

§ 14-208.12B. Registration requirement review.

(a) When a person is notified by a sheriff that the person may be required to register based on an out-of-state conviction as provided in G.S. 14-208.6(4)(b), or a federal conviction as provided in G.S. 14-208.6(4)(c), that is substantially similar to a North Carolina sexually violent offense, or an offense against a minor, the sheriff shall notify the person of the right to petition the court for a judicial determination of the requirement to register. Notification shall be served on the person and the district attorney, as provided in G.S. 1A-1, Rule 4(j), or delivery by any other means that the person consented to in writing. The person may petition the court to contest the requirement to register by filing a petition to obtain a judicial determination as to whether the person is required to register under this Article. The judicial review shall be by a superior court judge presiding in the district where the petition is filed. The review under this section is limited to determine whether or not the person's out-of-state or federal conviction is substantially similar to a reportable conviction, as defined in G.S. 14-208.6(4)(a).

(b) The petition shall be filed in the county in which the person resides using a form created by the Administrative Office of the Courts. The petition must be filed with the clerk of court within 30 days of the person's receipt of the notification of the requirement to register from the sheriff. The person filing the petition must serve a copy of the petition on the office of the district attorney and the sheriff in the county where the person resides within three days of filing the petition with the clerk of court. The petition shall be calendared at the next regularly scheduled term of superior court. At the first setting, the petitioner must be advised of the right to have counsel present at the hearing and to the appointment of counsel if the petitioner cannot afford to retain counsel. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services.

(c) At the hearing, the district attorney has the burden to prove by a preponderance of the evidence, that the person's out-of-state or federal conviction is for an offense, which if committed in North Carolina, was substantially similar to a sexually violent offense, or an offense against a minor. The person may present evidence in support of the lack of substantial similarity between the out-of-state or federal conviction, but may not contest the validity of the conviction. The court may review copies of the relevant out-of-state or federal criminal law and compare the elements of the out-of-state or federal offense to those purportedly similar to a North Carolina offense.

(d) After reviewing the petition, receiving any and all evidence presented by the parties at the hearing, considering any arguments of the parties, the presiding superior court judge shall determine whether the out-of-state or federal conviction is substantially similar to a reportable conviction. If the presiding superior court judge determines the out-of-state or federal conviction is substantially similar to a reportable conviction, the judge shall order the person to register as a sex offender pursuant to this Article. If the presiding superior court judge determines the out-of-state or federal conviction is not substantially similar to a reportable conviction, the judge shall indicate in an order that the person is not required to register as a sex offender pursuant to this Article, based on the out-of-state or federal conviction presented in the hearing. The judge shall prepare a written order and shall direct such order be filed with the clerk of court and copied to the district attorney and the sheriff.

(e) A person who properly files a petition in accordance with this provision shall not be required to register with the sheriff until such petition is decided by the court. No person who properly files a petition in accordance with this provision may be charged with failing to register or any other violation applicable to registrants under this Article, while such petition is pending judicial review as provided in this section.

(f) Any person who is notified by the sheriff of the person's requirement to register as a result of an out-of-state or federal conviction and fails to file a petition under this provision within 30 days of receipt of the notification shall be deemed to have waived judicial review of the person's requirement to register.

(g) A person notified of a requirement to register as a result of a conviction for an offense under G.S. 14-208.6(4)(b) or G.S. 14-208.6(4)(c), who willfully (i) does not file a petition under this section and (ii) does not register in accordance with this Article, shall be in violation of G.S. 14-208.11(a)(1) and shall be guilty of a Class F Felony as provided in that section.

(h) This section shall not be used in lieu of the process to terminate the period of registration pursuant to G.S. 14-208.12A.

(i) No sheriff, or employee of a sheriffs' office, district attorney's office, or the North Carolina State Bureau of Investigation shall incur any civil or criminal liability under North Carolina law as the result of the performance of official duties under this Article. (2020-83, s. 11.5(a).)