **300 feet** of any place intended 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 subdivision (1) of this subsection that are located in malls, shopping centers, or other property open to the general public.

N.C.G.S. § 14-208.18 (a) (2) Sex offender unlawfully on premises.

Remember that the premises restrictions do not apply to all registered offenders.

- **Applies to Offenders convicted of:**

- An offense under Article 7B of Chapter 14 of the North Carolina General Statutes, any offense (federal or out-of-state) which is substantially similar to an Article 7B offense **AND** a finding has been made in a criminal or civil proceeding that the person presents, or may present, a danger to minors under 18; or
- An offense where the victim was under the age of 18 years at the time of offense; or
- First, second, or third degree sexual exploitation of a minor (or substantially similar federal offenses or substantially similar offenses in another state), even if the victim in the case was not a minor (such as an undercover law enforcement officer posing as a minor).

What About Registered Sex Offenders in Emergency Shelters?

Work prohibitions in N.C.G.S. § 14-208.17

- Even if offenders are allowed in the shelter, it may violate [G.S. 14-208.17](#) for a registrant to work—with or without compensation—in any capacity where his/ her responsibilities or activities included **instruction, supervision, or care of minors**.



What About Registered Sex Offenders in Emergency Shelters?

Probation or Parole conditions

- Some offenders on **probation, parole, or post-release supervision** are subject to a condition of supervision that bars them from residing with or, being around minors.
- Being in a shelter with minors might violate the literal conditions of supervision.
- Offenders may wish to consult with their probation officers to get a clearer sense of how, if at all, the conditions will be enforced.
- However, a judge might not be reasonably satisfied that it was willful or without lawful excuse, depending on the nature of the underlying emergency. (this may be a defense)



What About Registered Sex Offenders in Emergency Shelters?

- <https://nccriminallaw.sog.unc.edu/sex-offenders-emergency-shelters/>



Review: Registered Sex Offenders in Emergency Shelters

Reminder that there is no North Carolina law that currently sets out any direct prohibition on a registered individual being in a shelter.

- However, as we have discussed, a registered individual must consider both of the following:
 - Residential restrictions in N.C.G.S. § 14-208.16
 - Premise restriction set forth in N.C.G.S. § 14-208.18
 - Work prohibitions in N.C.G.S. § 14-208.17
 - Probation or Parole conditions
- Consult with the Sheriff's office attorney, County Attorney or Local District Attorney



What About Registered Sex Offenders in Churches?

- There is NO statute that specifically lists churches as a place that a registered offender may not visit or be on those premises
- However, a registered individual must adhere to the following:
 - The premise restriction set forth in N.C.G.S. § 14-208.18(a)(2). (if applicable).



History of legal challenges

- 2009 Offender was charged in Chatham county for attending church. Superior Court Judge ruled that the premise restriction was an unconstitutional ban on the right to freedom religion.

State v. Fryou *244 N.C. App. 112 (2015).*

- In 2010, Fryou was convicted as a sex offender and registered
- On November 13, 2012, the defendant went to Banner Elk Presbyterian Church for a meeting with a pastor
 - This meeting occurred during church office hours
 - During those hours, the church operated a church preschool program in the same building as the pastor's office.

State v. Fryou

244 N.C. App. 112 (2015).

- Fryou admitted to police that he visited the church
- Fryou was indicted and subsequently found guilty for unlawfully being on the premises pursuant to N.C.G.S. § 14-208.18(a)(2).
- The defendant appealed arguing that he did not receive sufficient notice that a preschool was located on the church premises.
 - It was later demonstrated that the church had displayed flyers promoting their preschool program around the building where Fryou had entered the church.
- The North Carolina Court of Appeals affirmed the trial court's ruling concluding that the statute "plainly prohibits him from being within 300 feet of **any** premises, no matter its purpose, if within that premises there is any location intended primarily for the use, care, or supervision of minors."



State v. Fryou
244 N.C. App. 112 (2015).

- **NOTE:** The defendant in *State v. Fryou* did not challenge the constitutionality of the statute with respect to his First Amendment right to participate in religious services.



Federal Civil Case

- *Doe v. Cooper* (2016)
- An argument was presented in *Doe v. Cooper*, in which the U.S. Court of Appeals for the Fourth Circuit found certain portions of N.C.G.S. § 14-208.18 to be unconstitutionally vague and overbroad. In turn, those portions were amended by the North Carolina General Assembly to ensure their constitutional adequacy
- Fourth Circuit court of appeals enjoined the state from enforcing 14-208.18 (a)(2) (violates first amendment) and (a)(3) (generally overbroad)

Legislative Response to Doe. V Cooper Case- Session Law 2016-102

- **GENERAL ASSEMBLY OF NORTH CAROLINA**
 - **SESSION 2015**
 - **SESSION LAW 2016-102**
 - **HOUSE BILL 1021**

- AN ACT TO AMEND THE LAW REGARDING SEX OFFENDERS ON CERTAIN PREMISES TO ADDRESS THE RULING IN *DOE V. COOPER*.

- The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.18 reads as rewritten:

"§ 14-208.18. Sex offender unlawfully on premises.



Review: N.C.G.S. § 14-208.18 (a) (2)

Premise restrictions

- Unlawful for any registered individual to be within **300 feet** of any place intended 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 subdivision (1) of this subsection that are located in malls, shopping centers, or other property open to the general public.



N.C.G.S. § 14-208.18 (a) (2) Sex offender unlawfully on premises.

Remember that the premises restrictions do not apply to all registered offenders.

- **Applies to Offenders convicted of:**

- An offense under Article 7B of Chapter 14 of the North Carolina General Statutes, any offense (federal or out-of-state) which is substantially similar to an Article 7B offense **AND** a finding has been made in a criminal or civil proceeding that the person presents, or may present, a danger to minors under 18; or
- An offense where the victim was under the age of 18 years at the time of offense; or
- First, second, or third degree sexual exploitation of a minor (or substantially similar federal offenses or substantially similar offenses in another state), even if the victim in the case was not a minor (such as an undercover law enforcement officer posing as a minor).



N.C.G.S. § 14-208.18 (a) (3) Sex offender unlawfully on premises.

- Modified this provision:
- (3) At any place where minors ~~gather for regularly scheduled educational, recreational, or social programs.~~frequently congregate, including, but not limited to, libraries, arcades, amusement parks, recreation parks, and swimming pools, when minors are present.

Federal civil cases pending

- There are some federal civil court cases pending challenging the constitutionality of some of the registry provisions including the premises restrictions.
- More to come so stay tuned!
- Consult with the Sheriff's office attorney, County Attorney or Local District Attorney and watch future webinars for updated on the pending cases.



Ask before charging and research

- Sheriff's attorney
- County Attorney
- District Attorney
- Sheriff's Association (SOR pub and trainings)
- Institute of Government (blogs and case law updates)

Coming Soon: Future Trainings

NC SBI Webinars in 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)?

Contact

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