

2010 REVISIONS TO GEORGIA SEX OFFENDER LAW: A SUMMARY OF KEY PROVISIONS OF HB 571 FOR MEMBERS OF THE *WHITAKER V. PERDUE* CLASS

House Bill 571 made significant changes to Georgia law governing persons on the sex offender registry. Some key changes are described below. If you have questions about how the new law applies to you, we encourage you to check with your attorney or local law enforcement officer. We also encourage you to read the text of the new law at:

http://www.legis.state.ga.us/legis/2009_10/sum/hb571.htm.

Please note that this handout applies to persons designated as “sex offenders.” Different rules apply to persons designated as “sexual predators.” *HB 571 became effective on May 20, 2010.*

I. RESIDENCE/EMPLOYMENT RESTRICTIONS

Under the new law, the residence and employment restrictions that were in effect at the time of your offense will apply to you. In other words, different restrictions will apply to different people depending on the date on which the offense (that caused you to have to register) occurred. If you don’t know the date on which the conduct occurred, you should consult the indictment and/or the plea or trial transcript from your case.

A. **If the offense that caused you to have to register occurred on or after July 1, 2008:**

1. You cannot live within 1,000 feet of a child care facility, church, school, public park, private park, recreation facility, playground, skating rink, neighborhood center, gymnasium, **school bus stop¹**, **public library**, or public or community **swimming pool**. See O.C.G.A. § 42-1-15(b).
2. You cannot be employed by or volunteer at any child care facility, school or church, or by or at any business or entity that is located within 1,000 feet of a child care facility, a school, or a church. See O.C.G.A. § 42-1-15(c)(1).

¹ The school bus stop provision is still not being enforced anywhere in Georgia at this time. School bus stops have only been “designated” for purposes of the sex offender law in Bulloch, Chatham, and Columbia counties. Those counties have agreed to suspend enforcement of the school bus stop provision until the federal court resolves *Whitaker v. Perdue*, the class action lawsuit challenging the 2006 residence restrictions.

B. If the offense that caused you to have to register occurred between July 1, 2006 and June 30, 2008:

1. You cannot live within 1,000 feet of any child care facility, church, school, public park, private park, recreation facility, playground, skating rink, neighborhood center, gymnasium, **school bus stop**, or public or community **swimming pool**. See O.C.G.A. § 42-1-16(b).
2. You cannot be employed by any child care facility, school, or church or by or at any business or entity that is located within 1,000 feet of a child care facility, a school, or a church. See O.C.G.A. § 42-1-16(c)(1).

C. If the offense that caused you to have to register occurred between June 4, 2003 and June 30, 2006:

1. You cannot live within 1,000 feet of any child care facility, school, public park, private park, recreation facility, playground, skating rink, neighborhood center, gymnasium, or “similar facilities providing programs or services directed towards persons under 18 years of age.” See O.C.G.A. § 42-1-17(b). “Child care facility” means all public and private pre-kindergarten facilities, day-care centers, and preschool facilities. See O.C.G.A. § 42-1-17(a)(2).

D. If the offense that caused you to have to register occurred before June 4, 2003:

1. The residence and employment restrictions in O.C.G.A. § 42-1-15, § 42-1-16, and § 42-1-17 do not apply to you. If you are on probation or parole, however, it is possible that your probation or parole officer may place limitations on the locations where you can reside.

II. EXCEPTIONS TO RESIDENCE/EMPLOYMENT RESTRICTIONS

E. Owning/Leasing Property:

1. You will not be guilty of violating the residence restrictions in O.C.G.A. § 42-1-15, § 42-1-16, or § 42-1-17 if you: (a) own or lease real property, (b) reside on such property, (c) can prove ownership/lease as required by the statute, AND (d) a prohibited location thereafter locates itself within 1,000 feet of your property.
2. You will not be guilty of violating the residence restrictions in O.C.G.A. § 42-1-15, § 42-1-16, or § 42-1-17 if you: (a) own or lease real property, (b) reside on the property, (c) established property ownership or leasehold prior to the applicable date as set forth in O.C.G.A. § 42-1-15, § 42-1-16, or § 42-1-17, (d) comply with the statutory provisions requiring proof of ownership.

- a. For purposes of providing proof of leasehold, you must provide a copy of the lease agreement.
- b. Leasehold exemptions shall only be for the duration of the lease. See O.C.G.A. § 42-1-15(f)(3). In other words, law enforcement officials can make you leave once your lease term expires, if you live within 1,000 feet of a prohibited location.

F. Employment Exceptions:

1. You will not be guilty of violating the employment restrictions in O.C.G.A. § 42-1-15, § 42-1-16, or § 42-1-17 if you established employment at a location and a child care facility, church, or school thereafter located itself within 1,000 feet of such employment.
2. You will not be guilty of violating the employment provisions in O.C.G.A. § 42-1-15, § 42-1-16, or § 42-1-17 if you were employed within 1,000 feet of a prohibited location, but had established such employment prior to the applicable date (as set forth in O.C.G.A. § 42-1-15, § 42-1-16, or § 42-1-17), and if you comply with the statutory requirements regarding proof of your employment.

III. PETITIONING FOR RELEASE FROM REGISTRATION/ RESIDENCE/ EMPLOYMENT RESTRICTIONS

Pursuant to a new code section, O.C.G.A. § 42-1-19, certain people may petition a superior court for release from registration requirements and from any residency or employment restrictions under the following circumstances:

Incapacitated/Disabled Persons

The person completed all prison, parole, supervised release, and probation for the offense which required registration AND the person:

- (A) Is confined to a hospice facility, skilled nursing home, residential care facility for the elderly, or nursing home;
- (B) Is “totally and permanently disabled” as defined in O.C.G.A. § 49-4-80; or
- (C) Is otherwise seriously physically incapacitated due to illness or injury.

“Romeo & Juliet” Cases

The person was sentenced for a crime that became punishable as a misdemeanor on or after July 1, 2006, AND he/she meets the criteria in O.C.G.A. § 17-10-6.2 (c)(1)(A) - (c)(1)(F) (see p. 4).

This section is likely to apply to a very small number of people. To give a few examples, this section will apply to persons convicted of sodomy prior to July 1, 2006, if the victim was at least 13 but less than 16, and the person convicted of the crime was 18 or younger and was no more than 4 years older than the victim. This section will also apply to persons convicted of statutory rape prior to July 1, 2006, if the victim was at least 14 but less than 16, and the person convicted of statutory rape was 18 or younger, and no more than 4 years older than the victim.

Persons Convicted of Kidnapping or False Imprisonment Where the Offense or Attempted Offense Was Not Sexual in Nature

The person must register as a sex offender solely because he or she was convicted of kidnapping or false imprisonment involving a minor and such offense did not involve a sexual offense against such minor or an attempt to commit a sexual offense against such minor. The term "sexual offense" means any offense listed in O.C.G.A. § 42-1-12 (a)(10)(B)(i) or (a)(10)(B)(iv) - (a)(10)(B)(xix).

Other Persons Who May Petition for Release

Other persons may petition for release from the registration, residence, or employment restrictions if they meet the requirements in paragraphs (a) and (b) AND either (c) or (d) below:

- a. The person completed all prison, parole, supervised release, and probation for the offense which required registration;

AND

- b. The person meets ALL of the following criteria (set forth in O.C.G.A. § 17-10-6.2 (c)(1)(A) - (c)(1)(F):
 - a. The person has no prior conviction of an offense prohibited by Chapter 6 of Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16, nor a prior conviction for any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of offenses prohibited by Chapter 6 of Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16;
 - b. The person did not use a deadly weapon or any object, device, or instrument which when used offensively against a person would be likely to or actually did result in serious bodily injury during the commission of the offense;
 - c. The court has not found evidence of a relevant similar transaction;

- d. The victim did not suffer any intentional physical harm during the commission of the offense;
- e. The offense did not involve the transportation of the victim; and
- f. The victim was not physically restrained during the commission of the offense;

AND EITHER

- c. Ten years have elapsed since the person completed all prison, parole, supervised release, and probation for the offense which required registration;

OR

- d. The person has been classified by the Sex Offender Review Board as a Level I risk assessment classification, provided that if the Board has not done a risk assessment classification for such individual, the court shall order such classification to be completed prior to considering the petition for release.

Petitions for release must be filed in the superior court of the jurisdiction in which you were convicted. If you were not convicted in Georgia, the petition must be filed in the superior court of the county where you live. If your petition for release is denied, you cannot file another one for two years from the date on which your petition was denied. Please see O.C.G.A. § 42-1-19 for more about the petition process.

If you wish to, you may hire an attorney to assist you in petitioning for release from the registration/residence/employment requirements. If you can afford an attorney, we recommend that you hire one. There is no requirement, however, that you have an attorney to file a petition. You can do it yourself. **Please note that the Southern Center for Human Rights cannot represent you in your petition for removal from the sex offender registry.** If you are looking for an attorney to assist you, you may go to the website of the Georgia Association of Criminal Defense Lawyers (GACDL) at www.gacdl.org. You may click on "find an attorney." If you enter your town, you can find there a list of all local GACDL members.

IV. VOLUNTEERING AT CHURCH

The 2008 sex offender law criminalized religious activity by making it illegal and punishable by 10-30 years in prison to "volunteer" at church. The 2008 law contained no definition of the term "volunteer," leading persons to wonder whether they would be prosecuted for activities like singing in an adult church choirs or participating in adult Bible study. Under the 2010 law, it is still illegal for certain persons on the registry to "volunteer" at a church. (See Section I, above). HB 571, however, defines what it means to "volunteer" as follows:

“Volunteer” means to engage in an activity in which one could be, and ordinarily would be, employed for compensation, and which activity involves working with, assisting, or being engaged in activities with minors; provided, however, that such term shall not include participating in activities limited to persons who are 18 years of age or older or participating in worship services or engaging in religious activities or activities at a place of worship that do not include supervising, teaching, directing, or otherwise participating with minors who are not supervised by an adult who is not an individual required to register pursuant to Code Section 42-1-12. See O.C.G.A. § 42-1-15(a)(4) (2010).

V. HOMELESS PERSONS ON THE SEX OFFENDER REGISTRY

The 2006 sex offender law made it illegal and punishable by 10-30 years in prison for a person on the sex offender registry to be homeless. HB 571 changes the requirements for homeless persons on the registry. Under HB 571, homeless persons must:

- a. register in person with the sheriff of the county in which he/she sleeps within 72 hours after his/her release from prison or placement on parole, supervised release, probation, or entry into this state;
- b. provide the location where he/she sleeps;
- c. Maintain the required registration information with the sheriff of each county in which he/she sleeps;
- d. Renew the required registration information with the sheriff of the county in which he/she sleeps by reporting in person to the sheriff within 72 hours prior to his/her birthday each year to be photographed and fingerprinted;
- e. If the sexual offender is homeless and the information is his/her new sleeping location, within 72 hours of changing sleeping locations, the sexual offender shall give the information regarding his/her new sleeping location to the sheriff of the county in which he/she last registered, and if the county has changed, to the sheriff of the county to which he/she has moved. See O.C.G.A. § 42-1-12(f) (2.1-5) (2010).

VI. MOVING TO A NEW RESIDENCE

If you wish to move, you must give law enforcement notice of your new address before you move:

- Within 72 hours prior to moving, you must give your new address to the sheriff of the county in which you live now;
- If you are moving to a different county, within 72 hours prior to moving, you must also give your new address to the sheriff of the county to which you are moving.

See O.C.G.A. § 42-1-12(b)(3); 42-1-12(f)(5). You must also follow your parole/probation conditions regarding the reporting of a new residence.

VII. PUNISHMENT FOR “FAILURE TO REGISTER” AND FAILURE TO ABIDE BY 1,000-FOOT RESIDENCE/EMPLOYMENT RESTRICTIONS.

(A) Failure to provide the required registration information (including name, address, date of employment, place of employment, and other information) is punishable by **1-30 years in prison** for a first offense. See O.C.G.A. § 42-1-12(n).

(B) The potential punishment for failing to abide by the 1,000-foot residence/employment restrictions varies depending on the date on which the underlying offense requiring registration occurred. For persons whose offenses requiring registration occurred on or after July 1, 2006, a violation of the residence/employment law carries a potential punishment of **10-30 years in prison**. See O.C.G.A. § 42-1-15(g); 42-1-16(g). For persons whose offenses requiring registration occurred between June 4, 2003 and June 30, 2006, a violation of the residence/employment law carries a potential punishment of **1-3 years in prison**. See O.C.G.A. § 42-1-17(e).

VIII. USERNAMES/PASSWORDS

The 2010 sex offender law **deletes** the requirement that persons on the registry must provide their “e-mail addresses, usernames, and user passwords” to law enforcement officials as part of the required registration information.

IX. PHOTOGRAPHING MINORS

The 2010 law contains a new code section punishing the act of taking pictures of minors. Persons on the sex offender registry may not intentionally photograph (or videotape) a minor without the consent of the minor’s parent or guardian. A person who knowingly photographs a minor without such consent shall be guilty of a misdemeanor of a high and aggravated nature. See O.C.G.A. § 42-1-18.