

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 06-134

Monitoring of Sex Offenders at Probation and Parole Field Offices

QUESTION

Is it a violation of Tenn. Code Ann. §40-39-211(a), which makes it a Class E felony for sex offenders whose victims were minors to knowingly obtain sexual offender treatment within 1000 feet of the property line of certain types of property where children congregate, for such sex offenders to report as required to probation or parole officers at a Probation and Parole Field Office located within 1000 feet of one of the proscribed areas.

OPINION

No. The monitoring of sex offenders done by probation and parole officers to ensure compliance with the conditions of probation and parole does not fit the definition of treatment in Tenn. Code Ann. §40-39-211.

ANALYSIS

You ask whether the monitoring of sex offenders done by probation and parole officers is considered treatment for the purposes of Tenn. Code Ann. §40-39-211(a) which makes it a criminal offense for certain sex offenders to knowingly obtain sexual offender treatment or attend a sexual offender treatment program within 1000 feet of the property line of any public, private or parochial school, licensed day care or other child care facility, public park, playground, recreation center or public athletic field. Violation of the statute is a Class E felony. Sex offenders are required to report at least once a month to a Probation and Parole Field Office for drug screens, polygraphs and/or other monitoring activities. The Field Offices do not provide what would traditionally be considered treatment, such as therapy by a licensed professional. Many of the field offices are within 1000 feet of the property line of one of the proscribed areas above.

Inasmuch as Tenn. Code Ann. §40-39-211(a) does not define “treatment,” the principles of statutory construction must guide the ascertainment of its meaning.

Courts are to look to the plain language of a statute and give effect to the ordinary meaning of the words. (citations omitted). We presume that the legislature purposefully chose each word used in a statute and that each word conveys a specific purpose and meaning. (citations omitted). Further, we must “ascertain and carry

out the legislature's intent without unduly restricting or expanding a statute's coverage beyond its intended scope.” (citations omitted). Only if the plain language of a statute is ambiguous must we look beyond the statutory language to determine the legislature's intent. (citation omitted). However, in criminal cases, all ambiguities will be resolved in favor of the defendant. (citation omitted).

State v. Denton, 149 S.W.3d 1, 17 (Tenn. 2004).

Tennessee Standardized Treatment Program for Sex Offenders, codified in Tenn. Code Ann. Title 39, Chapter 13, Part 7, defines “treatment” as “therapy *and supervision* of any sex offender which conforms to the standards created by the [sex offender treatment] board pursuant to §39-13-704.” Tenn. Code Ann. §39-13-703(4)(italics added). However, that definition is limited to Title 39, Chapter 13, Part 7. *Id.*

The ordinary meaning of treatment would not include monitoring activities by nonmedical personnel. The Oxford Dictionary defines treatment as “1. Process or manner of behaving towards or dealing with a person or thing. 2. medical care or attention.” Oxford Dictionary of Current English 974 (2nd ed. 1992). The American Heritage Dictionary defines treatment as “1. The act or manner of treating; handling. 2. The application of remedies with the object of effecting a cure; therapy.” American Heritage Dictionary 1290 (2nd ed. 1991). Consequently, the acts of probation and parole officers in monitoring compliance with the conditions of probation and parole do not fit the definition of treatment as contained in Tenn. Code Ann. § 40-39-211(a).

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

KIMBERLY J. DEAN
Deputy Attorney General

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Requested by:

Charles Traugher
Chairman, Tennessee Board of Probation and Parole
404 James Robertson Parkway, Suite 1300
Nashville, TN 37243-0850