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Opinion No. 09-01

Requirements for Registered Out-of-State Sex Offenders with Expunged Convictions

QUESTION

Are out-of-state sex offenders, whose convictions have been expunged, but who are still required to register in another jurisdiction, required to register in Tennessee if they meet the residency or other physical presence requirements that are set forth in Tenn. Code Ann. § 40-39-203 (2008 Supp.)?

OPINION

Yes. Out-of-state sex offenders whose convictions have been expunged are required to register in Tennessee if they were required to register as any form of sexual offender in another jurisdiction prior to their physical presence in Tennessee and if they meet the residency or other physical presence requirements that are set forth in Tenn. Code Ann. § 40-39-203 (2008 Supp.).

ANALYSIS

Out-of-state sex offenders are required to register after they establish sufficient contact with Tennessee.[1] Tenn. Code Ann. § 40-39-203(a)(1) (2008 Supp.) states:

> Within forty-eight (48) hours of establishing or changing a primary or secondary residence, establishing a physical presence at a particular location, becoming employed or practicing a vocation or becoming a student in this state, the offender shall register or report in person, as required by this part.

Persons who successfully complete judicial diversion may move to have the records related to their convictions expunged. Tenn. Code Ann. § §40-32-101(a)(1)(C) and 40-35-313(b) (2008 Supp.). A sexual offender who obtains an expungement order from a court of competent jurisdiction and pursuant to Tenn. Code Ann. § 40-32-101 (2008 Supp.) is entitled to immediate removal from the registry. Tenn. Code Ann. § 40-39-207(a)(2) (2008 Supp.) states:

[1] Offenders include persons who have been convicted of sexual and violent sexual offenses. Tenn. Code Ann. § 40-39-202(10) (2008 Supp.). The term conviction is defined to include guilty pleas, guilty verdicts and judicial diversion under Tenn. Code Ann. § 40-35-313 or its equivalent in another jurisdiction. Tenn. Code Ann. § 40-39-202(2) (2008 Supp.).

> Notwithstanding subdivision (a)(1), if a court of competent jurisdiction orders that an offender's records be expunged pursuant to § 40-32-101, and the offense being expunged is an offense eligible for expunction under § 40-32-101, the TBI shall immediately remove the offender from the SOR and the offender's records shall be removed as provided in § 40-39-209.

The statute does not anywhere address whether an out-of-state offender whose record has been expunged in the convicting jurisdiction is required to initiate registration in Tennessee. However, the statute does unconditionally require that out-of-state offenders must initiate registration in this state if they were required to register in another jurisdiction prior to establishing contact in Tennessee sufficient to trigger Tenn. Code Ann. § 40-39-203(a)(1) (2008 Supp.).

Specifically, Tenn. Code Ann. § 40-39-203(a)(2) (2008 Supp.) states:

> Regardless of an offender's date of conviction or discharge from supervision, an offender whose contact with the state is sufficient to satisfy the requirements of subdivision (a)(1) and who was an adult when the offense occurred is required to register or report in person as required by this part, if the person was required to register as any form of sexual offender in another jurisdiction prior to the offender's presence in this state.

The primary objective of statutory construction is to ascertain and give effect to the intention of the legislature as expressed in the text of the statute. *In Re Adoption of A.M.H.,* 215 S.W.3d 793 (Tenn. 2007). When the language of a statute is clear and unambiguous, courts will give effect to that intent as expressed in the plain meaning of the statutory language. *State v. Strode,* 232 S.W.3d 1 (Tenn. 2007).

Tenn. Code Ann. § 40-39-203(a)(2) (2008 Supp.) clearly and unambiguously requires the registration of any out-of-state sex offender who establishes a presence in Tennessee if, prior to establishing such a presence, the offender was required to register in another state. Because the statute provides no exception for such offenders whose records have been expunged by the convicting jurisdiction, we conclude that they must register in Tennessee, even if their records have been expunged elsewhere.

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