

O.C.G.A. § 42-1-15

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**Official Code of Georgia Annotated TITLE 42 Penal Institutions (Chs. 1 – 13) CHAPTER 1
General Provisions (Arts. 1 – 2) Article 2 Sexual Offender Risk Review Board (§§ 42-1-12
– 42-1-19)**

42-1-15. Restriction on registered sexual offenders residing, working, or loitering within certain distance of child care facilities, churches, schools, or areas where minors congregate; penalties.

(a) As used in this Code section, the term:

(1) "Individual" means a person who is required to register pursuant to Code Section 42-1-12.

(2) "Lease" means a right of occupancy pursuant to a written and valid lease or rental agreement.

(3) "Minor" means any person who is under 18 years of age.

(4) "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.

(b) On and after July 1, 2008, no individual shall reside within 1,000 feet of any child care facility, church, school, or area where minors congregate if the commission of the act for which such individual is required to register occurred on or after July 1, 2008. Such distance shall be determined by measuring from the outer boundary of the property on which the individual resides to the outer boundary of the property of the child care facility, church, school, or area where minors congregate at their closest points.

(c)

(1) On and after July 1, 2008, no individual shall 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 if the commission of the act for which such individual is required to register occurred on or after July 1, 2008. Such distance shall be determined by measuring from the outer boundary of the property of the location at which such individual is employed or volunteers to the outer boundary of the child care facility, school, or church at their closest points.

(2) On or after July 1, 2008, no individual who is a sexually dangerous predator shall be employed by or volunteer at any business or entity that is located within 1,000 feet of an area where minors congregate if the commission of the act for which such individual is required to register occurred on or after July 1, 2008. Such distance shall be determined by measuring from the outer boundary of the property of the location at which the sexually dangerous predator is employed or volunteers to the outer boundary of the area where minors congregate at their closest points.

(d) Notwithstanding any ordinance or resolution adopted pursuant to Code Section 16-6-24 or subsection (d) of Code Section 16-11-36, it shall be unlawful for any individual or for any person who is or should be registered on another state's sexual offender registry to loiter, as prohibited by Code Section 16-11-36, at any child care facility, school, or area where minors congregate.

(e)

(1) If an individual owns or leases real property and resides on such property and a child care facility, church, school, or area where minors congregate thereafter locates itself within 1,000 feet of such property, or if an individual has established employment at a location and a child care facility, church, or school thereafter locates itself within 1,000 feet of such employment, or if a sexual predator has established employment and an area where minors congregate thereafter locates itself within 1,000 feet of such employment, such individual shall not be guilty of a violation of subsection (b) or (c) of this Code section, as applicable, if such individual successfully complies with subsection (f) of this Code section.

(2) An individual owning or leasing real property and residing on such property or being employed within 1,000 feet of a prohibited location, as specified in subsection (b) or (c) of this Code section, shall not be guilty of a violation of this Code section if such individual had established such property ownership, leasehold, or employment prior to July 1, 2008, and such individual successfully complies with subsection (f) of this Code section.

(f)

(1) If an individual is notified that he or she is in violation of subsection (b) or (c) of this Code section, and if such individual claims that he or she is exempt from such prohibition pursuant to subsection (e) of this Code section, such individual shall provide sufficient proof demonstrating his or her exemption to the sheriff of the county where the individual is registered within ten days of being notified of any such violation.

(2) For purposes of providing proof of residence, the individual may provide a driver's license, government issued identification, or any other documentation evidencing where the individual's habitation is fixed. For purposes of providing proof of property ownership, the individual shall provide a

copy of his or her warranty deed, quitclaim deed, or voluntary deed, or other documentation evidencing property ownership.

(3) For purposes of providing proof of a leasehold, the individual shall provide a copy of the applicable lease agreement. Leasehold exemptions shall only be for the duration of the executed lease.

(4) For purposes of providing proof of employment, the individual may provide an Internal Revenue Service Form W-2, a pay check, or a notarized verification of employment from the individual's employer, or other documentation evidencing employment. Such employment documentation shall evidence the location in which such individual actually carries out or performs the functions of his or her job.

(5) Documentation provided pursuant to this subsection may be required to be date specific, depending upon the individual's exemption claim.

(g) Any individual who knowingly violates this Code section shall be guilty of a felony and shall be punished by imprisonment for not less than ten nor more than 30 years.

(h) Nothing in this Code section shall create, either directly or indirectly, any civil cause of action against or result in criminal prosecution of any person, firm, corporation, partnership, trust, or association other than an individual required to be registered under Code Section 42-1-12.

History

Code 1981, § **42-1-15**, enacted by Ga. L. 2008, p. 680, § 4/SB 1; Ga. L. 2010, p. 168, § 13/HB 571; Ga. L. 2017, p. 347, § 1/SB 250.

▼ Annotations

Notes

Amendments.

The 2017 amendment, effective July 1, 2017, inserted "or for any person who is or should be registered on another state's sexual offender registry" in the middle of subsection (d).

Editor's notes.

This Code section formerly pertained to restriction on registered offenders residing, working, or loitering within certain distance of child care facilities, churches, schools, or areas where minors congregate; penalty for violations; civil causes of action. The former Code section was based on Ga. L. 2006, p. 379, § 24/HB 1059 and was repealed by Ga. L. 2008, p. 680, § 1/SB 1.

JUDICIAL DECISIONS

Editor's notes.

In light of the similarity of the subject matter, decisions under former Code 1981, § 42-1-13, enacted by Ga. L. 2003, p. 878, § 1 and former O.C.G.A. § **42-1-15**, are included in the annotations for this Code section.

Statute not unconstitutional ex post facto law. —

Even though former O.C.G.A. § 42-1-13 was passed after a sex offender's statutory rape conviction, and used the prior conviction as an element of a future offense, it was not an ex post facto law since it only punished a future offense, which punishment was enhanced by the prior conviction, and the sex offender could only have been punished under former § 42-1-13 if the offender prospectively chose to violate the statute by continuing to live at the offender's current home; the fact that the prior conviction subjected the sex offender to possible punishment under former § 42-1-13 did not make the statute into an unconstitutional ex post facto law. *Denson v. State of Ga.*, 267 Ga. App. 528, 600 S.E.2d 645, 2004 Ga. App. LEXIS 703 (2004) (decided under former O.C.G.A. § 42-1-13).

Unconstitutional when applied to sex offender's residence. —

In a declaratory action suit brought by a registered sex offender, former O.C.G.A. § **42-1-15(a)** was held unconstitutional as to the sex offender's residence, which was acquired prior to a child care facility locating itself within 1,000 feet of the property as forcing the sex offender from the home was a regulatory taking of the property without just and adequate compensation. However, no regulatory taking occurred with regard to prohibiting the sex offender from physically working at a business, pursuant to former § **42-1-15(b)(1)**, in which the sex offender held an ownership interest in as there existed no prohibition on owning a business within 1,000 feet of any child care facility, church, school, or other area where minors congregated and the sex offender failed to show that physically working at the premises was necessary. *Mann v. Ga. Dep't of Corr.*, 282 Ga. 754, 653 S.E.2d 740, 2007 Ga. LEXIS 849 (2007) (decided under former O.C.G.A. § **42-1-15**).

Life sentence for failing to register unconstitutional. —

Imposition of a mandatory sentence of life imprisonment imposed against a defendant, who was a second time offender, for failing to register as a sexual offender was held unconstitutional as grossly disproportionate to the crime of failing to register. *Bradshaw v. State*, 284 Ga. 675, 671 S.E.2d 485, 2008 Ga. LEXIS 1022 (2008) (decided under former O.C.G.A. § **42-1-15**).

No registration required for conviction prior to July 1, 2008. —

Defendant was entitled to reversal of the conviction for violation of a sexual offender restriction because the defendant was required to register as a sexual offender due to a conviction for statutory rape that occurred in October 2002, but the loitering prohibition applied only to acts committed on or after July 1, 2008. *Walker v. State*, 360 Ga. App. 211, 860 S.E.2d 868, 2021 Ga. App. LEXIS 325 (2021).

Failure of homeless to register. —

Defendant's conviction under O.C.G.A. § 42-1-12 for failing to register as a sex offender was reversed because the record showed that the state has never contested the evidence showing the defendant's homeless status nor had the state ever alleged, either in the indictment or at trial, that, despite the defendant's homelessness, the defendant had a street or route address which the defendant failed to register with the sheriff's office. *Chestnut v. State*, 331 Ga. App. 69, 769 S.E.2d 779, 2015 Ga. App. LEXIS 105 (2015).

Research References & Practice Aids

Cross references.

Electronic location tracking of sexual offenders, § 42-1-13.1.

Law reviews.

For comment, "'An Era of Human Zoning': Banning Sex Offenders from Communities Through Residence and Work Restrictions," see 57 Emory L.J. 1347 (2008).

For survey article on criminal law, see 60 Mercer L. Rev. 85 (2008).

For summary review article on zoning and land use law, see 60 Mercer L. Rev. 457 (2008).

For annual survey on criminal law, see 69 Mercer L. Rev. 73 (2017).

RESEARCH REFERENCES

ALR.

Validity of statutes imposing residency restrictions on registered sex offenders, 25 A.L.R.6th 227.

Validity, construction, and application of statutory and municipal enactments and conditions of release prohibiting sex offenders from parks, 40 A.L.R.6th 419.

Validity, construction, and application of federal Sex Offender Registration and Notification Act (SORNA), 42 U.S.C.A. § 16901 et seq., its enforcement provision, 18 U.S.C.A § 2250, and associated regulations, 30 A.L.R. Fed. 2d 213.

Validity, construction, and application of state sex offender statutes prohibiting use of computers and internet as conditions of probation or sentence, 89 A.L.R.6th 261.

Hierarchy Notes:

O.C.G.A. Title 42

O.C.G.A. Title 42, Ch. 1, Art. 2

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