



KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Validity Called into Doubt by [Reid v. Lee](#), M.D.Tenn., Aug. 05, 2020



KeyCite Yellow Flag - Negative Treatment Proposed Legislation

[West's Tennessee Code Annotated](#)

[Title 40. Criminal Procedure](#)

[Chapter 39. Offender Registration and Monitoring](#)

[Part 2. Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking](#)

[Act of 2004 \(Refs & Annos\)](#)

T. C. A. § 40-39-211

§ 40-39-211. Establishment of residence or acceptance of employment; violations

Effective: April 1, 2020

[Currentness](#)

(a)(1) While mandated to comply with the requirements of this chapter, no sexual offender, as defined in [§ 40-39-202](#), or violent sexual offender as defined in [§ 40-39-202](#), shall knowingly establish a primary or secondary residence or any other living accommodation or knowingly accept employment within one thousand feet (1,000') of the property line of any public school, private or parochial school, licensed day care center, other child care facility, public park, playground, recreation center, or public athletic field available for use by the general public.

(2) For purposes of this subsection (a), “playground” means any indoor or outdoor facility that is intended for recreation of children and owned by the state, a local government, or a not-for-profit organization, and includes any parking lot appurtenant to the indoor or outdoor facility.

(b) No sexual offender, violent sexual offender, or violent juvenile sexual offender, as those terms are defined in [§ 40-39-202](#), shall knowingly:

(1) Reside within one thousand feet (1,000') of the property line on which the offender's former victims or the victims' immediate family members reside;

(2) Come within one hundred feet (100') of any of the offender's former victims, except as otherwise authorized by law; or

(3) Contact any of the offender's former victims or the victims' immediate family members without the consent of the victim or consent of the victim's parent or guardian if the victim is a minor being contacted by telephone, in writing, by electronic mail, internet services or any other form of electronic communication, unless otherwise authorized by law.

(c)(1) While mandated to comply with the requirements of this part, no sexual offender or violent sexual offender, whose victim was a minor, shall knowingly reside or conduct an overnight visit at a residence in which a minor resides or is present. Notwithstanding this subsection (c), the offender may reside, conduct an overnight visit, or be alone with a minor if the offender is the parent of the minor, unless:

- (A) The offender's parental rights have been or are in the process of being terminated as provided by law;
 - (B) Any minor or adult child of the offender was a victim of a sexual offense or violent sexual offense committed by the offender; or
 - (C) The offender has been convicted of a sexual offense or violent sexual offense and the following conditions have been satisfied:
 - (i) The victim of the sexual offense or violent sexual offense was a minor twelve (12) years of age or less; and
 - (ii) A circuit court, exercising its jurisdiction over civil matters, has found by clear and convincing evidence that the offender presents a danger of substantial harm to the minor.
- (2) For purposes of subdivision (c)(1)(C):
- (A) The district attorney general for the judicial district in which the minor resides may petition the court to make a finding described in subdivision (c)(1)(C)(ii) at any time the offender is required to register pursuant to this part;
 - (B) The offender must be provided notice and an opportunity to be heard;
 - (C) When determining whether the offender poses a danger of substantial harm to a minor, the court may consider the facts and circumstance of the offense, the offender's most recent efforts to rehabilitate, compliance with community supervision as provided in [§ 39-13-524](#) if applicable, any violations of this part as specified in [§ 40-39-208](#), and other relevant evidence;
 - (D) All files and records of the court in the proceeding must be treated as confidential and shall not be open to the public or disclosed to the public, but are open to:
 - (i) The judge, officers, and professional staff of the court;
 - (ii) The parties to the proceeding and their counsel and representatives;
 - (iii) Any parent or legal guardian of the minor other than the offender;
 - (iv) The offender's registering agency; and
 - (v) With permission of the court, any other person or agency having a legitimate interest in the proceeding;

(E) The court must enter a written order stating its findings. If the court finds that the offender presents a danger of substantial harm to the minor, the district attorney general shall provide the court's finding to the offender's registering agency;

(F) No sooner than two (2) years after the date of entry of the circuit court's order, the offender may petition the court for reconsideration of a finding that the offender presents a danger of substantial harm to the minor. The offender must show, by clear and convincing evidence, that the offender no longer presents a danger of substantial harm to the minor; and

(G) An appeal from a final order or judgment under subdivision (c)(1)(C)(ii) may be made to the court of appeals. A finding that the offender presents a danger of substantial harm to the minor shall remain in effect pending the outcome of the appeal.

(d)(1) No sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, shall knowingly:

(A) Be upon or remain on the premises of any building or grounds of any public school, private or parochial school, licensed day care center, other child care facility, public park, playground, recreation center or public athletic field available for use by the general public in this state when the offender has reason to believe children under eighteen (18) years of age are present;

(B) Stand, sit idly, whether or not the offender is in a vehicle, or remain within one thousand feet (1,000') of the property line of any building owned or operated by any public school, private or parochial school, licensed day care center, other child care facility, public park, playground, recreation center or public athletic field available for use by the general public in this state when children under eighteen (18) years of age are present, while not having a reason or relationship involving custody of or responsibility for a child or any other specific or legitimate reason for being there; or

(C) Be in any conveyance owned, leased or contracted by a school, licensed day care center, other child care facility or recreation center to transport students to or from school, day care, child care, or a recreation center or any related activity thereof when children under eighteen (18) years of age are present in the conveyance.

(2) Subdivision (d)(1) shall not apply when the offender:

(A) Is a student in attendance at the school;

(B) Is attending a conference with school, day care, child care, park, playground or recreation center officials as a parent or legal guardian of a child who is enrolled in the school, day care center, other child care center or of a child who is a participant at the park, playground or recreation center and has received written permission or a request from the school's principal or the facility's administrator;

(C) Resides at a state licensed or certified facility for incarceration, health or convalescent care; or

(D) Is dropping off or picking up a child or children and the person is the child or children's parent or legal guardian who has provided written notice of the parent's offender status to the school's principal or a school administrator upon enrollment.

(3) The exemption provided in subdivision (d)(2)(B) shall not apply if the victim of the offender's sexual offense or violent sexual offense was a minor at the time of the offense and the victim is enrolled in the school, day care center, recreation center or other child care center that is participating in the conference or other scheduled event.

(e) Changes in the ownership or use of property within one thousand feet (1,000') of the property line of an offender's primary or secondary residence or place of employment that occur after an offender establishes residence or accepts employment shall not form the basis for finding that an offender is in violation of the residence restrictions of this section.

(f) A violation of this part is a Class E felony. No person violating this part shall be eligible for suspension of sentence, diversion or probation until the minimum sentence is served in its entirety.

(g)(1) The first violation of this part is punishable by a fine of not less than three hundred fifty dollars (\$350) and imprisonment for not less than ninety (90) days.

(2) A second violation of this part is punishable by a fine of not less than six hundred dollars (\$600) and imprisonment for not less than one hundred eighty (180) days.

(3) A third or subsequent violation of this part is punishable by a fine of not less than one thousand one hundred dollars (\$1,100) and imprisonment for not less than one (1) year.

(4) A violation of this part due solely to a lack of the written permission required pursuant to subdivision (d)(2) shall be punishable by fine only.

(h)(1)(A) While mandated to comply with the requirements of this part, it is an offense for three (3) or more sexual offenders, as defined in § 40-39-202, or violent sexual offenders, as defined in § 40-39-202, or a combination thereof, to establish a primary or secondary residence together or inhabit the same primary or secondary residence at the same time.

(B) Each sexual offender or violent sexual offender who establishes or inhabits a primary or secondary residence in violation of subdivision (h)(1)(A) commits a violation of this section.

(C) Subdivision (h)(1)(A) shall not apply if the residence is located on property that is, according to the relevant local, county, or municipal zoning law, zoned for a use other than residential or mixed-use.

(2)(A) No person, corporation, or other entity shall knowingly permit three (3) or more sexual offenders, as defined in § 40-39-202, violent sexual offenders, as defined in § 40-39-202, or a combination thereof, while such offenders are mandated to comply with the requirements of this part, to establish a primary or secondary residence in any house, apartment or other habitation, as defined by § 39-14-401(1)(A), owned or under the control of such person, corporation, or entity.

(B) Subdivision (h)(2)(A) shall not apply if the residence is located on property that is, according to the relevant local, county, or municipal zoning law, zoned for a use other than residential or mixed-use.

(3) This subsection (h) shall not apply to any residential treatment facility in which more than three (3) sexual offenders, as defined in § 40-39-202, violent sexual offenders, as defined in § 40-39-202, or combination thereof, reside following sentencing to such facility by a court or placement in such facility by the board of parole for the purpose of in-house sexual offender treatment; provided, the treatment facility complies with the guidelines and standards for the treatment of sexual offenders established by the sex offender treatment board pursuant to § 39-13-704.

(i) The restrictions set out in subsections (a)-(d) and (k) shall not apply to a violent juvenile sexual offender required to register under this part unless otherwise ordered by a court of competent jurisdiction.

(j) Notwithstanding any law to the contrary, a violent juvenile sexual offender who knowingly violates this section commits a delinquent act as defined by the juvenile code.

(k)(1) As used in this subsection (k), unless the context otherwise requires:

(A)(i) “Alone with” means one (1) or more offenders covered by this subsection (k) is in the presence of a minor or minors in a private area; and

(a) There is no other adult present in the area;

(b) There is another adult present in the area but the adult is asleep, unconscious, or otherwise unable to observe the offender and the minor or minors;

(c) There is another adult present in the area but the adult present is unable or unwilling to come to the aid of the minor or minors or contact the proper authorities, if necessary; or

(d) There is another adult present in the area but the adult is also a sexual offender or violent sexual offender mandated to comply with the requirements of this part;

(ii) If the offender is in a private area where the offender has the right to be, the offender is not “alone with” a minor or minors if the offender is engaged in an otherwise lawful activity and the presence of the minor or minors is incidental, accidental, or otherwise unrelated to the offender's lawful activity; and

(B)(i) “Private area” means in or on any real or personal property, regardless of ownership, where the conduct of the offender is not readily observable by anyone but the minor or minors alone with the offender;

(ii) If the private area contains multiple rooms, such as a hotel, motel, or other place of temporary lodging, any room, rooms, or other area that the offender occupies with a minor or minors and that otherwise meets the requirements of this definition shall be considered a private area.

(2) Unless otherwise permitted by subsection (c), while mandated to comply with the requirements of this part, no sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, shall be alone with a minor or minors in a private area.

Credits

2004 Pub.Acts, c. 921, § 1; 2005 Pub.Acts, c. 316, § 1; 2006 Pub.Acts, c. 890, § 20, eff. July 1, 2006; 2008 Pub.Acts, c. 1164, § 11, eff. July 1, 2008; 2009 Pub.Acts, c. 597, § 1; 2010 Pub.Acts, c. 750, §§ 1, 2, eff. July 1, 2010; 2010 Pub.Acts, c. 1145, § 1, eff. July 1, 2010; 2011 Pub.Acts, c. 308, § 1, eff. May 27, 2011; 2011 Pub.Acts, c. 483, §§ 18 to 20, eff. July 1, 2011; 2014 Pub.Acts, c. 992, § 1, eff. July 1, 2014; 2015 Pub.Acts, c. 516, §§ 1, 2, 8, eff. July 1, 2015; 2018 Pub.Acts, c. 643, § 1, eff. July 1, 2018; 2018 Pub.Acts, c. 898, § 1, eff. July 1, 2018; 2019 Pub.Acts, c. 374, § 1, eff. July 1, 2019; 2020 Pub.Acts, c. 636, § 1, eff. April 1, 2020.

Editors' Notes

VALIDITY

<For validity of this section, see [Reid v. Lee, M.D. Tenn., Aug. 5, 2020, 2020 WL 4501457.](#) >

Notes of Decisions (9)

T. C. A. § 40-39-211, TN ST § 40-39-211

Current with laws from the 2021 First Extraordinary Sess. of the 112th Tennessee General Assembly, eff. through February 3, 2021. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text.

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