

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

CRIMINAL LAW: Application of the Sex Offenders  
Registration Act's Student Safety Zone  
LAW ENFORCEMENT: Exception to Prisoners  
SEXUAL OFFENDERS:  
STUDENT SAFETY ZONES:

For purposes of the exception in section 35(3)(c) of the Sex Offenders Registration Act, MCL 28.735(3)(c), a person who was confined in prison on January 1, 2006, is regarded as "residing within" the prison on that date.

Opinion No. 7228

April 13, 2009

Honorable Michael Switalski  
State Senator  
The Capitol  
Lansing, MI 48909

You have asked two questions concerning the sections of the Sex Offenders Registration Act (Act or SORA), 1994 PA 295, MCL 28.721 *et seq*, that prohibit registered sex offenders from residing within a student safety zone. Section 35(3)(c) of the Act, MCL 28.735(3)(c), provides an exception to that prohibition for individuals who were "residing within" a student safety zone on the Act's effective date, January 1, 2006.

Information received with your request indicates that your questions were prompted by inquiries from a local police department. The department seeks clarification of the Act's application to an individual who was convicted of a SORA crime and sent to prison before the Act took effect and, upon his release from prison after the Act took

effect, returned to his previous residence now located in a student safety zone. If the person is regarded as "residing" in prison on the effective date of the Act, then he is subject to prosecution upon his return to his previous residence for residing in a student safety zone. If, however, the person is regarded as still "residing" in his previous residence during his period of incarceration, he would not be subject to prosecution upon his release and return to his previous residence in a student safety zone under the exception set forth in section 35(3)(c) of the SORA. Combining your questions into one, you ask whether such an incarcerated individual is regarded as "residing within" his former residence or the prison on the January 1, 2006, effective date of the SORA.

In the exercise of its police power authority to address critical health and safety concerns, the Michigan Legislature enacted the SORA to better protect "against the commission of future criminal sexual acts by convicted sex offenders." MCL 28.721a. The Legislature sought to assist law enforcement and protect communities by requiring individuals who have been convicted of criminal sexual acts to register with the State. The Legislature was specifically concerned about protecting children when it enacted the Act, as stated in section 1a of the SORA:

The legislature has determined that a person who has been convicted of committing an offense covered by this act poses a potential serious menace and danger to the health, safety, morals, and welfare of the people, and *particularly the children*, of this state. [MCL 28.721a; emphasis added.]

With certain exceptions, the Act requires individuals who have committed one of the offenses listed in the Act to be registered in the Sex Offenders Registry. MCL 28.723(1). That Registry is "intended to provide law enforcement and the people of this

state with an appropriate, comprehensive, and effective means to monitor those persons who pose such a potential danger." MCL 28.721a. The public registration database provides information to the citizens of this State that allows them to learn where convicted sex offenders reside and if they have recently moved into their communities.

Under sections 34(1)(a) and (b) and 35(1) of the Act, MCL 28.734(1)(a) and (b) and MCL 28.735(1), individuals who are required to register are prohibited from working, loitering, or residing within a "student safety zone," which is defined as "the area that lies 1,000 feet or less from school property." MCL 28.733(f). Section 35 of the SORA states the general prohibition against residing in a student safety zone with several exceptions, the two most pertinent of which provide:

(1) Except as otherwise provided in this section and section 36, *an individual required to be registered under article II shall not reside within a student safety zone.*

\* \* \*

(3) *This section does not apply to any of the following:*

\* \* \*

(c) *An individual who was residing within that student safety zone on January 1, 2006.* However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone.

\* \* \*

(e) An individual who resides within a student safety zone because the individual is an inmate or resident of a prison, jail, juvenile facility, or other correctional facility or is a patient of a mental health facility under an order of commitment. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone. [MCL 28.735(1) and (3)(c) and (e); emphasis added.]

Under the exception in section 35(3)(c), commonly known as a "grandfather clause,"<sup>1</sup> an individual who resided in a student safety zone on the effective date of the Act, January 1, 2006, was not required to move out of that student safety zone upon the Act taking effect. Your question asks whether a person who was in prison on January 1, 2006, but who returned to his home in a student safety zone immediately after his period of incarceration, should be considered to have been "residing," on January 1, 2006, in the prison or in the residence he occupied at the time he was incarcerated, for purposes of applying the grandfather clause exception.

Research has disclosed no court case addressing your question.<sup>2</sup> The answer to your question requires employing rules of statutory construction to determine the meaning of the term "residing" in MCL 28.735(3)(c) to establish which location is considered a person's residence while he is in prison.

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<sup>1</sup> A "grandfather clause" is a provision that exempts persons whose existing status or activity would otherwise be made illegal by new legislation.

<sup>2</sup> *People v Zujko*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_; 2008 Mich App LEXIS 2604 (2008), analyzed the grandfather clause to address a residence issue but in a different factual context than presented in your question. The *Zujko* Court ruled that a person who resided in a school safety zone on January 1, 2006, and was later convicted of a crime requiring registration under the SORA is entitled to remain in that residence under the section 35(3)(c) exception:

MCL 28.735(1) and MCL 28.735(3)(c), taken together, mean that a registered sex offender shall not reside in a student safety zone unless he resided in that zone as of January 1, 2006.

\* \* \*

We do not agree with plaintiff's contention that the exemption in MCL 28.735(3)(c) applies only to those individuals who were registered sex offenders as of January 1, 2006, and who also resided in a student safety zone as of that date.

The *Zujko* case does not address the present issue of where an individual resides who was incarcerated on the effective date of the SORA.

The foremost rule of statutory construction is to give effect to the intent of the Legislature as expressed in the statutory language:

We begin by examining the plain language of the statute; where that language is unambiguous, we presume that the Legislature intended the meaning clearly expressed--no further judicial construction is required or permitted, and the statute must be enforced as written. [*People v Morey*, 461 Mich 325, 330; 603 NW2d 250 (1999).]

Moreover, "a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Roberts v Mecosta County General Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). Furthermore, "[w]hen a statute specifically defines a given term, that definition alone controls." *Kuznar v Raksha Corp*, 481 Mich 169, 176; 750 NW2d 121 (2008).

While it does not define "residing," the SORA defines the related term "residence," to have the following meaning:<sup>3</sup>

"Residence," as used in this act, for registration and voting purposes means that place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. If a person has more than 1 residence, or if a wife has a residence separate from that of the husband, that place at which the person resides the greater part of the time shall be his or her official residence for the purposes of this act. This section shall not be construed to affect existing judicial interpretation of the term residence. [MCL 28.722(g); emphasis added.]

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<sup>3</sup> This definition uses language identical to that used in the definition of "residence" under the Michigan Election Law:

"Residence", as used in this act, for registration and voting purposes means that place at which a person habitually sleeps, keeps his or her personal effects and has a regular place of lodging. If a person has more than 1 residence, or if a wife has a residence separate from that of the husband, that place at which the person resides the greater part of the time shall be his or her official residence for the purposes of this act. This section shall not be construed to affect existing judicial interpretation of the term residence. [MCL 168.11(1).]

During a prisoner's term of imprisonment, the prisoner generally sleeps in prison, eats his meals there, keeps personal effects there, and maintains his place of lodging there. Applying the definition of "residence" in accordance with the plain language of the statute leads to the conclusion that, while incarcerated, a prisoner's "residence" for SORA purposes is the prison itself. The person may continue to keep personal effects at the place where he resided before incarceration, and may otherwise retain the expectation of resuming lodging there, but the place at which he "habitually sleeps . . . and has a regular place of lodging" is the prison. MCL 28.722(g).

The final sentence of the statutory definition of "residence" provides that it "shall not be construed to affect existing judicial interpretation of the term residence." MCL 28.722(g). This language indicates a legislative intent to limit use of the SORA's definition of "residence" to the SORA itself, and to expressly bar any exportation of that definition to other areas of the law. Thus, existing judicial interpretations of the term "residence" developed in other statutory contexts are not affected by any differences in the meaning of that term as it is defined in the SORA.<sup>4</sup>

Additional textual evidence that a person in prison on January 1, 2006, was "residing" there for SORA purposes may be found in another one of the exceptions that directly addresses the circumstance of an inmate in prison. MCL 28.735(3)(e) states that

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<sup>4</sup> For example, in *Paprocki v Jackson County Clerk*, 142 Mich App 785, 789; 371 NW2d 450 (1985), the Court decided that, under the Freedom of Information Act, a prisoner "resided" in the last county in which he resided before he was imprisoned and not the county where the prison was located for purposes of determining which court had jurisdiction to hear an action. See also *Fowler v Fowler*, 191 Mich App 318; 477 NW2d 112 (1991) (analyzing where a prisoner resides for purposes of filing a complaint for divorce under the applicable statute).

the student safety zone prohibition does not apply to an incarcerated person who resides in a student safety zone simply because the prison itself is located in such a zone:

(3) *This section does not apply to any of the following:*

\* \* \*

(e) *An individual who resides within a student safety zone because the individual is an inmate or resident of a prison, jail, juvenile facility, or other correctional facility or is a patient of a mental health facility under an order of commitment. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone. [Emphasis added.]*

By its very existence, that exception confirms the Legislature's intent that, for purposes of the SORA, a prisoner is deemed to be "residing within" the prison during his period of incarceration.

It is my opinion, therefore, that, for purposes of the exception in section 35(3)(c) of the Sex Offenders Registration Act, MCL 28.735(3)(c), a person who was confined in prison on January 1, 2006, is regarded as "residing within" the prison on that date.

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