



Sex Offender Sentencing, Monitoring, Apprehension, Registration and Tracking (SMART) Office

“The SMART Office: Open for Business”

By: Laura L. Rogers, Director of SMART Office

On July 27, 2006, President George W. Bush signed into law the Adam Walsh Child Protection and Safety Act of 2006 (AWA). In Title 1 of the AWA, the Congress comprehensively revised the national standards for sex offender registration and notification. Additionally, in section 146 of the AWA, a new office entitled the “Sentencing, Monitoring, Apprehension, Registration and Tracking” (SMART) Office was created. The SMART Office is located in the Department of Justice’s Office of Justice Programs. The AWA and the SMART office should prove to be a tremendously useful tool for all professionals involved in management of sex offenders.

In December 2006, the SMART Office officially opened for business when President Bush appointed Laura L. Rogers, a career prosecutor, as the Director. Ms. Rogers served as a Deputy District Attorney in San Diego, California for nine years, a Senior Attorney at the American Prosecutors Research Institute’s National Center for the Prosecution of Child Abuse for five years, the Director of the National Institute for Training Child Abuse Professionals for three years and an Adjunct Law Professor at George Mason School of Law for the past four years.

The SMART Mission Statement:

To assure that convicted sex offenders are prohibited from preying on citizens through a system of appropriate restrictions, regulations and internment.

What is the SMART Office?

The SMART Office is responsible for all matters related to the implementation of the AWA including, administering the Sex Offender Registration and Notification Act (“SORNA”), administering grant programs relating to sex offender registration and notification as well as other grant programs authorized by the AWA, 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 performing such other functions as the Attorney General may delegate. The SMART Office is the primary contact point for all professionals in need of assistance.

Looking Back: A Short History of Sex Offender Registration:¹

Since the early 1990’s, states have authorized the creation of registration systems that focused specifically on sex offenders. With the 1994 enactment of the Wetterling Act, Congress provided a recommended national baseline for sex offender registration programs, affecting such matters as the offenses for which registration is required, duration of registration periods, periodic verification of the registered address, continued registration of sex offenders when they move

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from one state to another, and community notification. In the years subsequent to the enactment of the Wetterling Act, there was a succession of Congressional amendments, which in part reflected and promoted trends and developments in state registration programs:

- 1996: The federal Megan's Law amendment made community notification in some form a mandatory feature of the national standards; the Pam Lychner Act, added a lifetime registration requirement for perpetrators of aggravated offenses and for recidivists; Congress authorized the National Sex Offender Registry (NSOR) operated by the FBI, which compiles information collected under the state registration programs and makes it available for law enforcement purposes on a nationwide basis.
- 1997: Several amendments were enacted, including: affording states greater flexibility in the design of registration procedures; bringing federal and military sex offenders within the scope of registration programs; and promoting a registration requirement for sex offenders in states where employed and attending school as well as their state of residence.
- 2000: The Campus Sex Crimes Prevention Act amendment and federal education laws added to ensure availability of information concerning the presence of sex offenders to campus communities.
- 2003: The PROTECT Act amendment added child pornography production and distribution to the list of registration offenses, and required that community notification include the maintenance of publicly accessible sex offender web sites in all jurisdictions.
- 2005: The Department of Justice established through administrative action a national sex offender website, known as the National Sex Offender Public Registry (NSOPR), whose purpose is to provide convenient public access to information in the various state sex offender web sites through single-query searches. (Renamed in 2006 the Dru Sjojin National Sex Offender Public Registry.)

Looking Forward: Beyond the Wetterling Act²

Title I of the Adam Walsh Act (AWA), referred to as SORNA and as the Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Program, provides a comprehensive and new set of sex offender registration and notification standards. These encompass the results of prior legislative developments, but also extend and supplement them. The main points of difference from the Wetterling Act are summarized as follows:

1. Expands jurisdictions included under registration requirements. The Wetterling Act only covered the states, the District of Columbia, and the principal territories. AWA §127 adds provisions concerning Indian tribal jurisdictions, which generally afford federally recognized Indian tribes an election between functioning as registration

² Id.

jurisdictions or delegating those functions to the state(s) in which the tribe is located. Additionally, the SORNA standards consistently require sex offenders to register in jurisdictions in which they reside, are employed, or attend school. The Wetterling Act simply promoted registration of sex offenders in employment and school jurisdictions, but did not fully equalize them to residence jurisdictions.

2. Increases offenses covered. The Wetterling Act required registration for offenses involving adult victims, and for the most part, was limited to sexual assaults involving sexual acts such as rape or rape-like offenses. SORNA broadens this to include sexual assault crimes whose elements involve sexual contact, even if not sexual acts. Also expanded are the covered offenses involving children, adding for example, child pornography possession and offenses involving sexual acts with victims below the age of 12. Inchoate offenses such as attempts or conspiracies to commit offenses - - which are otherwise covered- - are included. Persons required to register are extended from adult convicts to include juveniles age 14 or older who are adjudicated delinquent for the most serious sexual assault crimes (Aggravated sexual abuse such as rape or its equivalent).

3. Changes affecting standards for different classes of sex offenders. The Wetterling Act distinguish between sex offenders subject to lifetime registration, (recidivists, those convicted of aggravated offenses) and other registrants, for whom 10 years of registration was sufficient to satisfy the required minimum. In comparison, SORNA provides a three tier gradation:

Tier III: Requires lifetime registration for sex offenders convicted of offenses in the most serious class. Predicate offenses generally encompass rape or rape-like offenses, such as sexual assaults involving sexual acts regardless of victim age; sexual contact offenses against children below the age of 13; non-parental kidnapping of minors; and attempts or conspiracies to commit such offenses.

Tier II: Requires registration for 25 years for sex offenders in this intermediate class. Predicate offenses include most felonious sexual abuse or sexual exploitation crimes involving victims who are minors.

Tier I: Requires registration for 15 years for sex offenders in this lowest class. Predicate offenses include whatever does not support a higher classification, such as misdemeanor registration offenses and simple possession of child pornography.

Under SORNA, as under the Wetterling Act, recidivism pushes sex offenders into a higher class.

4. Requirements for periodic in person show up as a mandatory element of registration programs. The specific requirements under AWA §116 are:

- a. Tier I sex offenders: annual show ups
- b. Tier II sex offenders: semiannual show ups
- c. Tier III sex offenders: quarterly show ups

Sex offenders are now required to personally appear at established registration locations to allow for a current photograph to be obtained and update / verify the accuracy of current registration information. The Wetterling Act required at least annual

verification of the residence address, but did not specify the means of verification or require in person show ups.

5. Expands quantity of required registration information. AWA §114 requires the registration information to include name (including aliases used), residence information, Social Security number, employment and school information, motor vehicle and driver's license information, physical description, text of the registration offense, criminal history information, current photograph, fingerprints, palm prints, and DNA. The Wetterling Act required residence address information, with relatively limited and fragmentary requirements of other types of information.

6. Requires greater uniformity of sex offender websites. AWA §118's general rule is that all information [subject to certain statutory exemptions] about each sex offender in the registry is to be made available to the public on the internet. AWA §118 includes specifications about field search capabilities, including searches by zip code or geographic radius set by the user and all field search capabilities needed for participation in the national sex offender website. The Wetterling Act required the establishment of sex offender websites, but generally left to states discretion which sex offenders would be posted on the web sites and what information about them would be disclosed. The result was that approximately fifty percent of the states posted all, or nearly all, of their sex offenders on their web sites, while other states took a more restrictive approach.

7. Additional standards relating to disclosure of registration information. AWA §121 includes new requirements to provide information in the registry to a variety of specified institutions, organizations, and individuals. The Attorney General may exempt some information from disclosure.

8. Modification of the federal superstructure that supports the state programs and implementation of the national standards. The Attorney General remains responsible for issuing implementing guidelines and regulations (AWA §112(b)). The FBI continues to operate the NSOR, (AWA §119(a)) which compiles information submitted by the state registries and makes it available to law enforcement in all states. The Justice Department continues to operate the Dru Sjodin National Sex Offender Public Website, which makes the information in the various state sex offender web sites available to the public through a single internet site.

9. Awards and penalties for early implementation or failure to implement the new AWA standards within a specified time frame. As under the Wetterling Act, a 10% Byrne Grant funding reduction will be imposed for states failing to implement the SORNA standards by July 27, 2009. AWA §§124 and 125 allow the withheld Byrne funds to be redistributed to assist states working to implement the SORNA standards. AWA '126 authorizes an incentive grant program for states which implement the SORNA standards in a timely fashion. (The actual availability of funds under this program is contingent on decisions by Congress to appropriate funds for this purpose.) For Indian tribes unable to implement the AWA SORNA standards by July 27, 2009, their implementation responsibility may be delegated to the state(s) in which the tribal land is located.

In summary:

SORNA establishes the minimum standards for states, Indian tribes and territories regarding sex offender registration laws and requirements. While individual jurisdictions must at least adhere to these minimum standards, there is no need to amend existing laws that are more restrictive than the standards established by SORNA. Also, jurisdictions do not need to mirror the SORNA system, but the jurisdictions' laws must achieve the same objectives as the standards set by SORNA. The implementation deadline for the SORNA standards is July 27, 2009.

What the SMART Office can do for you:

The SMART Office is open for business and is here to help. With the enactment of the AWA, there are a variety of issues that will arise. Some jurisdictions may find the need to create new or amend existing legislation, revise registration and information collection procedures, review and revise documents used to notify sex offenders of their obligation to register or rework websites. Federally recognized Indian tribes, subject to the provisions under AWA §127 need to elect by July 27, 2007, whether to carry out AWA Title I (SORNA) or delegate its function to the state(s) in which tribal land is located. Jurisdictions may need to revise or establish procedures regarding registration of sex offenders or electronic monitoring programs. Federal prosecutors may need to establish procedures for prosecutions under 18 U.S.C. 2250. Jurisdictions may wish to establish civil commitment programs. Regardless of the issue, the SMART Office is here to help by providing technical assistance and advice. Requests for technical assistance or training should be sent to the SMART technical assistance email address: GetSMART@usdoj.gov . Please provide a detailed description of the assistance or training required as well as a telephone number and a contact email address. A SMART staff member will contact you as soon as possible.