

## O.C.G.A. § 42-1-12

Current through the 2023 Regular Session of the General Assembly.

*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)*

### 42-1-12. State Sexual Offender Registry.

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(a) As used in this article, the term:

(1) “Address” means the street or route address of the sexual offender’s residence. For purposes of this Code section, the term shall not mean a post office box.

(2) “Appropriate official” means:

(A) With respect to a sexual offender who is sentenced to probation without any sentence of incarceration in the state prison system or who is sentenced pursuant to Article 3 of Chapter 8 of this title, relating to first offenders, the Department of Community Supervision;

(B) With respect to a sexual offender who is sentenced to a period of incarceration in a prison under the jurisdiction of the Department of Corrections and who is subsequently released from prison or placed on probation, the commissioner of corrections or his or her designee;

(C) With respect to a sexual offender who is placed on parole, the chairperson of the State Board of Pardons and Paroles or his or her designee; and

(D) With respect to a sexual offender who is placed on probation through a private probation agency, the director of the private probation agency or his or her designee.

(3) “Area where minors congregate” shall include all public and private parks and recreation facilities, playgrounds, skating rinks, neighborhood centers, gymnasiums, school bus stops, public libraries, and public and community swimming pools.

(4) “Assessment criteria” means the tests that the board members use to determine the likelihood that a sexual offender will commit another criminal offense against a victim who is a minor or commit a dangerous sexual offense.

(5) “Board” means the Sexual Offender Risk Review Board.

(6) “Child care facility” means all public and private pre-kindergarten facilities, child care learning centers, preschool facilities, and long-term care facilities for children.

(6.1) “Child care learning center” shall have the same meaning as set forth in paragraph (2) of [Code Section 20-1A-2](#).

(7) “Church” means a place of public religious worship.

(8) “Conviction” includes a final judgment of conviction entered upon a verdict or finding of guilty of a crime, a plea of guilty, or a plea of nolo contendere. A defendant who is discharged without adjudication of guilt and who is not considered to have a criminal conviction pursuant to Article 3 of Chapter 8 of this title, relating to first offenders, shall be subject to the registration requirements of this Code section for the period of time prior to the defendant’s discharge after completion of his or her sentence or upon the defendant being adjudicated guilty. Unless otherwise required by federal law, a defendant who is discharged without adjudication of guilt and who is not considered to have a criminal conviction pursuant to Article 3 of Chapter 8 of this title, relating to first offenders, shall not be subject to the registration requirements of this Code section upon the defendant’s discharge.

**(8.1)** “Criminal history record information” shall have the same meaning as set forth in [Code Section 35-3-30](#).

**(9)**

**(A)** “Criminal offense against a victim who is a minor” with respect to convictions occurring on or before June 30, 2001, means any criminal offense under Title 16 or any offense under federal law or the laws of another state or territory of the United States which consists of:

- (i)** Kidnapping of a minor, except by a parent;
- (ii)** False imprisonment of a minor, except by a parent;
- (iii)** Criminal sexual conduct toward a minor;
- (iv)** Solicitation of a minor to engage in sexual conduct;
- (v)** Use of a minor in a sexual performance;
- (vi)** Solicitation of a minor to practice prostitution; or
- (vii)** Any conviction resulting from an underlying sexual offense against a victim who is a minor.

**(B)** “Criminal offense against a victim who is a minor” with respect to convictions occurring after June 30, 2001, means any criminal offense under Title 16 or any offense under federal law or the laws of another state or territory of the United States which consists of:

- (i)** Kidnapping of a minor, except by a parent;
- (ii)** False imprisonment of a minor, except by a parent;
- (iii)** Criminal sexual conduct toward a minor;
- (iv)** Solicitation of a minor to engage in sexual conduct;
- (v)** Use of a minor in a sexual performance;
- (vi)** Solicitation of a minor to practice prostitution;
- (vii)** Use of a minor to engage in any sexually explicit conduct to produce any visual medium depicting such conduct;
- (viii)** Creating, publishing, selling, distributing, or possessing any material depicting a minor or a portion of a minor’s body engaged in sexually explicit conduct;
- (ix)** Transmitting, making, selling, buying, or disseminating by means of a computer any descriptive or identifying information regarding a child for the purpose of offering or soliciting sexual conduct of or with a child or the visual depicting of such conduct;
- (x)** Conspiracy to transport, ship, receive, or distribute visual depictions of minors engaged in sexually explicit conduct; or
- (xi)** Any conduct which, by its nature, is a sexual offense against a victim who is a minor.

**(C)** For purposes of this paragraph, a conviction for a misdemeanor shall not be considered a criminal offense against a victim who is a minor, and conduct which is adjudicated in juvenile court shall not be considered a criminal offense against a victim who is a minor.

**(10)**

**(A)** “Dangerous sexual offense” with respect to convictions occurring on or before June 30, 2006, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this paragraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

- (i)** Aggravated assault with the intent to rape in violation of [Code Section 16-5-21](#);
- (ii)** Rape in violation of [Code Section 16-6-1](#);

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- (iii) Aggravated sodomy in violation of [Code Section 16-6-2](#);
- (iv) Aggravated child molestation in violation of [Code Section 16-6-4](#); or
- (v) Aggravated sexual battery in violation of [Code Section 16-6-22.2](#).

**(B)** “Dangerous sexual offense” with respect to convictions occurring between July 1, 2006, and June 30, 2015, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this paragraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

- (i) Aggravated assault with the intent to rape in violation of [Code Section 16-5-21](#);
- (ii) Kidnapping in violation of [Code Section 16-5-40](#) which involves a victim who is less than 14 years of age, except by a parent;
- (iii) False imprisonment in violation of [Code Section 16-5-41](#) which involves a victim who is less than 14 years of age, except by a parent;
- (iv) Rape in violation of [Code Section 16-6-1](#);
- (v) Sodomy in violation of [Code Section 16-6-2](#);
- (vi) Aggravated sodomy in violation of [Code Section 16-6-2](#);
- (vii) Statutory rape in violation of [Code Section 16-6-3](#), if the individual convicted of the offense is 21 years of age or older;
- (viii) Child molestation in violation of [Code Section 16-6-4](#);
- (ix) Aggravated child molestation in violation of [Code Section 16-6-4](#), unless the person was convicted of a misdemeanor offense;
- (x) Enticing a child for indecent purposes in violation of [Code Section 16-6-5](#);
- (xi) Sexual assault against persons in custody in violation of [Code Section 16-6-5.1](#);
- (xii) Incest in violation of [Code Section 16-6-22](#);
- (xiii) A second conviction for sexual battery in violation of [Code Section 16-6-22.1](#);
- (xiv) Aggravated sexual battery in violation of [Code Section 16-6-22.2](#);
- (xv) Sexual exploitation of children in violation of [Code Section 16-12-100](#);
- (xvi) Electronically furnishing obscene material to minors in violation of [Code Section 16-12-100.1](#);
- (xvii) Computer pornography and child exploitation in violation of [Code Section 16-12-100.2](#);
- (xviii) Obscene telephone contact in violation of [Code Section 16-12-100.3](#); or
- (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.

**(B.1)** “Dangerous sexual offense” with respect to convictions occurring between July 1, 2015, and June 30, 2017, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this subparagraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

- (i) Aggravated assault with the intent to rape in violation of [Code Section 16-5-21](#);
- (ii) Kidnapping in violation of [Code Section 16-5-40](#) which involves a victim who is less than 14 years of age, except by a parent;
- (iii) Trafficking a person for sexual servitude in violation of [Code Section 16-5-46](#);
- (iv) Rape in violation of [Code Section 16-6-1](#);

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- (v) Sodomy in violation of [Code Section 16-6-2](#);
- (vi) Aggravated sodomy in violation of [Code Section 16-6-2](#);
- (vii) Statutory rape in violation of [Code Section 16-6-3](#), if the individual convicted of the offense is 21 years of age or older;
- (viii) Child molestation in violation of [Code Section 16-6-4](#);
- (ix) Aggravated child molestation in violation of [Code Section 16-6-4](#), unless the person was convicted of a misdemeanor offense;
- (x) Enticing a child for indecent purposes in violation of [Code Section 16-6-5](#);
- (xi) Sexual assault against persons in custody in violation of [Code Section 16-6-5.1](#);
- (xii) Incest in violation of [Code Section 16-6-22](#);
- (xiii) A second conviction for sexual battery in violation of [Code Section 16-6-22.1](#);
- (xiv) Aggravated sexual battery in violation of [Code Section 16-6-22.2](#);
- (xv) Sexual exploitation of children in violation of [Code Section 16-12-100](#);
- (xvi) Electronically furnishing obscene material to minors in violation of [Code Section 16-12-100.1](#);
- (xvii) Computer pornography and child exploitation in violation of [Code Section 16-12-100.2](#);
- (xviii) Obscene telephone contact in violation of [Code Section 16-12-100.3](#); or
- (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.

**(B.2)** “Dangerous sexual offense” with respect to convictions occurring between July 1, 2017, and June 30, 2019, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this subparagraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

- (i) Aggravated assault with the intent to rape in violation of [Code Section 16-5-21](#);
- (ii) Kidnapping in violation of [Code Section 16-5-40](#) which involves a victim who is less than 14 years of age, except by a parent;
- (iii) Trafficking an individual for sexual servitude in violation of [Code Section 16-5-46](#);
- (iv) Rape in violation of [Code Section 16-6-1](#);
- (v) Sodomy in violation of [Code Section 16-6-2](#);
- (vi) Aggravated sodomy in violation of [Code Section 16-6-2](#);
- (vii) Statutory rape in violation of [Code Section 16-6-3](#), if the individual convicted of the offense is 21 years of age or older;
- (viii) Child molestation in violation of [Code Section 16-6-4](#);
- (ix) Aggravated child molestation in violation of [Code Section 16-6-4](#), unless the person was convicted of a misdemeanor offense;
- (x) Enticing a child for indecent purposes in violation of [Code Section 16-6-5](#);
- (xi) Sexual assault against persons in custody in violation of [Code Section 16-6-5.1](#);
- (xii) Incest in violation of [Code Section 16-6-22](#);
- (xiii) A second conviction for sexual battery in violation of [Code Section 16-6-22.1](#);
- (xiv) Aggravated sexual battery in violation of [Code Section 16-6-22.2](#);

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- (xv) Sexual exploitation of children in violation of [Code Section 16-12-100](#);
- (xvi) Electronically furnishing obscene material to minors in violation of [Code Section 16-12-100.1](#);
- (xvii) Computer pornography and child exploitation in violation of [Code Section 16-12-100.2](#);
- (xviii) Obscene telephone contact in violation of [Code Section 16-12-100.3](#); or
- (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.

**(B.3)** “Dangerous sexual offense” with respect to convictions occurring between July 1, 2019, and June 30, 2021, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this subparagraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

- (i) Aggravated assault with the intent to rape in violation of [Code Section 16-5-21](#);
- (ii) Kidnapping in violation of [Code Section 16-5-40](#) which involves a victim who is less than 14 years of age, except by a parent;
- (iii) Trafficking an individual for sexual servitude in violation of [Code Section 16-5-46](#);
- (iv) Rape in violation of [Code Section 16-6-1](#);
- (v) Sodomy in violation of [Code Section 16-6-2](#);
- (vi) Aggravated sodomy in violation of [Code Section 16-6-2](#);
- (vii) Statutory rape in violation of [Code Section 16-6-3](#), if the individual convicted of the offense is 21 years of age or older;
- (viii) Child molestation in violation of [Code Section 16-6-4](#);
- (ix) Aggravated child molestation in violation of [Code Section 16-6-4](#), unless the person was convicted of a misdemeanor offense;
- (x) Enticing a child for indecent purposes in violation of [Code Section 16-6-5](#);
- (xi) Improper sexual contact by employee or agent in the first or second degree in violation of [Code Section 16-6-5.1](#), unless the punishment imposed was not subject to [Code Section 17-10-6.2](#);
- (xii) Incest in violation of [Code Section 16-6-22](#);
- (xiii) A second or subsequent conviction for sexual battery in violation of [Code Section 16-6-22.1](#);
- (xiv) Aggravated sexual battery in violation of [Code Section 16-6-22.2](#);
- (xv) Sexual exploitation of children in violation of [Code Section 16-12-100](#);
- (xvi) Electronically furnishing obscene material to minors in violation of [Code Section 16-12-100.1](#);
- (xvii) Computer pornography and child exploitation in violation of [Code Section 16-12-100.2](#);
- (xviii) A second or subsequent conviction for obscene telephone contact in violation of [Code Section 16-12-100.3](#); or
- (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.

**(B.4)** “Dangerous sexual offense” with respect to convictions occurring after June 30, 2021, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this subparagraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

- (i) Aggravated assault with the intent to rape in violation of [Code Section 16-5-21](#);

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- (ii) Kidnapping in violation of [Code Section 16-5-40](#) which involves a victim who is less than 14 years of age, except by a parent;
- (iii) Trafficking an individual for sexual servitude in violation of [Code Section 16-5-46](#);
- (iv) Rape in violation of [Code Section 16-6-1](#);
- (v) Sodomy in violation of [Code Section 16-6-2](#);
- (vi) Aggravated sodomy in violation of [Code Section 16-6-2](#);
- (vii) Statutory rape in violation of [Code Section 16-6-3](#), if the individual convicted of the offense is 21 years of age or older;
- (viii) Child molestation in violation of [Code Section 16-6-4](#);
- (ix) Aggravated child molestation in violation of [Code Section 16-6-4](#);
- (x) Enticing a child for indecent purposes in violation of [Code Section 16-6-5](#);
- (xi) Improper sexual contact by employee or agent in the first or second degree or improper sexual contact by person in a position of trust in the first or second degree in violation of [Code Section 16-6-5.1](#), unless the punishment imposed was not subject to [Code Section 17-10-6.2](#);
- (xii) Incest in violation of [Code Section 16-6-22](#);
- (xiii) A second or subsequent conviction for sexual battery in violation of [Code Section 16-6-22.1](#);
- (xiv) Aggravated sexual battery in violation of [Code Section 16-6-22.2](#);
- (xv) Sexual exploitation of children in violation of [Code Section 16-12-100](#);
- (xvi) Computer pornography and child exploitation in violation of [Code Section 16-12-100.2](#);
- (xvii) A second or subsequent conviction for obscene telephone contact in violation of [Code Section 16-12-100.3](#); or
- (xviii) Any conduct which, by its nature, is a felony sexual offense against a victim who is a minor or an attempt to commit a felony sexual offense against a victim who is a minor.

(C) For purposes of this paragraph, a conviction for a misdemeanor shall not be considered a dangerous sexual offense, and conduct which is adjudicated in juvenile court shall not be considered a dangerous sexual offense.

- (11) “Institution of higher education” means a private or public community college, state university, state college, or independent postsecondary institution.
- (12) “Level I risk assessment classification” means the sexual offender is a low sex offense risk and low recidivism risk for future sexual offenses.
- (13) “Level II risk assessment classification” means the sexual offender is an intermediate sex offense risk and intermediate recidivism risk for future sexual offenses and includes all sexual offenders who do not meet the criteria for classification either as a sexually dangerous predator or for Level I risk assessment.
- (14) “Minor” means any individual under the age of 18 years and any individual that the sexual offender believed at the time of the offense was under the age of 18 years if such individual was the victim of an offense.
- (15) “Public and community swimming pools” includes municipal, school, hotel, motel, or any pool to which access is granted in exchange for payment of a daily fee. The term includes apartment complex pools, country club pools, or subdivision pools which are open only to residents of the subdivision and their guests. This term does not include a private pool or hot tub serving a single-family dwelling and used only by the residents of the dwelling and their guests.
- (16) “Required registration information” means:

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- (A) Name; social security number; age; race; sex; date of birth; height; weight; hair color; eye color; fingerprints; and photograph;
  - (B) Address, within this state or out of state, and, if applicable in addition to the address, a rural route address and a post office box;
  - (C) If the place of residence is a motor vehicle or trailer, the vehicle identification number, the license tag number, and a description, including color scheme, of the motor vehicle or trailer;
  - (D) If the place of residence is a mobile home, the mobile home location permit number; the name and address of the owner of the home; a description, including the color scheme of the mobile home; and, if applicable, a description of where the mobile home is located on the property;
  - (E) If the place of residence is a manufactured home, the name and address of the owner of the home; a description, including the color scheme of the manufactured home; and, if applicable, a description of where the manufactured home is located on the property;
  - (F) If the place of residence is a vessel, live-aboard vessel, or houseboat, the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat;
  - (F.1) If the place of residence is the status of homelessness, information as provided under paragraph (2.1) of subsection (f) of this Code section;
  - (G) Date of employment, place of any employment, and address of employer;
  - (H) Place of vocation and address of the place of vocation;
  - (I) Vehicle make, model, color, and license tag number;
  - (J) If enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the name, address, and county of each institution, including each campus attended, and enrollment or employment status;
  - (K) The name of the crime or crimes for which the sexual offender is registering and the date released from prison or placed on probation, parole, or supervised release; and
  - (L) The landline and mobile telephone numbers of the sexual offender.
- (17) "Risk assessment classification" means the notification level into which a sexual offender is placed based on the board's assessment.
- (18) "School" means all public and private kindergarten, elementary, and secondary schools.
- (19) "School bus stop" means a school bus stop as designated by local school boards of education or by a private school.
- (20) "Sexual offender" means any individual:
- (A) Who has been convicted of a criminal offense against a victim who is a minor or any dangerous sexual offense;
  - (B) Who has been convicted under the laws of another state or territory, under the laws of the United States, under the Uniform Code of Military Justice, or in a tribal court of a criminal offense against a victim who is a minor or a dangerous sexual offense; or
  - (C) Who is required to register pursuant to subsection (e) of this Code section.
- (21) "Sexually dangerous predator" means a sexual offender:
- (A) Who was designated as a sexually violent predator between July 1, 1996, and June 30, 2006; or
  - (B) Who is determined by the Sexual Offender Risk Review Board to be at risk of perpetrating any future dangerous sexual offense.

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(22) “Vocation” means any full-time, part-time, or volunteer employment with or without compensation exceeding 14 consecutive days or for an aggregate period of time exceeding 30 days during any calendar year.

(b) Before a sexual offender who is required to register under this Code section is released from prison or placed on parole, supervised release, or probation, the appropriate official shall:

- (1) Inform the sexual offender of the obligation to register, the amount of associated fees, and how to maintain registration;
- (2) Obtain the information necessary for the required registration information;
- (3) Inform the sexual offender that, if the sexual offender changes any of the required registration information, other than residence address, the sexual offender shall give the new information to the sheriff of the county with whom the sexual offender is registered within 72 hours of the change of information; if the information is the sexual offender’s new residence address, the sexual offender shall give the information to the sheriff of the county with whom the sexual offender last registered within 72 hours prior to moving and to the sheriff of the county to which the sexual offender is moving within 72 hours prior to moving;
- (4) Inform the sexual offender that he or she shall also register in any state where he or she is employed, carries on a vocation, or is a student;
- (5) Inform the sexual offender that, if he or she changes residence to another state, the sexual offender shall register the new address with the sheriff of the county with whom the sexual offender last registered and that the sexual offender shall also register with a designated law enforcement agency in the new state within 72 hours after establishing residence in the new state;
- (6) Obtain fingerprints and a current photograph of the sexual offender;
- (7) Require the sexual offender to read and sign a form stating that the obligations of the sexual offender have been explained;
- (8) Obtain and forward any information obtained from the clerk of court pursuant to [Code Section 42-5-50](#) to the sheriff’s office of the county in which the sexual offender will reside; and
- (9) If required by a court or by Code Section 42-1-13.1, place any required location tracking device upon a sexual offender and explain its operation and cost.

(c) The Department of Corrections shall:

- (1) Forward to the Georgia Bureau of Investigation a copy of the form stating that the obligations of the sexual offender have been explained;
- (2) Forward any required registration information to the Georgia Bureau of Investigation;
- (3) Forward the sexual offender’s fingerprints and photograph to the sheriff’s office of the county where the sexual offender is going to reside;
- (4) Inform the board and the prosecuting attorney for the jurisdiction in which a sexual offender was convicted of the impending release of a sexual offender at least eight months prior to such release so as to facilitate compliance with [Code Section 42-1-14](#); and
- (5) Keep all records of sexual offenders in a secure facility in accordance with [Code Sections 15-1-10](#), [15-6-62](#), and [15-6-62.1](#) until official proof of death of a registered sexual offender; thereafter, the records shall be destroyed.

(c.1) The Department of Community Supervision shall keep all records of sexual offenders in a secure facility in accordance with [Code Sections 15-1-10](#), [15-6-62](#), and [15-6-62.1](#) until official proof of death of a registered sexual offender; thereafter, the records shall be destroyed.

(d) No sexual offender shall be released from prison or placed on parole, supervised release, or probation until:



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- (1) The appropriate official has provided the Georgia Bureau of Investigation and the sheriff's office in the county where the sexual offender will be residing with the sexual offender's required registration information and risk assessment classification level; and
  - (2) The sexual offender's name has been added to the list of sexual offenders maintained by the Georgia Bureau of Investigation and the sheriff's office as required by this Code section.
- (e) Registration pursuant to this Code section shall be required by any individual who:
- (1) Is convicted on or after July 1, 1996, of a criminal offense against a victim who is a minor;
  - (2) Is convicted on or after July 1, 1996, of a dangerous sexual offense;
  - (3) Has previously been convicted of a criminal offense against a victim who is a minor and may be released from prison or placed on parole, supervised release, or probation on or after July 1, 1996;
  - (4) Has previously been convicted of a sexually violent offense or dangerous sexual offense and may be released from prison or placed on parole, supervised release, or probation on or after July 1, 1996;
  - (5) Is a resident of Georgia who intends to reside in this state and who is convicted under the laws of another state or the United States, under the Uniform Code of Military Justice, or in a tribal court of a sexually violent offense, a criminal offense against a victim who is a minor on or after July 1, 1999, or a dangerous sexual offense on or after July 1, 1996;
  - (6) Is a nonresident who changes residence from another state or territory of the United States or any other place to Georgia who is required to register as a sexual offender under federal law, military law, tribal law, or the laws of another state or territory or who has been convicted in this state of a criminal offense against a victim who is a minor or any dangerous sexual offense;
  - (7) Is a nonresident sexual offender who enters this state for the purpose of employment or any other reason for a period exceeding 14 consecutive days or for an aggregate period of time exceeding 30 days during any calendar year regardless of whether such sexual offender is required to register under federal law, military law, tribal law, or the laws of another state or territory; or
  - (8) Is a nonresident sexual offender who enters this state for the purpose of attending school as a full-time or part-time student regardless of whether such sexual offender is required to register under federal law, military law, tribal law, or the laws of another state or territory.
- (f) Any sexual offender required to register under this Code section shall:
- (1) Provide the required registration information to the appropriate official before being released from prison or placed on parole, supervised release, or probation;
  - (2) Register in person with the sheriff of the county in which the sexual offender resides within 72 hours after the sexual offender's release from prison or placement on parole, supervised release, probation, or entry into this state;
  - (2.1) In the case of a sexual offender whose place of residence is the status of homelessness, in lieu of the requirements of paragraph (2) of this subsection, register in person with the sheriff of the county in which the sexual offender sleeps within 72 hours after the sexual offender's release from prison or placement on parole, supervised release, probation, or entry into this state and provide the location where he or she sleeps;
  - (3) Maintain the required registration information with the sheriff of each county in which the sexual offender resides or sleeps;
  - (4) Renew the required registration information with the sheriff of the county in which the sexual offender resides or sleeps by reporting in person to the sheriff within 72 hours prior to such offender's birthday each year to be photographed and fingerprinted;
  - (4.1) In the case of a sexual offender who resides in a state or privately operated hospice facility, skilled nursing home, or residential health care facility, with the approval of the sheriff of the county where such sexual offender resides, the sexual offender may satisfy the annual registration requirements of paragraph (4) of this subsection by

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registering at any time during the sexual offender's month of birth. Additionally, in the case of a sexual offender who resides in a state or privately operated hospice facility, skilled nursing home, or residential health care facility, with the approval of the sheriff of the county where such sexual offender resides, such sexual offender shall not be required to be fingerprinted pursuant to paragraph (4) of this subsection but the sheriff shall be authorized to photograph the offender;

(5) Update the required registration information with the sheriff of the county in which the sexual offender resides within 72 hours of any change to the required registration information, other than where he or she resides or sleeps if such person is homeless. If the information is the sexual offender's new address, the sexual offender shall give the information regarding the sexual offender's new address to the sheriff of the county in which the sexual offender last registered within 72 hours prior to any change of address and to the sheriff of the county to which the sexual offender is moving within 72 hours prior to establishing such new address. If the sexual offender is homeless and the information is the sexual offender's new sleeping location, within 72 hours of changing sleeping locations, the sexual offender shall give the information regarding the sexual offender's new sleeping location to the sheriff of the county in which the sexual offender last registered, and if the county has changed, to the sheriff of the county to which the sexual offender has moved; and

(6) Continue to comply with the registration requirements of this Code section for the entire life of the sexual offender, excluding ensuing periods of incarceration.

(g) A sexual offender required to register under this Code section may petition to be released from the registration requirements and from the residency or employment restrictions of this Code section in accordance with the provisions of [Code Section 42-1-19](#).

(h)

(1) The appropriate official or sheriff shall, within 72 hours after receipt of the required registration information, forward such information to the Georgia Bureau of Investigation. Once the data is entered into the Criminal Justice Information System by the appropriate official or sheriff, the Georgia Crime Information Center shall notify the sheriff of the sexual offender's county of residence, either permanent or temporary, the sheriff of the county of employment, and the sheriff of the county where the sexual offender attends an institution of higher education within 24 hours of entering the data or any change to the data.

(2) The Georgia Bureau of Investigation shall:

(A) Transmit all information, including the conviction data and fingerprints, to the Federal Bureau of Investigation within 24 hours of entering the data;

(B) Establish operating policies and procedures concerning record ownership, quality, verification, modification, and cancellation; and

(C) Perform mail out and verification duties as follows:

(i) Send each month Criminal Justice Information System network messages to sheriffs listing sexual offenders due for verification;

(ii) Create a photo image file from original entries and provide such entries to sheriffs to assist in sexual offender identification and verification;

(iii) Mail a nonforwardable verification form to the last reported address of the sexual offender within ten days prior to the sexual offender's birthday;

(iv) If the sexual offender changes residence to another state, notify the law enforcement agency with which the sexual offender shall register in the new state; and

(v) Maintain records required under this Code section.

(i) The sheriff's office in each county shall:

(1) Prepare and maintain a list of all sexual offenders and sexually dangerous predators residing in each county. Such list shall include the sexual offender's name; age; physical description; address; crime of conviction, including conviction date and the jurisdiction of the conviction; photograph; and the risk assessment classification

## O.C.G.A. § 42-1-12

level provided by the board, and an explanation of how the board classifies sexual offenders and sexually dangerous predators;

- (2) Electronically submit and update all information provided by the sexual offender within two business days to the Georgia Bureau of Investigation in a manner prescribed by the Georgia Bureau of Investigation;
  - (3) Maintain and provide a list, manually or electronically, of every sexual offender residing in each county so that it may be available for inspection:
    - (A) In the sheriff's office;
    - (B) In any county administrative building;
    - (C) In the main administrative building for any municipal corporation;
    - (D) In the office of the clerk of the superior court so that such list is available to the public; and
    - (E) On a website maintained by the sheriff of the county for the posting of general information;
  - (4) Update the public notices required by paragraph (3) of this subsection within two business days of the receipt of such information;
  - (5) Inform the public of the presence of sexual offenders in each community;
  - (6) Update the list of sexual offenders residing in the county upon receipt of new information affecting the residence address of a sexual offender or upon the registration of a sexual offender moving into the county by virtue of release from prison, relocation from another county, conviction in another state, federal court, military tribunal, or tribal court. Such list, and any additions to such list, shall be delivered, within 72 hours of updating the list of sexual offenders residing in the county, to all schools or institutions of higher education located in the county;
  - (7) Within 72 hours of the receipt of changed required registration information, notify the Georgia Bureau of Investigation through the Criminal Justice Information System of each change of information;
  - (8) Retain the verification form stating that the sexual offender still resides at the address last reported;
  - (9) Enforce the criminal provisions of this Code section. The sheriff may request the assistance of the Georgia Bureau of Investigation to enforce the provisions of this Code section;
  - (10) Cooperate and communicate with other sheriffs' offices in this state and in the United States to maintain current data on the location of sexual offenders;
  - (11) Determine the appropriate time of day for reporting by sexual offenders, which shall be consistent with the reporting requirements of this Code section; and
  - (12) Provide current information on names and addresses of all registered sexual offenders to campus police with jurisdiction for the campus of an institution of higher education if the campus is within the sheriff's jurisdiction.
- (j)
- (1) The sheriff of the county where the sexual offender resides or last registered shall be the primary law enforcement official charged with communicating the whereabouts of the sexual offender and any changes in required registration information to the sheriff's office of the county or counties where the sexual offender is employed, volunteers, attends an institution of higher education, or moves.
  - (2) The sheriff's office may post the list of sexual offenders in any public building in addition to those locations enumerated in subsection (h) of this Code section.
- (k) The Georgia Crime Information Center shall create the Criminal Justice Information System network transaction screens by which appropriate officials shall enter original data required by this Code section. Screens shall also be created for sheriffs' offices for the entry of record confirmation data; employment; changes of residence, institutions of higher education, or employment; or other pertinent data to assist in sexual offender identification.

(l)

## O.C.G.A. § 42-1-12

- (1) On at least an annual basis, the Department of Education shall obtain from the Georgia Bureau of Investigation a complete list of the names and addresses of all registered sexual offenders and shall provide access to such information, accompanied by a hold harmless provision, to each school in this state. In addition, the Department of Education shall provide information to each school in this state on accessing and retrieving from the Georgia Bureau of Investigation's website a list of the names and addresses of all registered sexual offenders.
- (2) On at least an annual basis, the Department of Early Care and Learning shall provide current information to all child care programs regulated pursuant to [Code Section 20-1A-10](#) and to all child care learning centers, day-care, group day-care, and family day-care programs regulated pursuant to [Code Section 49-5-12](#) on accessing and retrieving from the Georgia Bureau of Investigation's website a list of the names and addresses of all registered sexual offenders and shall include, on a continuing basis, such information with each application for licensure, commissioning, or registration for early care and education programs.
- (3) On at least an annual basis, the Department of Human Services shall provide current information to all long-term care facilities for children on accessing and retrieving from the Georgia Bureau of Investigation's website a list of the names and addresses of all registered sexual offenders.
- (m) Within ten days of the filing of a defendant's discharge and exoneration of guilt pursuant to Article 3 of Chapter 8 of this title, the clerk of court shall transmit the order of discharge and exoneration to the Georgia Bureau of Investigation and any sheriff maintaining records required under this Code section.
- (n) Any individual who:
- (1) Is required to register under this Code section and who fails to comply with the requirements of this Code section;
  - (2) Provides false information; or
  - (3) Fails to respond directly to the sheriff of the county where he or she resides or sleeps within 72 hours prior to such individual's birthday
- shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than 30 years; provided, however, that upon the conviction of the second offense under this subsection, the defendant shall be punished by imprisonment for not less than five nor more than 30 years.
- (o) The information collected pursuant to this Code section shall be treated as private data except that:
- (1) Such information may be disclosed to law enforcement agencies for law enforcement purposes;
  - (2) Such information may be disclosed to government agencies conducting confidential background checks; and
  - (3) The Georgia Bureau of Investigation or any sheriff maintaining records required under this Code section shall, in addition to the requirements of this Code section to inform the public of the presence of sexual offenders in each community, release such other relevant information collected under this Code section that is necessary to protect the public concerning sexual offenders required to register under this Code section, except that the identity of a victim of an offense that requires registration under this Code section shall not be released.
- (p) The Board of Public Safety is authorized to promulgate rules and regulations necessary for the Georgia Bureau of Investigation and the Georgia Crime Information Center to implement and carry out the provisions of this Code section.
- (q) Law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under this article.
- (r) Any violation of this Code section is declared to be a continuous offense, and venue for such offense shall be considered to have been committed in any county where:
- (1) A sexual offender is required to register;
  - (2) An accused fails to comply with the requirements of this Code section; or
  - (3) An accused provides false information.

## History

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Code 1981, § [42-1-12](#), enacted by Ga. L. 1996, p. 1520, § 1; Ga. L. 1997, p. 143, § 42; Ga. L. 1997, p. 380, § 1; Ga. L. 1998, p. 831, § 1; Ga. L. 1999, p. 81, § 42; Ga. L. 1999, p. 837, § 1; Ga. L. 2001, p. 1004, § 1; Ga. L. 2002, p. 571, § 1; Ga. L. 2002, p. 1400, §§ 1, 2; Ga. L. 2003, p. 140, § 42; Ga. L. 2003, p. 281, § 1; Ga. L. 2004, p. 645, § 5; Ga. L. 2004, p. 1064, §§ 1, 2; [Ga. L. 2005, p. 453, § 1/ HB 106](#); [Ga. L. 2006, p. 72, § 42/ SB 465](#); [Ga. L. 2006, p. 379, § 24/ HB 1059](#); [Ga. L. 2008, p. 680, §§ 2, 3/ SB 1](#); [Ga. L. 2008, p. 810, §§ 3, 4/ SB 474](#); [Ga. L. 2009, p. 8, § 42/ SB 46](#); [Ga. L. 2009, p. 453, § 2-2/ HB 228](#); [Ga. L. 2010, p. 167, § 1/ HB 651](#); Ga. L. 2010, p. 168, §§ 5, 6, 7, 8, 9, 10, 11/ HB 571; [Ga. L. 2011, p. 752, § 42/ HB 142](#); [Ga. L. 2012, p. 173, § 2-9/ HB 665](#); [Ga. L. 2013, p. 135, § 10/ HB 354](#); [Ga. L. 2015, p. 422, § 5-65/ HB 310](#); [Ga. L. 2015, p. 675, § 4-2/ SB 8](#); [Ga. L. 2017, p. 489, § 6/ HB 341](#); [Ga. L. 2019, p. 912, § 5/ SB 9](#); [Ga. L. 2020, p. 588, § 1/ HB 983](#); [Ga. L. 2021, p. 417, § 2/ HB 495](#); [Ga. L. 2021, p. 516, § 4/ SB 117](#); [Ga. L. 2022, p. 352, § 42/ HB 1428](#); [Ga. L. 2023, p. 637, § 6-1/ HB 188](#), effective May 4, 2023.

### Annotations

## Notes

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**The 2012 amendment**, effective July 1, 2012, in paragraph (c)(5), inserted “in accordance with Code Sections 15-1-10, 15-6-62, and 15-6-62.1” and deleted “in accordance with Code Sections 15-1-10, 15-6-62, and 15-6-62.1” following “destroyed” at the end.

**The 2013 amendment**, effective July 1, 2013, deleted “day-care centers,” following “pre-kindergarten facilities,” in paragraph (a)(6); redesignated former paragraph (a)(10.1) as present paragraph (a)(6.1); and, in paragraph (a)(6.1), substituted “Child care learning center” for “Day-care center” at the beginning, and substituted “paragraph (2)” for “paragraph (4)” near the end.

### **The 2015 amendments.**

The first 2015 amendment, effective July 1, 2015, substituted “Department of Community Supervision” for “Division of Probation of the Department of Corrections” in subparagraph (a)(2)(A); and added subsection (c.1). See Editor’s notes for applicability. The second 2015 amendment, effective July 1, 2015, substituted “occurring between July 1, 2006, and June 30, 2015,” for “occurring after June 30, 2006,” in the introductory paragraph of subparagraph (a)(10)(B); deleted “prevention” following “child exploitation” in division (a)(10)(B)(xvii); and added subparagraph (a)(10)(B.1) and subsection (r).

**The 2017 amendment**, effective July 1, 2017, in subparagraph (a)(10)(B.1), substituted “between July 1, 2015, and June 30, 2017” for “after June 30, 2015” near the beginning, and substituted “subparagraph” for “paragraph” near the middle; and added subparagraph (a)(10)(B.2).

**The 2019 amendment**, effective July 1, 2019, substituted “between July 1, 2017, and June 30, 2019” for “after June 30, 2017” near the beginning of subparagraph (a)(10)(B.2); and added subparagraph (a)(10)(B.3).

**The 2020 amendment**, effective January 1, 2021, deleted “and” at the end of subparagraph (a)(16)(J); substituted “; and” for a period at the end of subparagraph (a)(16)(K); added subparagraph (a)(16)(L) and paragraph (f)(4.1); and, in subsection (i), added “and” at the end of paragraph (i)(12), substituted a period for “; and” at the end of paragraph (i)(13), and deleted former paragraph (i)(14), which read: “Collect the annual \$250.00 registration fee from the sexual offender and transmit such fees to the state for deposit into the general fund.”

### **The 2021 amendments.**

The first 2021 amendment, effective July 1, 2021, added paragraph (a)(9.1). The second 2021 amendment, effective July 1, 2021, substituted “occurring between July 1, 2019 and June 30, 2021” for “occurring after June 30, 2019” near the beginning of subparagraph (a)(10)(B.3); and added subparagraph (a)(10)(B.4).

**The 2022 amendment**, effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (a)(10)(B.3).

**The 2023 amendment**, effective May 4, 2023, substituted “Sexual Offender Risk Review Board” for “Sexual Offender Registration Review Board” in paragraph (a)(5); in subsection (b), substituted “amount of associated fees” for “amount of the registration fee” in paragraph (b)(1) and rewrote paragraph (b)(9), which read: “If required by Code Section 42-1-14, place any required electronic monitoring system on the sexually dangerous predator and explain its operation and cost.”; and, in subsection (i), added “and” at the end of paragraph (i)(11), deleted former paragraph (i)(12), which read: “If required by Code Section 42-1-14, place any electronic monitoring system on the sexually dangerous predator and explain its operation and cost; and”, and redesignated former paragraph (i)(13) as present paragraph (i)(12). See Editor’s notes for applicability.

#### **Code Commission notes.**

The amendment of this Code section by Ga. L. 2002, p. 571, § 1, irreconcilably conflicted with and was treated as superceded by Ga. L. 2002, p. 1400, § 2. See [County of Butts v. Strahan, 151 Ga. 417 \(1921\)](#).

The amendment of this Code section by [Ga. L. 2006, p. 72, § 42/SB 465](#), irreconcilably conflicted with and was treated as superseded by [Ga. L. 2006, p. 379, § 24/HB 1059](#). See [County of Butts v. Strahan, 151 Ga. 417 \(1921\)](#).

Pursuant to [Code Section 28-9-5](#), in 2020, a semicolon was substituted for a period at the end of paragraph (f)(4.1).

Pursuant to [Code Section 28-9-5](#), in 2021, paragraph (a)(9.1) was redesignated as paragraph (a)(8.1) to maintain alphabetical order.

Pursuant to [Code Section 28-9-5](#), in 2023, “Sexual Offender Risk Review Board” was substituted for “Sexual Offender Registration Review Board” in subparagraph (a)(21)(B).

#### **Editor’s notes.**

Ga. L. 2004, p. 1064, § 2, not codified by the General Assembly, provides that the amendment by that act shall apply to sentences imposed on or after July 1, 2004.

[Ga. L. 2006, p. 379, § 24/HB 1059](#), effective July 1, 2006, repealed the former Code section and enacted the current Code section covering substantially the same subject matter. The former Code section was based on Code 1981, [§ 42-1-12](#), enacted by Ga. L. 1996, p. 1520, § 1; Ga. L. 1997, p. 143, § 42; Ga. L. 1997, p. 380, § 1; Ga. L. 1998, p. 831, § 1; Ga. L. 1999, p. 81, § 42; Ga. L. 1999, p. 837, § 1; Ga. L. 2001, p. 1004, § 1; Ga. L. 2002, p. 571, § 1; Ga. L. 2002, p. 1400, §§ 1, 2; Ga. L. 2003, p. 140, § 42; Ga. L. 2003, p. 281, § 1; Ga. L. 2004, p. 645, § 5; Ga. L. 2004, p. 1064, §§ 1, 2; [Ga. L. 2005, p. 453, § 1/HB 106](#).

[Ga. L. 2006, p. 379, § 30/HB 1059](#), not codified by the General Assembly, provides, in part, that: “(b) Any person required to register pursuant to the provisions of [Code Section 42-1-12](#), relating to the state sexual offender registry, and any person required not to reside within areas where minors congregate, as prohibited by [Code Section 42-1-13](#), shall not be relieved of the obligation to comply with the provisions of said Code sections by the repeal and reenactment of said Code sections.

“(c) The provisions of this Act shall not affect or abate the status as a crime of any such act or omission which occurred prior to the effective date of the Act repealing, repealing and reenacting, or amending such law, nor shall the prosecution of such crime be abated as a result of such repeal, repeal and reenactment, or amendment.”

[Ga. L. 2015, p. 422, § 6-1/HB 310](#), not codified by the General Assembly, provides that: “This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date.”

[Ga. L. 2015, p. 675, § 1-1/SB 8](#), not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Safe Harbor/Rachel’s Law Act.’ ”

[Ga. L. 2015, p. 675, § 1-2/SB 8](#), not codified by the General Assembly, provides that: “(a) The General Assembly finds that arresting, prosecuting, and incarcerating victimized children serves to retraumatize children and increases their feelings of low

self esteem, making the process of recovery more difficult. The General Assembly acknowledges that both federal and state laws recognize that sexually exploited children are the victims of crime and should be treated as victims. The General Assembly finds that sexually exploited children deserve the protection of child welfare services, including family support, crisis intervention, counseling, and emergency housing services. The General Assembly finds that it is necessary and appropriate to adopt uniform and reasonable assessments and regulations to help address the deleterious secondary effects, including but not limited to, prostitution and sexual exploitation of children, associated with adult entertainment establishments that allow the sale, possession, or consumption of alcohol on premises and that provide to their patrons performances and interaction involving various forms of nudity. The General Assembly finds that a correlation exists between adult live entertainment establishments and the sexual exploitation of children. The General Assembly finds that adult live entertainment establishments present a point of access for children to come into contact with individuals seeking to sexually exploit children. The General Assembly further finds that individuals seeking to exploit children utilize adult live entertainment establishments as a means of locating children for the purpose of sexual exploitation. The General Assembly acknowledges that many local governments in this state and in other states found deleterious secondary effects of adult entertainment establishments are exacerbated by the sale, possession, or consumption of alcohol in such establishments.

“(b) The purpose of this Act is to protect a child from further victimization after he or she is discovered to be a sexually exploited child by ensuring that a child protective response is in place in this state. The purpose and intended effect of this Act in imposing assessments and regulations on adult entertainment establishments is not to impose a restriction on the content or reasonable access to any materials or performances protected by the [First Amendment of the United States Constitution](#) or [Article I, Section I, Paragraph V of the Constitution](#) of this state.”

[Ga. L. 2023, p. 637, § 1-1/HB 188](#), not codified by the General Assembly, provides: “This Act shall be known and may be cited as ‘Mariam’s Law.’”

[Ga. L. 2023, p. 637, § 7-1/HB 188](#), not codified by the General Assembly, provides, in part, that “the punishment provisions of this Act shall apply to all offenses committed on and after July 1, 2023.”

## JUDICIAL DECISIONS

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### General Consideration

### Evidence and Procedural Issues

### Registration Required

### Registration Not Required

### General Consideration

#### Constitutionality. —

Defendant who entered an Alford plea in 2000 to sex offenses as a first offender was properly required to register as a sex offender pursuant to the 2005 amendment to [O.C.G.A. § 42-1-12](#); the statute applies to first offenders convicted before July 1, 2004, and it is not an ex post facto law because if a defendant fails to register, the defendant will be guilty of a felony distinct from those crimes of which the defendant has been previously convicted. [Watson v. State, 283 Ga. App. 635, 642 S.E.2d 328, 2007 Ga. App. LEXIS 145 \(2007\)](#), cert. dismissed, [No. S07C0997, 2007 Ga. LEXIS 460 \(Ga. June 4, 2007\)](#).

Defendant’s conviction for violating [O.C.G.A. § 42-1-12\(e\)\(3\)](#) as a result of failing to renew the defendant’s registration as a sex offender was upheld on appeal as the requirement to register as a sexual offender under [§ 42-1-12\(e\)\(3\)](#) resulted in a new crime under [§ 42-1-12\(n\)](#) and was not an ex post facto law. [Frazier v. State, 284 Ga. 638, 668 S.E.2d 646, 2008 Ga. LEXIS 801 \(2008\)](#).

## O.C.G.A. § 42-1-12

Trial court did not err in revoking a convicted sexual offender's probation for failing to register an address change when the offender moved into a motel because [O.C.G.A. § 42-1-12](#) was not unconstitutionally vague in failing to define the term "temporary residence"; nor does the statute's use of the term "temporary residence" in any way authorize or encourage arbitrary and discriminatory enforcement, but rather, [§ 42-1-12\(a\)\(16\)](#) sets forth in considerable detail the information that must be reported by a sexual offender. [Dunn v. State, 286 Ga. 238, 686 S.E.2d 772, 2009 Ga. LEXIS 736 \(2009\)](#).

Trial court did not err in revoking a convicted sexual offender's probation for failing to register an address change after the offender moved into a motel because the offender failed to establish that the offender was treated differently from a similarly situated nonresident sexual offender entering the state; if [O.C.G.A. § 42-1-12\(e\)\(7\)](#) applies to a hypothetical nonresident sexual offender, that person must update his or her information within 72 hours of a change of address as required in [§ 42-1-12\(f\)\(5\)](#), and any nonresident sexual offender who is required to register by virtue of the specification of [§ 42-1-12\(e\)\(7\)](#) is equally subject to the requirement that he or she register a new address within 72 hours of changing that address and equally subject to being charged with a violation. [Dunn v. State, 286 Ga. 238, 686 S.E.2d 772, 2009 Ga. LEXIS 736 \(2009\)](#).

Because sexual offender registry requirements are regulatory, and not punitive the registry requirement is not a cruel and unusual punishment in violation of the Eighth Amendment; moreover, it is of no consequence whether a defendant has committed an offense that is "sexual" in nature before being required to register since the nature of the offense requiring the registration would not somehow change the registration requirements into a form of "punishment." [Rainer v. State, 286 Ga. 675, 690 S.E.2d 827, 2010 Ga. LEXIS 229 \(2010\)](#).

[O.C.G.A. § 42-1-12](#) does not violate substantive due process because [§ 42-1-12](#) advances the state's legitimate goal of informing the public for purposes of protecting children from those who would harm the children, and it is not arbitrary to believe that a child may be more at risk of harm from someone who would falsely imprison the child and who is not the child's parent; the fact that a defendant's offense did not involve sexual activity is of no consequence because under the statute, one only needs to have committed a criminal offense against a victim who is a minor in order to meet the statutory definition of "sexual offender" for purposes of registration. [Rainer v. State, 286 Ga. 675, 690 S.E.2d 827, 2010 Ga. LEXIS 229 \(2010\)](#).

It is commonly understood by persons of common intelligence that criminal conduct which is a sexual offense is, at a minimum, criminal conduct which involves genitalia. Inasmuch as the offense of cruelty to children is found in Title 16 of the Official Code of Georgia Annotated and a defendant's conduct that led to the defendant's conviction is a sexual offense, [O.C.G.A. § 42-1-12](#) is not unconstitutionally vague. [Wiggins v. State, 288 Ga. 169, 702 S.E.2d 865, 2010 Ga. LEXIS 854 \(2010\)](#), cert. denied, 563 U.S. 1011, 131 S. Ct. 2906, 179 L. Ed. 2d 1251, 2011 U.S. LEXIS 4005 (2011).

#### **Registration requirements for homeless sex offenders unconstitutionally vague. —**

Defendant was entitled to quash an indictment charging the defendant with failure to register a new residence address under [O.C.G.A. § 42-1-12](#) as the defendant, who was homeless and not living in a shelter, was not given an objective standard or guidelines as to how to register if the defendant did not have a street or route address; thus, [§ 42-1-12](#) was unconstitutionally vague as applied to homeless sex offenders without a street or route address. [Santos v. State, 284 Ga. 514, 668 S.E.2d 676, 2008 Ga. LEXIS 849 \(2008\)](#).

#### **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 \(2015\)](#).

#### **Classification implicated liberty interest. —**

Defendant's classification as a sexually dangerous predator implicated a liberty interest as it required electronic monitoring and tracking, additional registration requirements, additional employment restrictions, and reputational harm associated with such a classification. [Gregory v. Sexual Offender Registration Review Bd., 298 Ga. 675, 784 S.E.2d 392, 2016 Ga. LEXIS 242 \(2016\)](#).



**Reliance on registration database. —**

*Unpublished decision:* Defendant sergeant reasonably relied on the Georgia Bureau of Investigation's information that charges for failing to register as a sex offender were outstanding and that the plaintiff was last known to be in the sergeant's county; thus, verifying that the offender had not given the offender's address to the sheriff provided sufficient probable cause to seek an arrest warrant and a Fourth Amendment challenge properly failed; [O.C.G.A. § 42-1-12\(c\)](#) statutorily charged the Georgia Bureau of Investigation (GBI) with providing conviction data (including names and fingerprints) of persons required to register as sex offenders to local sheriffs, who in turn were charged with maintaining a list of their names and addresses, and the sergeant was in no position to challenge the information on the GBI database. [Smith v. Greenlee, 289 Fed. Appx. 373, 2008 U.S. App. LEXIS 17564 \(11th Cir. 2008\)](#).

*Unpublished decision:* As for defendant's argument that registering as a sex offender would have exposed the defendant to prosecution for reentry of a previously removed alien under [8 U.S.C. § 1326](#), the court found no Fifth Amendment violation because the defendant could not show that anything the defendant would have been required to provide under Georgia's sex offender statute would have confronted the defendant with a substantial hazard of self-incrimination (there were no nationality, visa, or other immigration details required to be submitted); the cases defendant cited in support of the defendant's Fifth Amendment argument were distinguishable because those cases imposed a disclosure requirement largely designed to discover involvement in criminal activities, and the Sex Offender Registration Notification Act, [18 U.S.C. § 2250\(a\)](#), was not designed to uncover criminal behavior, but was instead intended to protect the public from sex offenders by tracking the offenders' interstate movement. [United States v. Simon-Marcos, 363 Fed. Appx. 726, 2010 U.S. App. LEXIS 2319 \(11th Cir. 2010\)](#).

**Construction. —**

Nothing in [O.C.G.A. § 42-1-12](#) makes the registration requirements conditional upon a sexual offender having been told of the need to register upon release. Instead, [§ 42-1-12](#) directs the official to give the registration information to a person who is required to register, which indicates that the sexual offender has an obligation to register which is independent of the notice given by the official. [Petway v. State, 291 Ga. App. 301, 661 S.E.2d 667, 2008 Ga. App. LEXIS 476 \(2008\)](#).

[O.C.G.A. § 42-1-12\(e\)\(7\)](#) clearly provides that convictions for rape and crimes relating to rape require registration as a sex offender, and the statute is not unconstitutionally vague. [Jenkins v. State, 284 Ga. 642, 670 S.E.2d 425, 2008 Ga. LEXIS 1026 \(2008\)](#).

[O.C.G.A. § 42-1-12\(e\)\(7\)](#) does not give a nonresident sexual offender who falls under its definition license to remain in the state for fourteen consecutive days without providing notification to the appropriate sheriff because the statute brings such a person within the ambit of [§ 42-1-12](#); the obligations of those who are required to register are unaffected by the specifications in [§ 42-1-12\(e\)\(7\)](#) because [§ 42-1-12\(e\)](#) declares who shall register, and [§ 42-1-12\(f\)](#) prescribes the obligations of those persons. [Dunn v. State, 286 Ga. 238, 686 S.E.2d 772, 2009 Ga. LEXIS 736 \(2009\)](#).

Trial court properly convicted the defendant of failing to register as a sexual offender under [O.C.G.A. § 42-1-12\(e\)\(4\)](#) because the statute was not unconstitutionally vague absent the definition of the term sexually violent offense as the statute included offenses in violation of [O.C.G.A. § 16-6-22.2](#) and the defendant admitted the defendant knew the defendant was required to register. [Youmans v. State, 291 Ga. 754, 732 S.E.2d 441, 2012 Ga. LEXIS 788 \(2012\)](#).

**Motion to enforce terms inadequate to address regulatory mechanism. —**

Defendant's motion to enforce the terms and conditions of the defendant's sentence was ineffectual to address the regulatory mechanism requiring the defendant to register as a sex offender. [Smith v. State, 328 Ga. App. 885, 763 S.E.2d 269, 2014 Ga. App. LEXIS 595 \(2014\)](#).

**Counseling requirement as precondition to parole. —**

*Unpublished decision:* Prisoner who has not been convicted of a sex offense is entitled to due process before the state declares the prisoner to be a sex offender. While classification or designation as a sex offender under Georgia law is controlled by Georgia's Sex Offender Registration law, [O.C.G.A. § 42-1-12](#), the Parole Board's counseling precondition was insufficiently

stigmatizing to constitute a deprivation of a constitutionally protected liberty interest and to support a due process entitlement. [Kramer v. Donald](#), 286 Fed. Appx. 674, 2008 U.S. App. LEXIS 15324 (11th Cir. 2008).

**When pardoned. —**

Inclusion on the sex offender registry pursuant to [O.C.G.A. § 42-1-12](#) was a legal consequence of the underlying criminal offense and a disability imposed by law and the defendant's pardon by its express terms removed all disabilities under Georgia law resulting from the defendant's conviction and relieved all the legal consequences thereof, and restored all of the defendant's civil and political rights, excepting only the defendant's firearm rights. [State v. Davis](#), 303 Ga. 684, 814 S.E.2d 701, 2018 Ga. LEXIS 364 (2018).

**Cruel and unusual punishment. —**

Habeas court properly ruled that an inmate's sentence of 10 years in prison for having consensual oral sex with a 15-year-old when the inmate was only 17 years old constituted cruel and unusual punishment in light of the 2006 amendments to [O.C.G.A. §§ 16-6-4](#) and [42-1-12](#). As a result, the inmate's conviction was reversed and the inmate was not required to register as a sex offender. [Humphrey v. Wilson](#), 282 Ga. 520, 652 S.E.2d 501, 2007 Ga. LEXIS 774 (2007).

Trial court did not err in denying the defendant's motion to strike an illegal sentence because the requirement that the defendant register as a sex offender did not violate the Eighth Amendment's proscription against the imposition of cruel and unusual punishment. [Wiggins v. State](#), 288 Ga. 169, 702 S.E.2d 865, 2010 Ga. LEXIS 854 (2010), cert. denied, 563 U.S. 1011, 131 S. Ct. 2906, 179 L. Ed. 2d 1251, 2011 U.S. LEXIS 4005 (2011).

**Evidence insufficient to prove failure to register. —**

Defendant's conviction for failure to register as a sex offender had to be reversed because a rational trier of fact could not have found beyond a reasonable doubt from the evidence presented that the defendant violated the sex offender registration requirements of [O.C.G.A. § 42-1-12](#) as the state's sole witness did not testify that the witness was working when the defendant was required to register or that the defendant could not have registered with someone else. [Davis v. State](#), 330 Ga. App. 118, 766 S.E.2d 566, 2014 Ga. App. LEXIS 804 (2014).

Because the defendant was required to renew sex offender registration information in the county in which the defendant resided, and the evidence showed that the defendant did not renew registration in the county where the defendant had lived but had registered in the county where the defendant had moved to, the evidence was insufficient to support a conviction for violating the State Sexual Offender Registry statute, [O.C.G.A. § 42-1-12](#). [Jones v. State](#), 340 Ga. App. 398, 797 S.E.2d 653, 2017 Ga. App. LEXIS 73 (2017).

**Failure to register results in new crime. —**

Defendant's failure to abide by the requirement to register as a sexual offender, pursuant to [O.C.G.A. § 42-1-12](#), would result in a new crime, thus, [§ 42-1-12](#) is not an ex post facto law. [Miller v. State](#), 291 Ga. App. 478, 662 S.E.2d 261, 2008 Ga. App. LEXIS 540 (2008).

**Registration requirement not sentence or punishment. —**

Requiring a defendant who had been convicted of aggravated child molestation to submit to lifetime registration as a sex offender under [O.C.G.A. § 42-1-12](#) did not exceed the maximum sentence allowed under [O.C.G.A. § 16-6-4](#) as such registration was not a sentence or a punishment. [Hollie v. State](#), 298 Ga. App. 1, 679 S.E.2d 47, 2009 Ga. App. LEXIS 575 (2009), aff'd, 287 Ga. 389, 696 S.E.2d 642, 2010 Ga. LEXIS 497 (2010).

**Registration is not a sentence or punishment. —**

## O.C.G.A. § 42-1-12

That the sentencing judge did not impose sexual offender registration as a condition of probation did not excuse the defendant from registering as registration was not a sentence or a punishment. [Rogers v. State, 297 Ga. App. 655, 678 S.E.2d 125, 2009 Ga. App. LEXIS 496 \(2009\)](#).

In a case in which the defendant entered an Alford plea to two counts of enticing a child for indecent purposes, the trial court did not err in denying the defendant's motion to vacate a void sentence regarding the condition that the defendant register as a sex offender for life following the defendant's release from prison as such requirements were regulatory and not punitive in nature. [Bryant v. State, 363 Ga. App. 349, 870 S.E.2d 33, 2022 Ga. App. LEXIS 86 \(2022\)](#).

**Requiring registration as special condition of probation proper. —**

Trial court did not err in denying the defendant's motion to strike an illegal sentence because the special condition of probation the trial court imposed, requiring the defendant to register as a sex offender, was required by the sex-offender registration statute, [O.C.G.A. § 42-1-12](#). Moreover, the facts supporting the requirement that the defendant register as a sex offender, that the defendant committed conduct that was a sexual offense against a minor, were found by the jury. The sex-offender registry requirement is regulatory and not punitive in nature. [Wiggins v. State, 288 Ga. 169, 702 S.E.2d 865, 2010 Ga. LEXIS 854 \(2010\)](#), cert. denied, 563 U.S. 1011, 131 S. Ct. 2906, 179 L. Ed. 2d 1251, 2011 U.S. LEXIS 4005 (2011).

**Sentence of 30 years, 15 to serve, proper. —**

Defendant, who was indicted for violating [O.C.G.A. § 42-1-12](#) "on or about April 4, 2007, the exact date being unknown", was properly sentenced to 30 years, to serve 15 imprisoned, because an amendment to [§ 42-1-12](#) that was effective July 1, 2006, increased the sentencing range from one-to-three years to ten-to-thirty years. [Relaford v. State, 306 Ga. App. 549, 702 S.E.2d 776, 2010 Ga. App. LEXIS 989 \(2010\)](#), cert. denied, [No. S11C0429, 2011 Ga. LEXIS 576 \(Ga. July 11, 2011\)](#).

**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 \(2008\)](#).

**Denial of request for removal from registration requirement. —**

While the petitioner did present substantial evidence, the trial court's determination of risk depended, inter alia, on the court's assessment of the credibility of the petitioner and of the expert who testified very favorably on the petitioner's behalf regarding a risk assessment examination and analysis by the expert, and the petitioner failed to show a manifest abuse of discretion in the denial of the petition. [Royster v. State of Ga., 346 Ga. App. 333, 814 S.E.2d 455, 2018 Ga. App. LEXIS 313 \(2018\)](#).

**Evidence and Procedural Issues****No written findings of fact or conclusions of law required. —**

By the statute's plain terms, [O.C.G.A. § 42-1-12](#) specifies the criterion the trial court must consider in determining whether to grant a petition for relief from the statute's registration requirements for sexual offenders, namely, the risk that the petitioner will reoffend, but the statute does not state that the trial court's order granting or denying a petition must include written findings of fact or conclusions of law. [In re Baucom, 297 Ga. App. 661, 678 S.E.2d 118, 2009 Ga. App. LEXIS 504 \(2009\)](#).

**Motion to quash indictment untimely. —**

Defendant's motion to quash an indictment and a subsequent motion to quash a failure to register as a sex offender count under [O.C.G.A. § 42-1-12](#) were properly denied; the defendant waived the right to challenge the form of the failure to register count of the indictment because the defendant's motion was not made before entry of a not guilty plea and even if [§ 17-7-110](#) applied

to the filing of the defendant's motion, it was untimely under that statute as well. [Bryson v. State, 282 Ga. App. 36, 638 S.E.2d 181, 2006 Ga. App. LEXIS 1303 \(2006\)](#).

**Void indictment for failure to specify violation. —**

An indictment that failed to inform the defendant of what alleged action or inaction constituted a violation of [O.C.G.A. § 42-1-12\(f\)\(5\)](#) was deficient and void. Only if additional factual allegations had been asserted in the indictment would it be clear what acts or omissions the grand jury had found probable cause to believe the defendant had committed, and what acts or omissions the trial jury would be required to find, beyond a reasonable doubt, that the defendant had committed in order to find the defendant guilty as charged. [Jackson v. State, 301 Ga. 137, 800 S.E.2d 356, 2017 Ga. LEXIS 375 \(2017\)](#).

**Motion to sever properly denied. —**

Defendant's motion to sever the failure to register as a sex offender counts under [O.C.G.A. § 42-1-12](#) from the remaining aggravated sodomy and child molestation counts was properly denied as: (1) the charges involved a series of acts which were connected together; (2) the case was not so complex as to impair the jury's ability to distinguish the evidence and to apply the law intelligently to the counts as joined; and (3) the failure to report charges were legally material to the crimes against two children because the failure constituted evasive conduct that was circumstantial evidence of guilt; moreover, evidence of the conduct underlying the defendant's conviction of a sex offense in North Carolina was admissible as a similar transaction. [Bryson v. State, 282 Ga. App. 36, 638 S.E.2d 181, 2006 Ga. App. LEXIS 1303 \(2006\)](#).

**Retroactive registration of sex offenders is nonpunitive. —**

Trial court properly denied a defendant's motion to remove the defendant from the sex offender registry, or in the alternative to be resentenced as a first offender, as the United States Supreme Court had already determined that retroactive registration of sex offenders was nonpunitive and did not constitute an ex post facto law, and to resentence the defendant as a first offender would be in direct contravention of the plain language of [O.C.G.A. §§ 17-10-6.1](#) and [42-1-12](#) since the defendant pled guilty but mentally ill to kidnaping a child under the age of 14, which was a serious violent felony. [Finnicum v. State, 296 Ga. App. 86, 673 S.E.2d 604, 2009 Ga. App. LEXIS 137 \(2009\)](#).

**Registration for first offender. —**

Georgia superior court properly required a first offender to register as a sex offender pursuant to [O.C.G.A. § 42-1-12](#) as both the 2005 and 2006 amendments to the statute dictated registration, and despite the fact that registration was not part of the first offender's plea agreement, as neither the court nor the prosecutor had the power to exempt the first offender from the adoption of new rules regarding registration entered after the plea. [Peters v. Donald, 282 Ga. App. 714, 639 S.E.2d 345, 2006 Ga. App. LEXIS 1383 \(2006\)](#).

**Residence, not domicile. —**

Trial court properly denied a defendant's motion for a directed verdict on a count alleging that the defendant failed to register as a sex offender under [O.C.G.A. § 42-1-12](#) as that section did not speak to the concept of "domicile," but to residence address and moving and residence included an intent to live in a place for the time being; although the state did not show exactly where the defendant resided after leaving the county, it showed that the defendant left the county and lived outside the state for more than a year without informing the county sheriff of a change in residence address, as required by law. [Bryson v. State, 282 Ga. App. 36, 638 S.E.2d 181, 2006 Ga. App. LEXIS 1303 \(2006\)](#).

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. App. LEXIS 849 \(2007\)](#).

#### **Change of residence. —**

Trial court's conclusion that the state failed to present any competent evidence showing that the defendant had changed residences was erroneous because in the court's assessment of the evidence, the trial court erroneously determined that an investigator's testimony amounted to inadmissible hearsay; the investigator's testimony as to the declaration of the defendant's father that the defendant no longer lived at that residence was admissible as a prior inconsistent statement and was admissible as substantive evidence of the defendant's guilt. Moreover, the circumstances presented by the evidence would authorize a rational trier of fact to find that the defendant had intended to change residences without notifying the local authorities as required; the evidence showed that the defendant had been living at the defendant's mother's residence for over two weeks, had not returned to the defendant's father's residence by the time the defendant was arrested, had failed to report for a scheduled meeting with a probation officer, and had not contacted the probation officer to explain the defendant's failure to report for the meeting or to provide any information as to the defendant's current residential status. [State v. Canup, 300 Ga. App. 678, 686 S.E.2d 275, 2009 Ga. App. LEXIS 1207 \(2009\)](#).

Indictment was insufficient to withstand a general demurrer because the indictment did not allege that the defendant was a convicted sexual offender, that the defendant was required as a sexual offender to register the defendant's address with the sheriff of the county in which the defendant resided, the defendant previously resided in a county and had registered the defendant's address, or that the defendant changed the defendant's address to one in another county, and the indictment did not inform the defendant of what alleged action or inaction constituted a registration statute. [Jackson v. State, 301 Ga. 137, 800 S.E.2d 356, 2017 Ga. App. LEXIS 375 \(2017\)](#).

#### **Sufficient evidence to support conviction of failure to notify of change of residence. —**

Since the defendant's release to probation occurred after the effective date of the registration statute and the evidence proved that the defendant was required to register under [O.C.G.A. § 42-1-12\(e\)\(4\)](#), the evidence was sufficient to support the conviction for failure of a registered sex offender to report a change in residence prior to moving. [Pardon v. State, 322 Ga. App. 393, 745 S.E.2d 658, 2013 Ga. App. LEXIS 529 \(2013\)](#).

#### **Evidence of convictions admissible in trial for failure to notify of address change. —**

In a defendant's trial for failure to notify the sheriff of changes in the defendant's address as required by [O.C.G.A. § 42-1-12](#) based on the defendant's past rape conviction, the defendant's counsel was not ineffective in failing to object to admission of the defendant's past convictions for burglarizing and robbing the defendant's parents. Such evidence was admissible to impeach the defendant's testimony that the defendant had lived with the defendant's parents at their home without interruption. [Relaford v. State, 306 Ga. App. 549, 702 S.E.2d 776, 2010 Ga. App. LEXIS 989 \(2010\)](#), cert. denied, [No. S11C0429, 2011 Ga. App. LEXIS 576 \(Ga. July 11, 2011\)](#).

#### **Failure to have 72 hours elapse between address change and arrest. —**

Because there was no evidence that 72 hours elapsed prior to the defendant's change in sleeping location and the defendant's arrest, the state failed to present sufficient evidence to sustain the defendant's conviction for failing to register as a sex offender. [Young v. State, 355 Ga. App. 486, 844 S.E.2d 538, 2020 Ga. App. LEXIS 338 \(2020\)](#).

#### **Registration requirement for first offender under former law. —**

Trial court's denial of a defendant's motion for an out-of-time appeal was proper with respect to the defendant's claim that counsel was ineffective for failing to object to testimony by a probation officer as the officer's statement that under former O.C.G.A. § 42-1-2(a)(3), the defendant did not have to register as a sex offender if the defendant was afforded treatment as a first offender was a correct statement of law at the time; accordingly, counsel's failure to object thereto was not ineffectiveness as any such objection would have lacked merit. [Ethridge v. State, 283 Ga. App. 289, 641 S.E.2d 282, 2007 Ga. App. LEXIS 41 \(2007\)](#), overruled in part, [Collier v. State, 307 Ga. 363, 834 S.E.2d 769, 2019 Ga. App. LEXIS 708 \(2019\)](#).

**Denial of petition for release from requirement to register. —**

Trial court did not abuse the court's discretion by denying the defendant's petition for release from the requirement to register as a sexual offender for life as the defendant failed to make a prima facie showing that the defendant was no longer a substantial risk of reoffending since an agency abuse case was pending against the defendant, which required a child of the defendant to not bring any children around the defendant, and defendant characterized the conduct involving the child molestation of the defendant's three children as a mistake which everyone makes. [Miller v. State, 291 Ga. App. 478, 662 S.E.2d 261, 2008 Ga. App. LEXIS 540 \(2008\)](#).

Trial court erred by denying a defendant's petition for release from the requirement that the defendant register as a sexual offender, pursuant to [O.C.G.A. § 42-1-12](#), since the defendant's Texas conviction involving the use of the defendant's position as a clergyman to sexually assault two victims was not similar enough to any Georgia criminal statute that would have found the defendant to have been convicted of committing a dangerous sexual offense as that term was defined in [§ 42-1-12\(1\)\(10\)\(A\)](#). [Sharma v. State, 294 Ga. App. 783, 670 S.E.2d 494, 2008 Ga. App. LEXIS 1314 \(2008\)](#).

Trial court did not abuse the court's discretion by denying a defendant's petition seeking relief from the sexual offender registration requirements, pursuant to [O.C.G.A. § 42-1-12](#), because the defendant failed to provide a report from a licensed psychiatrist that allegedly set forth an opinion that the defendant posed no threat whatsoever of reoffending. Further, the defendant failed to provide any additional information regarding the underlying conduct for the out-of-state conviction that required the registration. [In re Baucom, 297 Ga. App. 661, 678 S.E.2d 118, 2009 Ga. App. LEXIS 504 \(2009\)](#).

**Confinement in probation detention center impacting registration period. —**

Defendant's confinement in a probation detention center was not equivalent to confinement in prison for purposes of [O.C.G.A. § 42-1-12\(g\)](#) because under [O.C.G.A. § 42-8-34.1\(c\)](#), such centers were alternatives to confinement in prison, and therefore the 10-year waiting period for release from sex offender registration requirements did not begin running upon the defendant's release from the center, but from the date the defendant was released from probation. [In re White, 306 Ga. App. 365, 702 S.E.2d 694, 2010 Ga. App. LEXIS 943 \(2010\)](#).

**Probation condition overbroad and vague. —**

Upon convicting the defendant of sexual battery under [O.C.G.A. § 16-6-22.1](#), special probation conditions 4, 5, and 6 were erroneously imposed as those conditions lacked reasonable specificity and encompassed groups and locations not rationally related to the sentencing objectives and failed to give the defendant notice of either the conduct or the groups to avoid. [Grovenstein v. State, 282 Ga. App. 109, 637 S.E.2d 821, 2006 Ga. App. LEXIS 1316 \(2006\)](#).

**No contest plea properly admitted. —**

Trial court did not err in admitting into evidence a no contest plea and in "making reference" to the plea with regard to the similar transaction evidence as the defendant's failure to object to the introduction of the evidence precluded review of the issue on appeal; further, the plea was admissible to show a conviction for purposes of the defendant's alleged failure to register as a sex offender under former O.C.G.A. § [42-1-12](#) and the jury was permitted to consider the plea as similar transaction evidence. [Bryson v. State, 282 Ga. App. 36, 638 S.E.2d 181, 2006 Ga. App. LEXIS 1303 \(2006\)](#).

**Lack of knowledge of registration requirements not a defense. —**

Defendant's conviction for filing false information with the Georgia Sex Offender Registry, in violation of [O.C.G.A. § 42-1-12\(n\)](#), was upheld. The defendant's claimed lack of knowledge of the registration requirements was no excuse and was refuted by the fact that the defendant had filed registration notification forms. [Scott v. State, 303 Ga. App. 672, 695 S.E.2d 71, 2010 Ga. App. LEXIS 388 \(2010\)](#).

**Failure to advise defendant of requirement to register as sex offender. —**

## O.C.G.A. § 42-1-12

Trial court erred in denying the defendant's motion to withdraw the defendant's guilty plea to two counts of child molestation because defendant's trial counsel failed to advise the defendant that entering a plea of guilty to child molestation would necessitate that the defendant comply with the requirements of the state's sex offender registry statute, [O.C.G.A. § 42-1-12](#); the defendant was subject to the sex offender registration requirements at the time that the defendant entered into defendant's plea, the terms of the sex offender registry statute were succinct, clear, and explicit in setting forth the consequences of defendant's guilty plea, and the defendant's trial counsel could have readily determined that the defendant was required to register and conveyed that information to the defendant. [Taylor v. State, 304 Ga. App. 878, 698 S.E.2d 384, 2010 Ga. App. LEXIS 673 \(2010\)](#).

Trial counsel's failure to advise a client that pleading guilty will require the defendant to register as a sex offender is constitutionally deficient performance. [Taylor v. State, 304 Ga. App. 878, 698 S.E.2d 384, 2010 Ga. App. LEXIS 673 \(2010\)](#).

**Delay in registration. —**

Evidence was sufficient to support the defendant's conviction of failing to register as a sex offender because the defendant did not dispute that the defendant failed to report to the county sheriff's office to re-register as a sex offender within 72 hours prior to the defendant's birthday in 2015 and there was no evidence that any potential conflict prohibited the defendant from satisfying the requirements of [O.C.G.A. § 42-1-12](#). Defendant could have reported to the office on the Thursday or Friday before the defendant's birthday, there was no evidence that the defendant tried to report on Saturday but was stymied by the office's weekend closure, and the defendant waited until the following Wednesday, three days after the defendant's birthday, to report to the office. [O'Brien v. State, 356 Ga. App. 617, 848 S.E.2d 463, 2020 Ga. App. LEXIS 495 \(2020\)](#).

**Evidence insufficient to support conviction. —**

Because the state's evidence on the issue of whether the defendant was convicted of a sexual offense involving a minor and whether that conviction required the defendant to register as a sex offender in Michigan was insufficient the defendant was entitled to reversal of the conviction for failure to register as a sex offender. [Smart v. State, 356 Ga. App. 60, 846 S.E.2d 172, 2020 Ga. App. LEXIS 407 \(2020\)](#).

**Release from registration after 10 years if victim not physically harmed. —**

Phrase "intentional physical harm," as it was used in [O.C.G.A. § 17-10-6.2\(c\)\(1\)\(D\)](#), providing conditions for release from the sex offender registry, meant intentional physical contact that caused actual physical damage, injury, or hurt to the victim; a sex offender registrant was entitled to release from registration because the registrant's unwanted touching of a ten-year-old boy's penis did not constitute such physical damage, injury, or hurt. [State v. Randle, 298 Ga. 375, 781 S.E.2d 781, 2016 Ga. LEXIS 85 \(2016\)](#).

**Registration Required****Attempt crimes required registration. —**

Defendant was properly ordered to register as a sex offender because the convictions constituted criminal offenses against a victim who was a minor, pursuant to [O.C.G.A. § 42-1-12](#), because the attempt convictions pursuant to [O.C.G.A. § 16-4-1](#) were covered within the registration requirement; the defendant was convicted of criminal attempt to commit child molestation and criminal attempt to entice a child for indecent purposes, in violation of [O.C.G.A. §§ 16-6-4\(a\)](#) and [16-6-5\(a\)](#), respectively, as the defendant communicated over the Internet with a police officer who was disguised as a 14-year-old girl, and arranged to meet the alleged girl, and the fact that an actual child was not involved did not negate the offense or the need for the registration as there was no impossibility defense. [Spivey v. State, 274 Ga. App. 834, 619 S.E.2d 346, 2005 Ga. App. LEXIS 837 \(2005\)](#), cert. denied, [No. S05C2012, 2005 Ga. LEXIS 895 \(Ga. Dec. 1, 2005\)](#).

Because the crime of attempt to commit rape was related to a sexually violent offense, the defendant was properly required to comply with the registration requirements of [O.C.G.A. § 42-1-12](#), and the trial court did not err in convicting the defendant for violating the registry statute. [Jenkins v. State, 284 Ga. 642, 670 S.E.2d 425, 2008 Ga. LEXIS 1026 \(2008\)](#).

**Registration for public indecency proper. —**

Offense of public indecency, [O.C.G.A. § 16-6-8](#), was not a victimless crime and, therefore, a perpetrator thereof may have been required to register under [O.C.G.A. § 42-1-12](#); the trial court did not err in requiring the defendant to register as a condition of the defendant's sentence for public indecency. [Brown v. State, 270 Ga. App. 176, 605 S.E.2d 885, 2004 Ga. App. LEXIS 1381 \(2004\)](#), cert. dismissed, [No. S05C0517, 2005 Ga. LEXIS 70 \(Ga. Jan. 10, 2005\)](#).

Because the defendant's sex offender registration as part of probation was limited to the maximum sentence allowed by law as punishment for that crime, the trial court did not improperly give the defendant an indeterminate sentence by requiring the defendant to register as a sexual offender following the defendant's conviction for felony public indecency. [Loya v. State, 321 Ga. App. 430, 740 S.E.2d 382, 2013 Ga. App. LEXIS 261 \(2013\)](#), cert. denied, [No. S13C1263, 2013 Ga. LEXIS 847 \(Ga. Oct. 7, 2013\)](#).

**Registration required when convicted as child sex offender. —**

Defendant was properly ordered to register as a sex offender after a conviction for cruelty to a child since the cruelty as stated in the indictment was rape of a minor, a threat to arrest and jail the victim, and force used to make the victim touch the defendant's penis. [Wiggins v. State, 272 Ga. App. 414, 612 S.E.2d 598, 2005 Ga. App. LEXIS 295 \(2005\)](#), aff'd in part and rev'd in part, [280 Ga. 268, 626 S.E.2d 118, 2006 Ga. LEXIS 75 \(2006\)](#), vacated in part, [279 Ga. App. 901, 633 S.E.2d 381, 2006 Ga. App. LEXIS 750 \(2006\)](#).

As the indictments made it clear that the underlying conduct for the two aggravated assaults to which the defendant entered Alford pleas was the oral sodomy of one minor and the rape of another, and the defendant was held to have notice of all lesser crimes shown by the facts alleged in the indictment, the defendant was required to register as a sex offender under [O.C.G.A. § 42-1-12](#). [Rogers v. State, 297 Ga. App. 655, 678 S.E.2d 125, 2009 Ga. App. LEXIS 496 \(2009\)](#).

Evidence was sufficient to support the defendant's conviction of failure to register as a sex offender, as required by [O.C.G.A. § 42-1-12](#), because when the defendant was charged with failure to register the defendant was required to register as a sex offender since the defendant had been convicted of criminal sexual conduct toward a minor in violation of [O.C.G.A. § 16-6-2](#), and the supreme court's ruling that [§ 16-6-2](#) infringed upon the right of privacy had to be applied retroactively on collateral review, but the court of appeals could not apply it in the defendant's case since it was not on collateral review; the appeal was from a conviction for failure to register as a sex offender, which was a proceeding separate from defendant's original offense, and at the time of the defendant's sodomy conviction, the conduct in which the defendant engaged was against the law in Georgia. [Green v. State, 303 Ga. App. 210, 692 S.E.2d 784, 2010 Ga. App. LEXIS 311 \(2010\)](#), cert. denied, [No. S10C1278, 2010 Ga. LEXIS 717 \(Ga. Oct. 4, 2010\)](#).

Because the addendum to the defendant's sentence purported to impose restrictions upon the defendant's future parole, if granted, the sentence was a nullity; however, in light of the testimony and the nature of the offense of which the defendant was convicted, incest, the conditions of probation imposed were reasonable and were not vague or overly broad because several of the conditions imposed were specifically mandated by [O.C.G.A. § 42-1-12](#), and even if the trial court had not specifically imposed sex offender registration as a condition of probation, the defendant was nonetheless required by statute to register. [Stephens v. State, 305 Ga. App. 339, 699 S.E.2d 558, 2010 Ga. App. LEXIS 668 \(2010\)](#).

Defendant did not show evidence was insufficient to support conclusion that defendant was required to register pursuant to [O.C.G.A. § 42-1-12\(e\)\(6\)](#) in Georgia as defendant had previously been convicted of offense of sexual battery against minor on August 15, 1995 in Louisiana. [Session v. State, 316 Ga. 179, 2023 Ga. LEXIS 86 \(2023\)](#).

**Perpetrator 18 and victim 13 required registration. —**

Trial court properly held that the defendant, who was convicted of a statutory rape that occurred when the defendant was 18 and the victim was 13, had to register as a sex offender. Because the victim was under 14, the case did not fall within the exception of [O.C.G.A. § 42-1-12\(a\)\(9\)\(C\)](#) for misdemeanor statutory rape under [O.C.G.A. § 16-6-3\(c\)](#); moreover, the defendant was prosecuted in superior court, not juvenile court. [Planas v. State, 296 Ga. App. 51, 673 S.E.2d 566, 2009 Ga. App. LEXIS 116 \(2009\)](#).



**Registration required when crime against minor. —**

Based on the allegations in the defendant's second indictment that the defendant sucked on the breasts of a minor under the age of 16, the trial court was authorized to conclude that the defendant committed a criminal offense against a victim who was a minor and was thus subject to the registration requirements and conditions in [O.C.G.A. § 42-1-12](#). [Phillips v. State, 298 Ga. App. 520, 680 S.E.2d 424, 2009 Ga. App. LEXIS 616 \(2009\)](#).

Defendant's convictions for child molestation supported the trial court's requirement that the defendant register as a sex offender because the defendant's conviction constituted a conviction for criminal sexual conduct toward a minor and a dangerous sexual offense. [Kruel v. State, 344 Ga. App. 256, 809 S.E.2d 491, 2018 Ga. App. LEXIS 15 \(2018\)](#).

**Electronically furnishing obscene materials required registration. —**

Detective erroneously promised during an interview that a defendant would not be charged with an offense that required sex offender registration because a conviction for electronically furnishing obscene material to a minor under [O.C.G.A. § 16-12-100.1](#) would require registration as a sex offender under [O.C.G.A. § 42-1-12\(e\)\(2\)](#); prior to the erroneous promise, the defendant's confession was voluntarily made under former O.C.G.A. § 24-3-50 (see now [O.C.G.A. § 24-8-824](#)) as the confession was made without the slightest hope of benefit. [State v. Lee, 295 Ga. App. 49, 670 S.E.2d 879, 2008 Ga. App. LEXIS 1352 \(2008\)](#).

**Internet sex crimes required registration. —**

Defendant's convictions under the computer pornography and child exploitation act, [O.C.G.A. § 16-12-100.2](#), required registration as a sex offender pursuant to [O.C.G.A. § 42-1-12](#), as the conviction for pornography and child exploitation under [§ 16-12-100.2\(d\)](#) for the use of an on-line Internet service in the attempt to commit child molestation, was within the definition of a "criminal offense against a victim who was a minor," pursuant to [§ 42-1-12](#); the defendant had communicated with a police officer who posed as a 14-year-old girl, sent her sexually explicit messages, and arranged a meeting with her. [Spivey v. State, 274 Ga. App. 834, 619 S.E.2d 346, 2005 Ga. App. LEXIS 837 \(2005\)](#), cert. denied, [No. S05C2012, 2005 Ga. LEXIS 895 \(Ga. Dec. 1, 2005\)](#).

**Registration for "criminal offense against a minor" based on communication over the Internet. —**

Trial court properly ordered the defendant to register as a sex offender, pursuant to [O.C.G.A. § 42-1-12](#), although the defendant's convictions did not fit within the category of "sexually violent offenses," pursuant to [§ 42-1-12](#), as the offenses were all within the "criminal offense against a victim who was a minor" category, pursuant to [§ 42-1-12](#), based on a strict construction of the registration statute, pursuant to the statutory interpretation rules under [O.C.G.A. § 1-3-1\(a\)](#); the defendant's convictions arose for communications over the Internet with a police officer who posed as a young girl, and the defendant sent her sexually explicit messages and arranged a meeting with her, at which time the defendant was arrested. [Spivey v. State, 274 Ga. App. 834, 619 S.E.2d 346, 2005 Ga. App. LEXIS 837 \(2005\)](#), cert. denied, [No. S05C2012, 2005 Ga. LEXIS 895 \(Ga. Dec. 1, 2005\)](#).

**Conduct alleged in indictment satisfied definition of sexual offense and required registration. —**

As a defendant entered an Alford plea to two counts of cruelty to children by committing the acts alleged in the indictment, the defendant acknowledged touching the breast and buttocks of the 14-year-old victim and although the defendant did not plead guilty to a sexual offense, the defendant pled guilty to conduct which, by the conduct's nature, was a sexual offense against a minor. Therefore, the defendant was required to register as a sexual offender under [O.C.G.A. § 42-1-12\(e\)\(1\)](#). [Morrell v. State, 297 Ga. App. 592, 677 S.E.2d 771, 2009 Ga. App. LEXIS 495 \(2009\)](#).

**Registration Not Required****Registration not required for sentence imposed before effective date of act. —**

[O.C.G.A. § 42-1-12\(a\)\(3\)](#) applied to sentences imposed on or after July 1, 2004, and thus, when the defendant was sentenced in December 2001, the new statutory language did not apply and the defendant did not need to register as a sex offender. [State v. Plunkett, 277 Ga. App. 605, 627 S.E.2d 182, 2006 Ga. App. LEXIS 162](#), superseded by statute as stated in [Peters v. Donald, 282 Ga. App. 714, 639 S.E.2d 345, 2006 Ga. App. LEXIS 1383 \(2006\)](#).

**Misdemeanor conviction for interference with child custody did not require registration. —**

Trial court properly permanently enjoined the Georgia Department of Corrections from requiring the defendant to register as a sex offender because the defendant's State of Alabama conviction for interference with custody of a child was a misdemeanor conviction that did not trigger the sex offender registration requirement under Georgia law. [Owens v. Urbina, 296 Ga. 256, 765 S.E.2d 909, 2014 Ga. LEXIS 908 \(2014\)](#).

**Sex offender registration not required after successful completion of first offender sentence. —**

Defendant was not required to register as a sexual offender because the defendant successfully completed a first-offender sentence for statutory rape and burglary charges, and a "conviction" under [O.C.G.A. § 42-1-12\(a\)\(8\)](#) did not include a discharge without an adjudication of guilt following the successful completion of a first offender sentence; the plain language of [O.C.G.A. § 42-8-62\(a\)](#) provided that, with certain exceptions, once a first offender was discharged without an adjudication of guilt, he or she stood completely exonerated and was not considered as having been convicted of a crime. [Jackson v. State, 299 Ga. App. 356, 683 S.E.2d 60, 2009 Ga. App. LEXIS 892 \(2009\)](#).

**Release from registration proper when offense did not rise to intentional physical harm. —**

Trial court did not abuse the court's discretion in releasing the defendant from the sex offender registration requirements because under [O.C.G.A. § 17-10-6.2\(c\)\(1\)\(D\)](#), there was evidence that the underlying child molestation offense consisted of the defendant touching the genitals of the child victim with the defendant's hands; thus, the sexual offense did not rise to the level of intentional physical harm so as to preclude release from the registration requirements. [State v. Randle, 331 Ga. App. 1, 769 S.E.2d 724, 2015 Ga. App. LEXIS 87 \(2015\)](#), aff'd, [298 Ga. 375, 781 S.E.2d 781, 2016 Ga. LEXIS 85 \(2016\)](#).

## Opinion Notes

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### OPINIONS OF THE ATTORNEY GENERAL

**Release of information by sheriff. —**

Sheriff must release relevant information relating to sexually violent predators; however, the sheriff is given the authority to determine what information and in what manner such information will be released. 1997 Op. Att'y Gen. No. U97-23.

## Research References & Practice Aids

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**Cross references.**

Development of model program for educating students regarding online safety, [§ 20-2-149](#).

Residing near and photographing minors by registered sexual offenders, [§ 42-1-15](#).

**Administrative rules and regulations.**

The Georgia Sexually Violent Offender Registry, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Crime Information Center Council, Practice and Procedure, Chapter 140-2.

**Law reviews.**

For review of 1996 department of corrections legislation, see *13 Ga. U. L. Rev. 257 (1996)*.

For note, “A Mandate Without a Duty: The Apparent Scope of Georgia’s Megan’s Law,” see *15 Ga. St. U.L. Rev. 1131 (1999)*.

For annual survey article discussing developments in criminal law, see *52 Mercer L. Rev. 167 (2000)*.

For note on the 2001 amendment to this Code section, see *18 Ga. St. U.L. Rev. 227 (2001)*.

For note on the 2003 amendment to this section, see *20 Ga. St. U.L. Rev. 217 (2003)*.

For article on 2006 amendment of this Code section, see *23 Ga. St. U. L. Rev. 11 (2006)*.

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

For article, “‘Sexting’ to Minors in a Rapidly Evolving Digital Age: *Frix v. State* Establishes the Applicability of Georgia’s Obscenity Statutes to Text Messages,” see *61 Mercer L. Rev. 1283 (2010)*.

For article on the 2015 amendment of this Code section, see *32 Ga. St. U. L. Rev. 43 (2015)*.

For article on the 2015 amendment of this Code section, see *32 Ga. St. U.L. Rev. 231 (2015)*.

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

For article, “Disrupting Victim Exploitation,” see *69 Mercer L. Rev. 805 (2018)*.

**RESEARCH REFERENCES****ALR.**

Name Change Under State Sex Offender Registration Laws, *67 A.L.R. 7th 4*.

Registration Under Sex Offender Registration Statute When Underlying Conduct Was Voyeurism, *63 A.L.R.7th 5*.

Validity, construction, and application of state statute including “sexually motivated offenses” within definition of sex offense for purposes of sentencing or classification of defendant as sex offender, *30 A.L.R.6th 373*.

Validity, construction, and application of state statutes imposing criminal penalties for failure to register as required under sex offender or other criminal registration statutes, *33 A.L.R.6th 91*.

State statutes or ordinances requiring persons previously convicted of crime to register with authorities as applied to juvenile offenders — Constitutional issues, *37 A.L.R.6th 55*.

State statutes or ordinances requiring persons previously convicted of crime to register with authorities as applied to juvenile offenders — duty to register, requirements for registration, and procedural matters, *38 A.L.R.6th 1*.

State statutes or ordinances requiring persons previously convicted of crime to register with authorities as applied to juvenile offenders — expungement, stay or deferral, exceptions, exemptions, and waiver, *39 A.L.R.6th 577*.

Court’s duty to advise sex offender as to sex offender registration consequences or other restrictions arising from plea of guilty, or to determine that offender is advised thereof, *41 A.L.R.6th 141*.

[Application of \*Apprendi v. New Jersey\*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 \(2000\)](#), and [Blakely v. Washington](#), 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403, 6 A.L.R. Fed. 2d 619 (2004), to Sex Offender Registration Statutes, [51 A.L.R.6th 139](#).

Validity, construction, and application of state sex offender registration statutes concerning level of classification — Initial classification determination, [65 A.L.R.6th 1](#).

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 and applicability of state requirement that person convicted or indicted of sex offenses be subject to electronic location monitoring, including use of satellite or global positioning system, [57 A.L.R.6th 1](#).

Validity of state sex offender registration laws under ex post facto prohibitions, [63 A.L.R.6th 351](#).

Validity, construction and application of state sex offender registration statutes concerning level of classification — general principles, evidentiary matters, and assistance of counsel, [64 A.L.R.6th 1](#).

Validity, construction, and application of state sex offender registration statutes concerning level of classification — initial classification determination, [65 A.L.R.6th 1](#).

Removal of adults from state sex offender registries, [77 A.L.R.6th 197](#).

Discharge from commitment and supervised release of civilly committed sex offender under state law, [78 A.L.R.6th 417](#).

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](#).

Validity of state sex offender registration laws under equal protection guarantees, [93 A.L.R.6th 1](#).

### **Hierarchy Notes:**

[O.C.G.A. Title 42](#)

[O.C.G.A. Title 42, Ch. 1, Art. 2](#)

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