

§ 14-208.40B. Determination of satellite-based monitoring requirement in certain circumstances.

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), and there has been no determination by a court on whether the offender shall be required to enroll in satellite-based monitoring, the Division of Adult Correction and Juvenile Justice shall make an initial determination on whether the offender falls into one of the categories described in G.S. 14-208.40(a).

(b) If the Division of Adult Correction and Juvenile Justice determines that the offender falls into one of the categories described in G.S. 14-208.40(a), the district attorney, representing the Division of Adult Correction and Juvenile Justice, shall schedule a hearing in superior court for the county in which the offender resides. The Division of Adult Correction and Juvenile Justice shall notify the offender of the Division of Adult Correction and Juvenile Justice's determination and the date of the scheduled hearing by certified mail sent to the address provided by the offender pursuant to G.S. 14-208.7. The hearing shall be scheduled no sooner than 15 days from the date the notification is mailed. Receipt of notification shall be presumed to be the date indicated by the certified mail receipt. Upon the court's determination that the offender is indigent and entitled to counsel, the court shall assign counsel to represent the offender at the hearing pursuant to rules adopted by the Office of Indigent Defense Services.

(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the conviction offense was a violation of G.S. 14-27.23 or G.S. 14-27.28, the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated offense or a violation of G.S. 14-27.23 or G.S. 14-27.28, and the offender is not a recidivist, the court shall order that the Division of Adult Correction and Juvenile Justice do a risk assessment of the offender. The Division of Adult Correction and Juvenile Justice shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court. The Division of Adult Correction and Juvenile Justice may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Division of Adult Correction and Juvenile Justice, the court shall determine whether, based on the Division of Adult Correction and Juvenile Justice's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court. (2007-213, s. 3; 2007-484, s. 42(b); 2008-117, s. 16.2; 2009-387, s. 4; 2011-145, s. 19.1(h); 2015-181, ss. 42, 47; 2017-186, s. 2(v).)