

**SATELLITE BASED MONITORING (SBM) ----MAY 13, 2010**

**LEANN MELTON, PUBLIC DEFENDER FOR THE 28<sup>TH</sup> JUDICIAL DISTRICT**

- ISSUES:**
1. WHO IS ELIGIBLE FOR SATELLITE BASED MONITORING?
  2. WHAT IMPACT DOES SATELLITE BASED MONITORING HAVE ON YOUR CLIENT?
  3. IS THE DETERMINATION AN ELEMENTS BASED TEST OR A FACTS BASED TEST?

**1. WHO IS ELIGIBLE FOR SATELLITE BASED MONITORING?**

**\*\*EX POST FACTO ISSUE IS CURRENTLY IN NORTH CAROLINA SUPREME COURT**

(Article I, Sec. 10(1) of the United States Constitution and Article I, Sec. 16 of the North Carolina Constitution)

**\*\*STATE V. BOWDITCH, PLEMMONS, WATERS** – (docket # 448PA09) ORAL ARGUMENT HEARD 5-10-2010

**\*\*STATE V. WAGNOR**- (docket # 396A09) ORAL ARGUMENT HEARD 2-17-2010

**\*\*STATE V. VOGT, JR**-(docket # 465A09) ORAL ARGUMENT HEARD 2-17-2010

**\*\*STATE V. MORROW**- (docket # 461A09) ORAL ARGUMENT HEARD 2-17-2010

**SBM WAS ENACTED BY LEGISLATURE ON AUGUST 16, 2006**

\*PROCEDURE FOR HEARINGS WAS EFFECTIVE FOR SENTENCES ENTERED ON DECEMBER 1, 2007 (G.S. 14-208.40A)

\*PROCEDURE FOR BRING BACK HEARINGS WAS EFFECTIVE ON DECEMBER 1, 2007 (G.S. 14-208.40B)

**TO IMPOSE SBM COURT MUST DETERMINE:**

1. Whether the defendant was convicted of a **reportable conviction under G.S. 14-208.6(4)**

**14-208.6 – Definitions.....**

**(1m) "Offense against a minor"** means any of the following offenses if the offense is committed against a minor, and the person committing the offense is not the minor's parent: [G.S. 14-39](#) (kidnapping), [G.S. 14-41](#) (abduction of children), and [G.S. 14-43.3](#) (felonious restraint). The term also includes the following if the person convicted of the following is not the minor's parent: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses. . . .

**(4) "Reportable conviction"** means:

- a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any

of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in [G.S. 14-208.5](#).

b. A final conviction in another state of an offense, which if committed in this State, is substantially similar to an offense against a minor or a sexually violent offense as defined by this section, or a final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state.

c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

d. A final conviction for a violation of [G.S. 14-202\(d\)](#), (e), (f), (g), or (h), or a second or subsequent conviction for a violation of [G.S. 14-202\(a\)](#), (a1), or (c), only if the court sentencing the individual issues an order pursuant to [G.S. 14-202\(l\)](#) requiring the individual to register. (G.S. 14-202 is secret peeping)

**(5) "Sexually violent offense"** means a violation of [G.S. 14-27.2](#) (first degree rape), [G.S. 14-27.2A](#) (rape of a child; adult offender), [G.S. 14-27.3](#) (second degree rape), [G.S. 14-27.4](#) (first degree sexual offense), [G.S. 14-27.4A](#) (sex offense with a child; adult offender), [G.S. 14-27.5](#) (second degree sexual offense), [G.S. 14-27.5A](#) (sexual battery), [G.S. 14-27.6](#) (attempted rape or sexual offense), [G.S. 14-27.7](#) (intercourse and sexual offense with certain victims), [G.S. 14-27.7A\(a\)](#) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), [G.S. 14-43.13](#) (subjecting or maintaining a person for sexual servitude), [G.S. 14-178](#) (incest between near relatives), [G.S. 14-190.6](#) (employing or permitting minor to assist in offenses against public morality and decency), [G.S. 14-190.9\(a1\)](#) (felonious indecent exposure), [G.S. 14-190.16](#) (first degree sexual exploitation of a minor), [G.S. 14-190.17](#) (second degree sexual exploitation of a minor), [G.S. 14-190.17A](#) (third degree sexual exploitation of a minor), [G.S. 14-190.18](#) (promoting prostitution of a minor), [G.S. 14-190.19](#) (participating in the prostitution of a minor), [G.S. 14-202.1](#) (taking indecent liberties with children), [G.S. 14-202.3](#) (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), [G.S. 14-202.4\(a\)](#) (taking indecent liberties with a student), [G.S. 14-318.4\(a1\)](#) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or [G.S. 14-318.4\(a2\)](#) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

2. Whether the defendant was convicted of an aggravated offense, is a recidivist, is a sexually violent predator, the conviction offense was a violation of 14-27.2A or G.S. 14-27.4A or an offense involving physical, mental, or sexual abuse of a minor?

#### **14-208.6 – Definitions.....**

**(1a) "Aggravated offense"** means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of serious violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old. . . .

**(2b) "Recidivist"** means a person who has a prior conviction for an offense that is described in [G.S. 14-208.6\(4\)](#). . . .

**(6) "Sexually violent predator"** means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

3. If the court determines the defendant was convicted of an aggravated offense, is a recidivist, a sexually violent predator or was convicted of a violation of G.S. 14-27.2A or G.S. 14-27.4A----- **SBM IS FOR LIFE!!!** (Can request termination of requirement under 14-208.43)
4. If the Court determines the defendant was convicted of an offense involving the physical, mental, or sexual abuse of a minor, the Court will order that a Risk Assessment be done by the Department of Corrections and will order that the results be given to the Court. The Court determines whether to impose SBM based on that Risk Assessment. (Maximum length of time is for period of Registration)

## **2. WHAT IMPACT DOES SATELLITE BASED MONITORING HAVE ON YOUR CLIENT?**

\$90.00 ONE TIME FEE UNDER G.S. 14-208.45 (INDIVIDUAL CAN REQUEST EXEMPTION)

### **INITIAL EQUIPMENT WAS MADE BY PRO TECH**

-Web Page regarding Pro Tech---[http://www.ptm.com/Hardware/SMART\\_MTD.htm](http://www.ptm.com/Hardware/SMART_MTD.htm)

\*Components:

Miniature Tracking Device (MTD)  
Ankle Bracelet  
Base Unit

### **INDIVIDUAL ORDERED TO SBM MUST AGREE TO:**

\*DCC-44 (04/09) North Carolina Division of Community Corrections Satellite-Based Monitoring (SBM) Program Guidelines and Regulations for Supervised Sex Offenders ([Copy Attached](#))

\*\*DCC-45 (04/09) North Carolina Division of Community Corrections Satellite-Based Monitoring (SBM) Program Guidelines and Regulations for Unsupervised Sex Offenders ([Copy Attached](#))

**14-208.42 provides in part:** The Department shall have the authority to have contact with the offender at the offender's residence or to require the offender to appear at a specific location as needed for the purpose of enrollment, to receive monitoring equipment, to have equipment examined or maintained, and for any other purpose necessary to complete the requirements of the satellite-based monitoring program. The offender shall cooperate with the Department and the requirements of the satellite-based monitoring program until the offender's requirement to enroll is terminated and the offender has returned all monitoring equipment to the Department.

\*FAILING TO ENROLL IN SBM IS A **CLASS F FELONY** (G.S. 14-208.44)

\*TAMPERING WITH, REMOVING, VANDALIZING OR OTHERWISE INTERFERING WITH THE PROPER FUNCTIONING OF THE MONITORING EQUIPMENT IS A **CLASS E FELONY** (G.S. 14-208.44 (B))

\*FAILING TO COOPERATE WITH DCC GUIDELINES AND REGULATIONS IS A **CLASS 1 MISDEMEANOR** (14-208.44(C))

## **TESTIMONY ON MAY 1, 2009 AND MAY 28, 2009 IN STATE V. BOWDITCH, PLEMMONS, AND WATERS**

THE MTD HAS A SIM CARD AND EMITS AN RF SIGNAL

THE RF SIGNAL CAN BE BLOCKED IN THREE FEET OF WATER

WHEN THE SIGNAL IS BLOCKED OR THE MTD LOSES SATELLITE CONNECTION, A TEXT MESSAGE IS SENT TO INDIVIDUAL WEARING DEVICE

IF NO RESPONSE TO TEXT MESSAGE OR SIGNAL IS NOT RECONNECTED

DCC will:

1. Call individual subject to SBM-  
If DCC doesn't get satisfactory response then they
2. Call contacts individual provided when originally placed on SBM-  
if they don't get satisfactory response then they
3. Send a field officer out to residence or last known point on SBM

CAN NOT FLY IN AIRPLANE- WILL NOT BE ABLE TO GET EQUIPMENT THROUGH TSA

CAN NOT FLY IN AIRPLANE- MTD IS LIKE A CELL PHONE AND WOULD HAVE TO BE TURNED OFF

DIVISION OF COMMUNITY CORRECTIONS HAS TO BE ALLOWED TO COME INTO INDIVIDUALS

RESIDENCE TO CHECK EQUIPMENT

HAVE TO WEAR BRACELET 24 HOURS A DAY 7 DAYS A WEEK

HAVE TO CARRY MTD 24 HOURS A DAY 7 DAYS A WEEK

HAVE TO PLACE THE MTD IN THE BASE UNIT FOR A MINIMUM OF 4 HOURS EACH 24 HOUR PERIOD

TO ENABLE EQUIPMENT TO WORK PROPERLY

HAVE TO HAVE ELECTRICITY TO CHARGE UNIT

THE MTD MUST BE PLACED IN AN AREA THAT IS UNOBSTRUCTED WITH THE MTD DISPLAY SCREEN

FACING OUT AT ALL TIMES. THE MTD IS NOT SUPPOSED TO BE COVERED BY METAL CONTAINERS,

LOCKERS, VEHICLE TRUNKS, ETC. OR HIDDEN UNDER CLOTHING, CAR SEATS, PURSES, BRIEFCASES,

TOTE BAGS, ETC.

INDIVIDUAL CAN LOSE SIGNAL WHILE DRIVING AND HAVE TO GET OUT OF CAR TO REGAIN SIGNAL

INDIVIDUAL CAN LOSE SIGNAL WHILE INSIDE BUILDINGS AND HAVE TO GO OUTSIDE BUILDING TO

REGAIN SIGNAL

INDIVIDUAL COULD HAVE PROBLEMS WITH HAVING CERTAIN TYPES OF EMPLOYMENT BECAUSE OF

SIGNAL LOSS IN BUILDINGS UNLESS DCC AGREES TO WORK WITH THEM

INDIVIDUAL WOULD HAVE A DIFFICULT TIME HIKING IN AREA WITHOUT ELECTRICITY

INDIVIDUAL WEARING DEVICE COULD NOT SCUBA DIVE

INDIVIDUAL WEARING DEVICE ON ANKLE COULD NOT ENGAGE IN WHIRLPOOL THERAPY (HEAT CAN INTERFERE WITH DEVICE)

INDIVIDUAL COULD NOT GO SWIMMING BECAUSE DEVICE WOULD LOSE SIGNAL IN THREE FEET OF WATER

INDIVIDUAL COULD HAVE DIFFICULTY BATHING BECAUSE DEVICE WOULD LOSE SIGNAL IN THREE FEET OF WATER

INDIVIDUAL REQUIRING MEDICAL TREATMENT SUCH AS AN MRI WOULD HAVE TO GET PROBATION TO

REMOVE THE ANKLE BRACELET PRIOR TO PROCEDURE AND ALSO HAVE PROBATION REATTACH ANKLE

BRACELET AFTER PROCEDURE

THE RANGE OF THE OLD DEVICE IN A PERFECT WORLD IS 50 FEET FROM MTD (PRO TECH)

THE RANGE OF THE NEW DEVICE IN A PERFECT WORLD IS 30 FEET FROM MTD (STAR UNIT BY ELMOTECH)

### **\*\*NEW EQUIPMENT THAT IS CURRENTLY IN USE IS MADE BY ELMOTECH**

-Web page for ElmoTech---<http://www.elmotech.com/default.asp?PageID=196>

### **3. IS THE DETERMINATION AN ELEMENTS BASED TEST OR A FACTS BASED TEST?**

State v. Singleton, 689 S.E.2d 562, review granted by State v. Singleton, 2010 N.C. Lexis 325 (N.C. Apr. 14, 2010)

Court of Appeals in Singleton held that it is an elements based test, but the North Carolina Supreme Court has granted review.

State v. Davison, \_\_\_\_ N.C. App. \_\_\_\_, 689 S.E.2d 510 (December 8, 2009) (elements based test)

**NORTH CAROLINA DIVISION OF COMMUNITY CORRECTIONS  
SATELLITE-BASED MONITORING (SBM) PROGRAM  
GUIDELINES AND REGULATIONS FOR SUPERVISED SEX OFFENDERS**

Offender's Name: \_\_\_\_\_ NC DOC#: \_\_\_\_\_

Pursuant to G.S. §14-208.40, I understand that I am required to submit to a Satellite-Based Monitoring (SBM) program. I understand the following guidelines will apply and that my agreement to these guidelines is part of the enrollment process:

1. I understand that failing to enroll in a SBM program is in violation of G.S. §14-208.44 (a) and is a Class F felony.
2. I understand that tampering with, removing, vandalizing, or otherwise interfering with the proper functioning of the monitoring equipment is in violation of G.S. §14-208.44 (b) and is a Class E felony. I agree to immediately report any equipment damage or malfunction to my Probation Officer and follow any instructions the Probation Officer gives me concerning this situation. I understand that this may also be considered a violation of the terms and conditions of my probation.
3. I understand that failing to provide necessary information to the Division of Community Corrections (DCC) or failing to cooperate with the DCC Guidelines and Regulations is in violation of G.S. §14-208.44 (c) and is a Class 1 misdemeanor.
4. My location will be monitored by a tamper proof, non-removable ankle bracelet (transmitter) and a Miniature Tracking Device (MTD). I will be required to wear the bracelet and carry the MTD with me 24 hours a day, 7 days a week.
5. I understand that it is my responsibility to place the MTD in the base unit for a minimum of four (4) hours each 24-hour period to enable the equipment to work properly. I understand that charging the base unit requires electric service to be available.
6. I understand a MTD base unit will be assigned to me and it will be necessary for a DCC representative to enter my residence to install, retrieve, or periodically inspect the MTD base unit in order to maintain tracking as required.
7. I understand I must place the MTD in an area that is unobstructed with the MTD display screen facing out at all times. The MTD should not be covered by metal containers, lockers, vehicle trunks, etc. or hidden under clothing, car seats, purses, briefcases, tote bags, etc.
8. I agree to reside at \_\_\_\_\_ with contact phone number \_\_\_\_\_. Prior to changing my residence, I will obtain prior approval from my supervising Probation Officer and update my registration with the Sheriff's Office where I am registered with my new address.
9. I understand that I must comply with my daily schedule as directed by my Probation Officer 24 hours per day, 7 days per week, which may include Inclusion zones, such as home or work, and Exclusion zones. I understand that Inclusion zones are geographical areas where I will be confined during an assigned schedule. Exclusion zones are geographical areas I am prohibited from entering. I understand I will not enter areas that are defined as Exclusion zones as directed by my supervising officer. I understand that additional Exclusion zones may be added or modified during my period of supervision.
10. I understand that messages may be sent to me via my MTD. I will acknowledge these messages and follow the instructions in order to maintain the equipment.

Offender's Name: \_\_\_\_\_ NC DOC#: \_\_\_\_\_

- 11. I understand that it is my responsibility to obtain and maintain a basic landline telephone service in the event that an active continuous satellite-based monitoring program will not work due to technological and/or geographical limitations. I also understand that no optional telephone features will be allowed on this line, such as call forwarding, call waiting, caller ID, call notes, voice mail, anonymous call block, etc. and I will not install the internet or answering machines to the landline telephone service during my monitoring period.
- 12. I understand that subject to Interstate Compact rules, I may be allowed to permanently relocate to another state. If I plan to transfer out of state, I will contact my Probation Officer for permission to initiate a request for transfer. If approved, I understand the SBM equipment is leased by the State of North Carolina and I agree to make arrangements with my Probation Officer to return my equipment upon my pending registration in and departure to the other state. I understand that if, after notifying my Probation Officer, I decide not to leave the State of North Carolina or relocate back to the State of North Carolina, I will immediately contact my Probation Officer to re-enroll in the satellite-based monitoring program.
- 13. I understand I must request permission from my Probation Officer to travel out of state and if permitted, I understand it is my responsibility to comply with all sex offender laws in the visiting state.
- 14. I am responsible for a one-time GPS/SBM fee of \$90 and agree to pay the fee to the Clerk of Superior Court in \_\_\_\_\_ County (county of determination hearing).

\_\_\_\_\_  
(Offender Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Probation/Parole Officer Signature)

\_\_\_\_\_  
Date

**Distribution:** Original to Probation Officer  
Copy to Offender  
Copy to SOM (Fax: 919-716-3939)

**NORTH CAROLINA DIVISION OF COMMUNITY CORRECTIONS  
SATELLITE-BASED MONITORING (SBM) PROGRAM  
GUIDELINES AND REGULATIONS FOR TRACKING OF UNSUPERVISED SEX OFFENDERS**

Offender's Name: \_\_\_\_\_ NC DOC#: \_\_\_\_\_

Pursuant to G.S. §14-208.40, I understand that I am required to submit to a Satellite-Based Monitoring (SBM) program. I understand the following guidelines will apply and that my agreement to these guidelines is part of the enrollment process:

1. I understand that failing to enroll in a SBM program is in violation of G.S. §14-208.44 (a) and is a Class F felony.
2. I understand that tampering with, removing, vandalizing, or otherwise interfering with the proper functioning of the monitoring equipment is in violation of G.S. §14-208.44 (b) and is a Class E felony. I agree to immediately report any equipment damage or malfunction to the designated representative of Division of Community Corrections (DCC) and follow any instructions the representative gives me concerning this situation.
3. I understand that failing to provide necessary information to DCC or failing to cooperate with the DCC Guidelines and Regulations is in violation of G.S. §14-208.44 (c) and is a Class 1 misdemeanor.
4. My location will be monitored by a tamper proof, non-removable ankle transmitter and a receiver. I will be required to wear the transmitter and carry the receiver with me 24 hours a day, 7 days a week.
5. I understand that it is my responsibility to charge the receiver for a minimum of four (4) hours each 24-hour period to enable the equipment to work properly. I understand that charging the receiver requires electric service to be available.
6. I understand a unit in the home will be assigned to me and it will be necessary for a designated representative of DCC to enter my residence or other location(s) where I may temporarily reside to install, retrieve, or periodically inspect the unit in order to maintain tracking as required.
7. I understand I must place the receiver in an area that is unobstructed with the receiver display screen facing out at all times. The receiver should not be covered by metal containers, lockers, vehicle trunks, etc. or hidden under clothing, car seats, purses, briefcases, tote bags, etc.
8. I understand that upon initial enrollment and on occasion, a DCC representative will be contacting me by phone to verify information relevant to my Satellite-Based Monitoring including, without limitation, address, telephone numbers and contact information.
9. In order to maintain equipment and receive necessary communications, I agree to reside at \_\_\_\_\_ with contact phone number \_\_\_\_\_. Prior to changing my residence, I will contact the appropriate DCC representative and the Sheriff's Office where I am registered with my new address.
10. I understand that messages may be sent to me via my receiver. I will acknowledge these messages and follow the instructions in order to maintain the equipment.
11. I understand that it is my responsibility to obtain and maintain a basic landline telephone service in the event that an active continuous satellite-based monitoring program will not work due to technological and/or geographical limitations.
12. I understand the equipment is leased by the State of North Carolina; therefore, if I plan to permanently relocate to another state I will contact my DCC representative to make arrangements to return my equipment upon my pending registration in and departure to the other state. I understand that if, after

DCC-45  
04/09

Offender's Name: \_\_\_\_\_ NC DOC#: \_\_\_\_\_

notifying my DCC representative, I decide not to leave the State of North Carolina or relocate back to the State of North Carolina, I will immediately contact my DCC representative to re-enroll in the satellite-based monitoring program.

13. When traveling out of state, I understand it is my responsibility to comply with all sex offender laws in the visiting state.
14. I am responsible for a one-time GPS/SBM fee of \$90 and agree to pay the fee to the Clerk of Superior Court in \_\_\_\_\_ County (county of determination hearing).

\_\_\_\_\_  
(Offender Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Witness Signature)

\_\_\_\_\_  
Date

DCC/SBM Representative: \_\_\_\_\_  
(Printed name)

DCC Telephone Number: 1-888-663-0156 (Toll Free)

**Distribution:** Original to SOM  
Copy to Offender  
Copy to JDM