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Opinion No. 07-13

Termination of Sexual Offender Registration and Residency Requirements

QUESTIONS

1. Is a person convicted of statutory rape in 1997 under the prior definition of that offense still classified as a sexual offender for purposes of the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act (Tenn. Code Ann. § 40-39-201 *et seq.*) as amended by 2006 Tenn. Pub. Acts, ch. 890, § 26?

2. If the person convicted of statutory rape in 1997 is no longer classified as a sexual offender, is that person exempted from the registration requirements of the Act?

3. If a person convicted of statutory rape in 1997 is no longer classified as a sexual offender, is that person allowed to reside in a home where a minor resides?

OPINIONS

1. A person convicted of statutory rape in 1997 is still classified as a sexual offender under the amended Act and is subject to its registration and residency requirements unless he requests and is approved for termination of registration requirements pursuant to Tenn. Code Ann. § 40-39-207(g).

2. Unless a person convicted of statutory rape in 1997 has requested and been approved for termination of registration requirements, he must continue to comply with the sexual offender registry mandates.

3. Unless a person convicted of statutory rape in 1997 has requested and been approved for termination of registration requirements, he must continue to comply with the residency restrictions of the Act, which prohibit a sexual offender from residing in a home where a minor resides.

ANALYSIS

Prior to July 1, 2006, statutory rape was defined as "sexual penetration of a victim by the defendant or of the defendant by the victim when the victim is at least thirteen (13) but less than eighteen (18) years of age and the defendant is at least four (4) years older than the victim." Tenn. Code Ann. § 39-13-506(a) (1989). Statutory rape was also included in the definition of sexual offenses for purposes of classifying sexual offenders who were subject to the registration and residency requirements of the Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004 and its predecessors. Tenn. Code Ann. § 40-39-202(16); (17)(A)(ii). Accordingly, a person convicted of statutory rape in 1997 was required to register as a sexual offender and comply with the residency restrictions of the Act.

Effective July 1, 2006, the legislature redefined statutory rape as follows:

> (a) Mitigated statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when the victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is at least four (4) but not more than five (5) years older than the victim.
> (b) Statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when:
>
> > (1) The victim is at least thirteen (13) but less than fifteen (15) years of age and the defendant is at least four (4) years older than the victim; or
> > (2) The victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is more than five (5) years older than the victim.
>
> (c) Aggravated statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when the victim is at least thirteen (13) but less than eighteen (18) years of age and the defendant is at least ten (10) years older than the victim.

Tenn. Code Ann. § 39-13-506 (2006).

The legislature also amended the definition of sexual offenses to include statutory rape if the defendant was an authority figure to the victim or if the defendant has at least one prior conviction for any form of statutory rape under Tenn. Code Ann. § 39-13-506 (2006). Tenn. Code Ann. § 40-39-202(17)(A)(ii). Thus, a person convicted of statutory rape who was not an authority figure to the victim and has no prior convictions for statutory rape is no longer required to comply with the Act.

However, a person who is already on the sexual offender registry because of a pre-2006 conviction for statutory rape is not automatically exempted from the requirements of the Act simply because he would not be required to register if he had been convicted after July 1, 2006. Pursuant to Tenn. Code Ann. § 40-39-207(g)(1), that person "may file a request for termination of registration requirements with TBI headquarters in Nashville." Upon receipt of an application, the TBI shall conduct an investigation and

> [i]f it is determined that the offender would not be required to register if the offense was committed on or after July 1, 2006, that the offender has not been convicted of any additional sexual offenses or violent sexual offenses, and that the offender has substantially complied with the provisions of this part and any previous versions of this part, the TBI shall remove the offender's name from the SOR and notify the offender that the offender is no longer required to comply with the provisions of this part.

Tenn. Code Ann. § 40-39-(g)(3).

A person whose request for termination of registration requirements is approved by the TBI — or by the chancery court on appeal of a denial by the TBI — is exempt from the registration requirements of the Act. Furthermore, that person would no longer be "mandated to comply" with the residential and work restrictions of Tenn. Code Ann. § 40-39-211, including the prohibition against establishing a residence where a minor resides.

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