"Time Served" on Another State's Sex Offender Registry

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North Carolina requires certain people to register as sex offenders in North Carolina for crimes committed in other states. But what if a person has completed his or her term of registration in another state before moving here? Can North Carolina require the person to register again?

The definition of "reportable conviction"—which is to say, convictions that require sex offender registration—includes two types of convictions from other states. First, there are out-of-state crimes that are **substantially similar** to North Carolina crimes that require registration. Second, there are **crimes that require registration under the sex offender registration statutes of another state**. G.S. 14-208.6(4)b. The second category was added in 2006, to address the possibility that a person could evade their registration requirement by moving to North Carolina if he or she were on another state's registry for a crime that was not substantially similar to any crime requiring registration here.

We know that time spent on another state's registry does not generally count toward the time an offender must spend on the registry here before he or she is eligible to petition for removal. In *In re Borden*, 216 N.C. App. 579 (2011) (discussed here), the court of appeals read the words "initial county registration" in G.S. 14-208.12A to refer to a person's initial registration in a county in North Carolina, not to a county in any jurisdiction (in Mr. Borden's case, Kentucky). Thus, the time he spent on Kentucky's registry did not count toward the 10-year period that needed to transpire before the trial court could grant his petition for removal from the registry.

I suppose that's clear enough for purposes of the back-end petition-for-removal statute. But suppose Mr. Borden had been on Kentucky's registry for so long that he was removed from it before he moved to North Carolina. Would he need to re-register with the local sheriff upon his arrival here?

There's no clear answer in the statutes or case law. I think it may depend on the basis for the reportability of the out-of-state conviction.

If the out-of-state offense were reportable here based on its substantial similarity to a North Carolina crime, I think he may need to re-register. A reportable conviction is a reportable conviction, and there is no provision in our law exempting the person from registration based on service of a full registration period in another state.

If, however, the person's out-of-state crime were reportable not based on substantial similarity to a North Carolina crime, but rather based on the fact that the offense "requires registration" in the other state, it seems likely that he would not have to register here if the requirement to register had ended in the other state. At the risk of stating the obvious, once the requirement to register ends in the other state, that state no longer "requires registration" for the offense, and it is therefore not reportable here within the language of G.S. 14-208.6(4)b. I suppose you could read "offense that requires registration" to refer to an offense that *generally* requires registration in the other state, not to whether *this particular defendant* still has to register for it there. But to read it that way would, to some degree, untether the provision from its intended purpose, which was to prevent offenders from avoiding their registration requirement by moving to North Carolina. If the person no longer has to register for an offense in another state, there's nothing left to avoid by moving here.

Even if re-registration may sometimes be required as a matter of statute, you could imagine several constitutional objections. Surveying the case law, the most common argument appears to be that re-registration violates the Full Faith and Credit Clause.

Courts have generally rejected that argument. In Crofoot v. Harris, 192 Cal. Rptr. 3d 49 (Cal. Ct. App. 2015), for example, a defendant was convicted of a crime in Washington that required 10 years of registration there. After 10 years, a court in Washington issued an order terminating his registration. He moved to California, which required lifetime registration for offenses like his, and which made him register for life. The appellate court rejected his argument that California's lifetime registration requirement violated the Full Faith and Credit Clause by failing to give effect to the Washington order. The Full Faith and Credit Clause does not, the court concluded, "require one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state." *Id.* at 51. Nevada's supreme court reached a similar conclusion in Donlan v. State, 249 P.3d 1231 (Nev. 2011). In that case Nevada required a new resident to register even though California had previously terminated his registration requirement. As in *Crofoot*, the court rejected the registrant's full faith and credit argument, holding that the "Full Faith and Credit Clause does not require Nevada to dispense with its preferred mechanism for protecting its citizenry by virtue of termination of the duty to register in another state."

We did not find any cases where a defendant successfully argued that re-registration in another state was unconstitutional.

As a practical matter, if a defendant has completed registration in another state before moving to North Carolina, he may be able to relocate here without coming to the attention of the local sheriff. If registration in the other state has ended, the defendant will no longer be required to give the sheriff there notice of his intent to move, and there will therefore be no notice to the receiving sheriff of the person's pending arrival. Nevertheless, a former registrant in another state may wish to consult legal counsel before relocating to North Carolina to determine how the sheriff and district attorney in the county of intended residence view the issue.

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