

THE SEX OFFENDER REGISTRATION AND NOTIFICATION PROVISIONS OF THE ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006 (P. L. 109-248)

The Adam Walsh Child Protection and Safety Act includes a comprehensive revision of the national standards for sex offender registration and notification. This statement summarizes the relevant provisions of the Act. The descriptions of these provisions are organized under the following headings:

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I. SEX OFFENDER REGISTRATION AND NOTIFICATION STANDARDS

A. Names and purposes

The short name for Title I, which contains the sex offender registration and notification standards, is the “Sex Offender Registration and Notification Act.” The Act establishes a comprehensive national system for the registration of sex offenders and offenders against children, in order to protect the public from such offenders. The program established by the Act is also referred to as the “Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Program.” (Relevant provisions: §§ 101-03.)

B. Covered jurisdictions

The jurisdictions subject to the Sex Offender Registration and Notification Act are the states, the District of Columbia, the principal territories, and Indian tribes to the extent provided in § 127. (Section 127 generally allows an election by Indian tribes between functioning as registration jurisdictions or delegating their registration and notification functions to the states in which they are located.) The general requirement for covered jurisdictions is to maintain a sex offender registration and notification program conforming to the Act's standards. The Attorney General is directed to issue guidelines and regulations to interpret and implement the Act. Jurisdictions and their officials are immune from liability for good faith conduct under the Act. (Relevant provisions: §§ 111(9)-(10), 112, 131.)

C. Covered offenses and offenders

The "sex offenders" for whom registration is required include persons convicted under the laws of state, local, tribal, federal, military, or foreign jurisdictions. However, registration based on a foreign conviction is not required if it was not obtained with sufficient safeguards for fundamental fairness and due process as provided in the Attorney General's guidelines or regulations. "Conviction" for purposes of the Act usually means an adult conviction, but it includes delinquency adjudications of juveniles age 14 or older for offenses comparable to aggravated sexual abuse as defined in 18 U.S.C. 2241, or an attempt or conspiracy to commit such an offense. (Roughly speaking, the referenced federal "aggravated sexual abuse" offense encompasses forcible rape or its equivalent, and offenses involving sexual acts with victims below the age of 12.) (Relevant provisions: § 111(1), (5)(B), (6), (8).)

The predicate "sex offenses" for which registration is required in case of conviction include: (i) offenses whose elements involve a sexual act or sexual contact with another (regardless of victim age), (ii) most sex offenses and abduction offenses involving minors (i.e., persons below the age of 18) as specified in the statute, (iii) the principal federal sex offenses as specified in the statute, (iv) military offenses as specified by the Secretary of Defense, and (v) attempts or conspiracies to commit any of the foregoing offenses. However, offenses involving consensual sexual conduct with adults are not covered, unless the adult was under the custodial authority of the offender, and offenses involving consensual sexual conduct with minors are not covered if the victim was at least 13 years old and the offender was not more than 4 years older than the victim. (Relevant provisions: § 111(5)(A), (C), (7), (14).)

D. Classes of sex offenders

The Act distinguishes three classes of sex offenders ("tiers") based on the nature of the registration offense and the offender's recidivism. Tier I is the lowest (default) category for sex offenders who do not satisfy the criteria for classification in a higher tier. Tier II includes offenders convicted of various sorts of felony sex offenses against minors – generally speaking, the predicate offenses for this tier include offenses involving sexual contact with minors (and attempts and conspiracies to commit such offenses), child prostitution offenses, and production

or distribution of child pornography. Tier II also includes offenders convicted of a felony sex offense that occurred after a prior sex offense conviction. Tier III generally includes felony offenders convicted of sexual assaults involving sexual acts with victims of any age, offenses involving sexual contact with children below the age of 13, nonparental kidnapping of minors, and attempts or conspiracies to commit any of the foregoing offenses. Tier III also includes offenders convicted of a felony sex offense that occurred after a prior conviction or convictions of the offender that would qualify the offender for inclusion in Tier II. (Relevant provisions: § 111(2)-(4).)

Under the Act's standards, the tier classifications have implications for the required duration of registration, the frequency of required showups by sex offenders to verify registration information, and the required public disclosure of information about sex offenders through the Internet. (Relevant provisions: §§ 115, 116, 118(c)(1).)

E. Required registration information

The Act requires that the registration information include name, Social Security number, residence address, names and addresses for places of employment and school attendance, license plate number and description for motor vehicles, physical description, text of the law defining the registration offense, criminal history of the offender, current photograph, fingerprints and palm prints, DNA sample, copy of driver's license or identification card, and any other information required by the Attorney General. (Relevant provisions: § 114.)

F. Disclosure and transmittal of information

Section 118 of the Act generally requires that all information about each sex offender in the registry must be made available to the public through the Internet, and that the field search capabilities of the Internet sites must include zip code/geographic radius searches, and other field search capabilities needed for full participation in the national sex offender website (established by § 120) as provided by the Attorney General. The Internet posting requirements for sex offender information would be subject to: (i) mandatory exemption of victim identity, Social Security number, and arrests not resulting in conviction, and (ii) discretionary exemption of information about tier I sex offenders not convicted of offenses against minors (as specified in § 111(7)), employer name, and name of educational institution attended. The Attorney General would have the authority to exempt additional information from Internet disclosure. (Relevant provisions: § 118.)

Section 121 of the Act provides that, immediately after a sex offender registers or updates a registration, an appropriate official shall immediately provide the information in the registry (other than information exempted from disclosure by the Attorney General) to:

- (i) The Attorney General, for inclusion of the information in the National Sex Offender Registry (established by § 119(a)) or other appropriate databases.

(ii) Appropriate law enforcement (including probation) agencies and schools and public housing agencies in areas in which the sex offender resides, works, or goes to school.

(iii) Each jurisdiction in which the sex offender resides or works or goes to school, and each jurisdiction from or to which a change of residence, employment, or student status occurs. (Two related provisions – §119(b) provides that the Attorney General shall ensure that updated information about a sex offender is immediately transmitted by electronic forwarding to all relevant jurisdictions; § 113(c) provides that a jurisdiction in which a sex offender appears to report a change of name, residence, employment, or student status must immediately provide that information to all other jurisdictions in which the offender is required to register.)

(iv) Agencies responsible for employment-related background checks under the National Child Protection Act.

(v) Social service entities responsible for protecting minors in the child welfare system.

(vi) Volunteer organizations in which contacts with minors or other vulnerable individuals might occur.

(vii) Any organization, company, or individual who requests such notification pursuant to procedures established by the jurisdiction.

The requirement that the information be provided “immediately” is qualified to allow that the entities referenced in (vi) and (vii) – volunteer organizations and other requesters – may elect to receive the notification no less frequently than once every five business days. (Relevant provisions: § 121.)

G. Where registration is required

Sex offenders are required to register and keep the registration current in each jurisdiction in which they reside, work, or go to school. A sex offender must also initially register in the jurisdiction in which convicted if it is different from the jurisdiction of residence. (Relevant provisions: §§ 111(11)-(13), 113(a).)

H. Initial registration

Initial registration is generally required prior to completing a sentence of imprisonment, or not later than three business days after sentencing if the sex offender is not sentenced to imprisonment. At the time of initial registration, an appropriate official must inform the sex offender of his or her registration duties, obtain a signed acknowledgment, and ensure that the sex offender is registered. The Attorney General has the authority to prescribe rules for the registration of sex offenders who cannot be registered within the normal time frame, and to specify the applicability of the Act’s requirements to sex offenders convicted before its

enactment or its implementation in a particular jurisdiction. (Relevant provisions: §§ 113(b), (d), 117.)

I. Keeping the registration current

Sex offenders are required to keep the registration current in each jurisdiction in which they reside, work, or go to school. This includes appearing in person in at least one such jurisdiction within three business days to report any change of name, residence, employment, or student status. (Relevant provisions: § 113(c).)

J. Verification/showup requirements

The Act requires that a sex offender periodically appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which the offender is required to be registered. The required frequency of such showups is at least annually for tier I sex offenders, at least semiannually for tier II sex offenders, and at least quarterly for tier III sex offenders. (Relevant provisions: § 116.)

K. Duration of registration

The required registration period is 15 years for a tier I sex offender, 25 years for a tier II sex offender, and life for a tier III sex offender. However, for a tier I sex offender, the registration period could be reduced from 15 years to 10, and for a tier III sex offender registered on the basis of a juvenile delinquency adjudication, the registration period could be reduced from life to 25 years, if the offender maintains a “clean record.” A clean record in the relevant sense means not having a subsequent felony or sex offense conviction, successfully completing any period of supervision, and successfully completing an appropriate sex offender treatment program certified by a jurisdiction or the Attorney General. (Relevant provisions: § 115.)

L. Consequences of registration violations

The Act provides that each jurisdiction (other than an Indian tribe) shall provide felony penalties for the failure of a sex offender to comply with its requirements. Appropriate officials are to notify the Attorney General and appropriate law enforcement agencies of sex offenders’ failure to comply with registration requirements and to revise the jurisdiction’s registry to reflect the nature of the violation; the officials and agencies involved are to take any appropriate action to ensure compliance. (Relevant provisions: §§ 113(e), 122.)

M. Time for implementation

Jurisdictions have three years to implement the new sex offender registration and notification requirements; the Attorney General may authorize up to two 1-year extensions of this deadline. Jurisdictions which fail to substantially implement the Act within the applicable time frame are subject to a 10% reduction of Byrne Grant funding. The principal pre-existing

sex offender registration and notification provisions of federal law are repealed, but the effectiveness of the repeal is delayed until the deadline for implementation of the new Act's standards. (Relevant provisions: §§ 124, 125, 129.)

II. RELATED FEDERAL GOVERNMENT FUNCTIONS

A. Guidelines and regulations

As noted in the course of the foregoing summaries of the new sex offender registration and notification standards, the Attorney General is generally directed to issue guidelines and regulations to interpret and implement the new standards, and is also authorized to carry out several more specific functions in fleshing out or supplementing the Act's provisions, which could be done through the implementing guidelines or regulations. (Relevant provisions: §§ 112(b), 113(d), 114(a)(7), (b)(8), 117(b), 118(a), (b)(4), (c)(4), 119(b).)

B. SMART Office

The Act creates a new Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking ("Smart Office") in the Department of Justice. The SMART Office's functions would include: (i) administering the national standards for sex offender registration and notification, (ii) administering grant programs relating to sex offender registration and notification and other grant programs authorized by the Act as directed by the Attorney General, (iii) cooperating with and providing technical assistance to states and other public and private entities in relation to sex offender registration and notification and other measures for the protection of the public from sexual abuse or exploitation, and (iv) performing such other functions as the Attorney General may delegate. (Relevant provisions: § 146.)

C. National Sex Offender Registry

The Act provides a new statutory basis for the National Sex Offender Registry (NSOR), the database maintained by the FBI which effectively compiles information obtained in the states' sex offender registration programs and makes it available to law enforcement agencies on a nationwide basis. (The pre-existing statutory basis for NSOR is 42 U.S.C. 14072(b).) (Relevant provisions: § 119(a).)

D. National Sex Offender Website

The Act provides a statutory basis for the national sex offender website (www.nsopr.gov) – which makes information in the various state sex offender websites accessible to the public on a nationwide basis through single-query searches – and names it the "Dru Sjodin National Sex Offender Public Website." (Relevant provisions: § 120.)

E. Registry management software

The Act directs the Attorney General, in consultation with the jurisdictions, to develop and support software to enable jurisdictions to establish and operate uniform sex offender registries and Internet sites. The functions of the software would be to facilitate immediate exchange of information among jurisdictions, public access over the Internet to sex offender information, full compliance with the Act's requirements, and communication of information to community notification participants under § 121. The first complete edition of the software is to be made available to jurisdictions within two years. (Relevant provisions: § 123.)

F. Funding and assistance programs

The Act authorizes a number of federal grant or assistance programs that are specifically concerned with sex offender registration:

(i) A "Sex Offender Management Assistance Program," involving grants to jurisdictions to offset the costs of implementing the new sex offender registration and notification standards. (§ 126.)

(ii) A direction to the Attorney General to use federal law enforcement resources to assist jurisdictions in locating and apprehending sex offenders who violate sex offender registration requirements (§ 142), and an authorization of grants to states and other entities to assist in enforcing sex offender registration requirements (§ 623). Also, a direction to the Attorney General to assist jurisdictions in identifying and locating sex offenders relocated as a result of a major disaster (§ 144).

(iii) An authorization of grants to states and other entities to carry out programs requiring an appropriate official to verify periodically the residence of all or some registered sex offenders (§ 631).

In addition to the funding and assistance programs specifically concerned with sex offender registration, supporting effective sex offender registration is included among the objectives of some more broadly defined funding or assistance programs under the Act. (Relevant provisions: §§ 145(a)(4), 625(b)(1), (3).)

G. Studies and reports

The Act directs a number of studies and reports relating to sex offender registration: (i) Directs the National Institute of Justice to conduct a comprehensive study to examine the control, prosecution, treatment, and monitoring of sex offenders, with a particular focus on sex offender registration and notification and sex offender treatment (§ 634). (ii) Directs the Attorney General to submit annual reports to Congress concerning implementation of various aspects of the Sex Offender Registration and Notification Act (§ 635). (iii) Directs the Government Accountability Office to study the feasibility of using driver's license registration processes as means of promoting compliance with sex offender registration requirements (§ 636). (iv) Directs the Attorney General to conduct a study of risk-based sex offender

classification systems (§ 637).

H. Federal and military sex offenders

The Act perpetuates with some amendment pre-existing provisions relating to federal and military sex offenders, including requirements that federal correctional and supervision authorities notify state and local registration and law enforcement authorities concerning the release of federal sex offenders to their areas, and requirements that released federal sex offenders register in the jurisdictions to which they go as conditions of their federal supervision.

It enacts a new version of the federal failure to register offense (and related provisions), creating federal criminal liability for sex offenders who fail to register under circumstances supporting federal jurisdiction, such as interstate travel. (The pre-existing version of the federal failure to register offense is 42 U.S.C. 14072(i).) The Act also enacts some new provisions relating to penalties or restraint for sex offenders who are required to register, e.g., a mandatory additional 10 year prison term for registrants who commit certain federal sex offenses. (Relevant provisions: §§ 141, 210, 216(1), 401, 702, 704(a)(3).)

I. Sex offenders entering the United States

The Act directs the Attorney General, in consultation with the Secretary of State and the Secretary of Homeland Security, to establish a system for informing relevant jurisdictions about persons entering the United States who are required to register. (Relevant provisions: § 128.)