

STATE OF NORTH CAROLINA
COUNTY OF PITT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
25 DOJ 00389

ERNEST LEVINE BROWN,

Petitioner,

v.

NORTH CAROLINA SHERIFFS'
EDUCATION AND TRAINING
STANDARDS COMMISSION,

Respondent.

EXCEPTIONS

The following **Exceptions** to the **Proposal for Decision** prepared by the Honorable Melissa Owens Lassiter, Administrative Law Judge, and filed in the Office of Administrative Hearings on October 7, 2025, are hereby submitted to the North Carolina Criminal Justice Education and Training Standards Commission for consideration in its Final Agency Decision.

1. Counsel has made minor typographical and grammatical changes as necessary to make the proposal appropriate for Final Agency Decision.
2. The Burden of Proof paragraphs should be amended as follows to reflect the position of the Commission.

There is no statutory allocation of the burden of proof in contested cases heard under Article 3A of the Administrative Procedure Act. In the absence of that direction, the burden of proof is "judicially allocated on considerations of policy, fairness and common sense." 1 Kenneth S. Broun, Brandis & Broun on North Carolina Evidence § 37 (4th. Ed. 1993); citing Peace v. Employment Sec. Comm'n of N. Carolina, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998); Robert Shawn Gaddis v. North Carolina Sheriffs' Education and Training Standards Commission, 2023 WL 2424080, 22 DOJ 03415.

While N.C. Gen. Stat. § 150B-40 enumerates the powers of the presiding officer, including an Administrative Law Judge in Article 3A cases, such statute does not address which party has the burden of proof in an Article 3A contested case hearing. Neither has the North Carolina Constitution nor the General Assembly addressed the burden of proof in Article 3A cases. However, the Commission has consistently held that Petitioner has the burden of proof in the case at bar as does a petitioner in an Article 3 case. Overcash

v. N.C. Dep't. of Env't & Natural Resources, 179 N.C. App 697, 635 S.E.2d 442 (2006) (stating that "the burden of proof rests on the petitioner challenging an agency decision").

~~While at least one appellate decision in Chapter 150B, Article 3A context suggests approval of requiring petitioners to prove a negative, no North Carolina appellate court has endorsed the State, in any form, first deciding that a citizen committed a crime and then requiring that citizen to prove that they did not. Christopher Lee Jackson v. NC Criminal Justice Education and Training Standards Commission, 2021 WL 2779127, 20 DOJ 04578.~~

~~Thus, when Respondent's agency action is based on its conclusion that a citizen not convicted of a crime nonetheless "committed" a crime, the burden of proof is on Respondent to show, by (at least) a preponderance of the evidence, that the person's actions satisfied all elements of the crime. Christopher Garris v. NC Criminal Justice Education And Training Standards Commission, 2019 WL 2183214, 18 DOJ 04480.~~

~~Based upon the testimony of the witnesses, consideration of all the admitted exhibits, the governing law and rules, and all evidence of record, the Tribunal makes the following:~~

3. Finding of Facts Paragraphs 12-13 should be amended that the findings were those made by the Administrative Law Judge and/or unnecessary to reach a Final Agency Decision.
12. Respondent's Exhibits 3 and 5 state that Petitioner failed to remain registered or respond to the Unit in a timely manner on January 30, 2008, and December 14, 2008. ~~However, while admitted into evidence without objection, these statements contain uncorroborated hearsay and should be given little weight. While Respondent may aver that the Petitioner's probation violations of February 26, 2002, for which Petitioner was pardoned, are corroborating evidence, it is unclear from the record whether the violations are related to the sexual offender registry.~~
13. Petitioner testified that he remained registered at all relevant times and mailed the address verification forms in a timely manner. The Administrative Law Judge found that Petitioner's testimony was credible. Accordingly, the Administrative Law Judge found undersigned finds there was insufficient evidence that Respondent has not met its burden of proof that Petitioner committed a felony for failure to register on or about January 30, 2008, or December 14, 2008.
4. Proposal for Decision should be revised to reflect the final decision of the Commission as follows:

PROPOSAL FOR DECISION

ORDER

~~The evidence in the record established that Because the Respondent proved by a preponderance of the evidence that the~~ Petitioner committed a felony—second-degree sexual assault in Connecticut—and therefore the rules require a denial of certification notwithstanding the later pardon. The PC Committee’s probable cause decision aligns with 12 NCAC 10B .0204(a)(1), 12 NCAC 10B .0205(1)(a), and N.C.G.S. 17E-12, and is therefore legally correct. Accordingly, it is hereby ORDERED that Petitioner’s detention officer certification is denied for the Commission of the felony offense of second degree assault in Connecticut.

This the 13th day of November, 2025.

JEFF JACKSON
Attorney General

/s/ J. Joy Strickland
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COUNSEL TO THE COMMISSION

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **EXCEPTIONS** have been duly served upon **Petitioner** by mailing a copy to the address below:

**Ernest Levine Brown
104 Chandler Drive, Apt. C
Greenville, NC 27834**

This the 13th day of November, 2025.

JEFF JACKSON
Attorney General

Attorney General

/s/ J. Joy Strickland
J. Joy Strickland
Senior Deputy Attorney General
ATTORNEY FOR THE COMMISSION