



Arizona State Senate Issue Brief

November 23, 2009

Note to Reader:

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ARIZONA SEX OFFENDER REGISTRATION AND NOTIFICATION

INTRODUCTION

Arizona sex offender registration and notification programs serve a number of public safety purposes. Registration tracks sex offenders following their release into the community and provides the informational base for community notification, which involves making information about released offenders readily available to the public.

The focus of this issue paper is to provide background the Adam Walsh Act and to provide a more thorough understanding of Arizona's current sex offender registration and notification laws as they apply to both juveniles and adults.

ADAM WALSH ACT

In 2006, Congress enacted the Adam Walsh Child Protection and Safety Act of 2006 (Act), which establishes a comprehensive set of minimum standards for sex offender registration and notification in the United States. The states are required to substantially implement Title I of the Act, which is the Sex Offender Registration and Notification Act (SORNA), or face a ten percent loss of federal funding. In 2008, Arizona's statutes governing sex offender registration and notification were submitted for review to the federal office assisting in SORNA's implementation. The deadline for substantial implementation is three years from the date of enactment (July 27, 2006) and Arizona had requested and was granted an additional one-year extension. Additionally, on May 26, 2009, the U.S. Attorney General provided a blanket one-year extension to all jurisdictions. Arizona may request an additional one-year extension to delay compliance until July 2011 although the Final Guidelines issued for SORNA specify that an extension request should include a description Arizona's implementation efforts and an explanation why an extension is needed.

Laws 2009, Chapter 125, (Senate Bill 1011), establishes a 22-member SORNA study committee to examine the effectiveness of Arizona's current sex offender laws, the standards set forth by the Act and the impact on Arizona of adopting the federal standards of the Act.

The SORNA study committee began meeting in November 2009 and is required to report its findings and recommendations by December 31, 2009. The SORNA Committee is repealed on January 1, 2011.

ARIZONA REGISTRATION AND NOTIFICATION

Registration of Sex Offenders

Arizona Revised Statutes require persons convicted of any of the following 21 different offenses to register as sex offenders: 1) unlawful imprisonment if the victim is under 18 years of age; 2) kidnapping if the victim is under 18 years of age; 3) sexual abuse if the victim is under 18 years of age; 4) sexual conduct with a minor; 5) sexual assault; 6) sexual assault of a spouse; 7) molestation of a child; 8) continuous sexual abuse of a child; 9) taking a child for the purpose of prostitution; 10) child prostitution; 11) commercial sexual exploitation of a minor; 12) sexual exploitation of a minor; 13) luring a minor for sexual exploitation; 14) aggravated luring a minor for sexual exploitation; 15) unlawful age misrepresentation for the purpose of committing a sexual offense 16) sex trafficking of a minor; 17) a second or subsequent violation of indecent exposure to a person under 15 years of age; 18) a second or subsequent violation of public sexual indecency to a minor under the age of 15; 19) a third or subsequent violation of indecent exposure; 20) a third or subsequent violation of public sexual indecency; and 21) violations relating to the failure to register as a sex offender.

Upon conviction, a person who is required to register as a sex offender (sex offender) has ten days to register with the sheriff of the county in which the person resides. Sex offenders are required to provide an electronic fingerprint, all names by which they are known, any online

identifiers such as an email address or screen name, a current photograph, a blood sample and their mailing address. Before a sex offender is released from incarceration, the Arizona Department of Corrections (ADC), in conjunction with the Arizona Department of Public Safety (DPS) and the appropriate county sheriff, must update the registration. After releasing a sex offender from incarceration, ADC has three days to forward the offender's completed registration information to DPS, as well as to the sheriff of the county in which the offender resides or intends to reside.

Juveniles adjudicated delinquent for certain sexual offenses may also be required to register as sex offenders; however, this duty may terminate under certain scenarios. For instance, registration for a person adjudicated delinquent terminates when the offender turns 25 years of age, or upon a court order following the successful completion of probation if the offender was under the age of 18 when the offense was committed.

Currently, in Arizona failure to register as a sex offender is a class 4 felony.

Sexually Violent Persons

History

Courts have upheld the states' involuntary commitment statutes in order to detain people who are unable to control their behavior or are found to have a mental illness, thereby posing a danger to both themselves and the public. The conditions surrounding Sexually Violent Persons (SVP) confinement are similar to conditions for civilly committed patients and are not for a punitive purpose.¹

In 1995, the Arizona Legislature enacted SVP statutes, to protect the citizens of Arizona

¹ In September 2007, a North Carolina District Court held that the section pertaining to civil commitment in the Adam Walsh Act is unconstitutional. The court found that the civil commitment scheme is not a necessary or proper exercise of Congress and the clear and convincing standard for the commitment scheme as written violates due process. The Court's holding only pertains to the civil commitment scheme and does not affect the remaining provisions of the Adam Walsh Act (*U.S. v. Comstock*, 507 F.Supp.2d 522 (E.D.N.C. 2007)).

from repetitive, predatory sex offenders by enabling certain offenders to be civilly committed to the Arizona State Hospital (State Hospital), upon completion of the offender's prison term. Three years later, Arizona's SVP statutes were revised to conform with the Kansas Sexually Violent Predator Act (Kansas Act), the constitutionality of which was upheld by the U.S. Supreme Court in *Kansas v. Hendricks* 521 U.S. 346 (1997) and revisited five years later in *Kansas v. Crane*, 534 U.S. 407 (2002) (*narrowing the class of persons subject to involuntary civil commitment to those who have serious difficulty controlling their behavior*).

In 2002, the Arizona Supreme Court examined Arizona's SVP statutes and determined that the statutes met the substantive due process principles specified in *Hendricks* and *Crane* because the statutes "imposes proper procedures and evidentiary standards and sufficiently narrows the class of persons subject to civil commitment". *In re the Matter of Leon G. 59 P.3d 779* (2002).

Implementation

The SVP Program is administered by the Arizona Department of Health Services (DHS) and the State Hospital. Persons convicted of a sexually violent offense, such as sexual conduct with a minor, sexual assault or molestation of a child, are required to undergo a psychological screening near the end of their incarceration to determine if the individual is an SVP. To be classified as an SVP an offender must: 1) have been convicted of or found guilty but insane of a sexually violent offense; 2) have been charged with a sexually violent offense and found incompetent to stand trial; or 3) have a mental disorder that makes him or her likely to engage in acts of sexual violence.

If the screening raises concerns that an individual may be an SVP, the county may file a petition alleging probable cause. The individual is detained if a judge makes the determination that probable cause exists. The individual can file a motion for a probable cause hearing (hearing) where the court will either dismiss the petition or reaffirm the probable cause finding and order an evaluation to determine whether the individual is an SVP. A trial must be held

within 120 days of the filing to ascertain whether or not the individual is an SVP and the inmate, while awaiting the hearing, remains at the State Hospital. If the individual is adjudicated an SVP, the individual either remains at the State Hospital or is placed in a Less Restrictive Alternative (LRA) Program. The LRA Program consists of six levels and integrates individuals into the community in stages. The SVP population is housed in the Arizona Community Protection and Treatment Center at the State Hospital, which is separate from other facilities on the State Hospital campus. Once at the SVP unit, the individual is evaluated and a treatment plan is developed. Counselors work with individuals to help them recognize and change their behavior.

As a result of *Crane* and *In re Matter of Leon G.* in 2002, Arizona adopted a community reintegration approach to evaluate individuals to ensure that civil commitment is narrowed to those who have serious difficulty controlling their behavior. This has led to a shift in the residential settings for individuals who are determined to be SVPs. According to the Joint Legislative Budget Committee DHS Program Summary Chart, the number of individuals in pretrial detainment and full confinement has decreased since 2001, while the LRA Program has increased, from 17 percent of the total population in FY 2001 to 65 percent in FY 2008.

Annually, an SVP may petition the court to be released from the State Hospital or to be moved to a less restrictive setting. At a discharge hearing, the state must prove that the individual's condition has not changed and that he or she is still a threat to the public.

Community Notification

Once a sex offender or an SVP has been registered and released, the surrounding community is notified. The Community Notification Guidelines Committee, comprised of adult probation officers, county attorneys, sheriffs, chiefs of police and legislators, was the entity charged with devising and implementing community notification guidelines. These guidelines provide three levels of notification based on the risk that a particular sex offender

poses to the surrounding community, with a level three being the most dangerous or likely to reoffend. Local law enforcement agencies are required to evaluate registered sex offenders who have been released on probation, and categorize each offender into a particular notification level. The notification guidelines are as follows:

Level Three Offenders – Notification is made to the surrounding neighborhoods, schools and appropriate community groups as well as any prospective employers. A flyer is produced that includes a photo of the offender, an exact address and a summary of the offender's status and criminal background. Additionally, a press release is given to the local media services. If a level three offender fails to register, an arrest warrant is issued and the community is notified.

Level Two Offenders – Notification is made to the immediate neighbors, schools, appropriate community groups and prospective employers. Notification may also include a flyer with a photo of the offender, the address of the general area where the offender will be living and a brief summary including the offender's status and criminal background. An arrest warrant is issued and notification may be made if the offender fails to register.

Level One Offenders – The local law enforcement agency that is responsible for community notification must maintain information about a level one offender. This information may be shared with other law enforcement agencies and notification may be provided to the people with whom the offender resides. If the offender fails to register, notification may be made and a warrant is issued for the offender's arrest.

Sex Offender Tracking/Monitoring

DPS is responsible for creating and maintaining an Internet sex offender website to provide information to the public about sex offenders who are categorized as level two or level three offenders. The information provided includes the offender's name, age, address, current photograph and a description of the offense the individual was convicted of, as well as the individual's notification level. Statute

requires DPS to update the website annually. DPS obtains current sex offender information using registration records maintained by the Arizona Criminal Justice Information System or through the Motor Vehicle Division (MVD). Additionally, DPS is required to maintain a separate database, within the sex offender website, that contains any online identifiers, such as an email address, being used by a level two or level three offender.

Arizona limits the validity of its driver's licenses and identification cards issued to registered offenders to one year from the date of issuance. Registered offenders are required to show proof of a current address upon application for renewal of a license or identification card and must also have an updated photo taken every year at MVD. MVD makes copies of the offender's information available to the criminal identification section at DPS or to any law enforcement agency.

Residency Restrictions

To curtail the event of multiple registered sex offenders living within close proximity of one another, or "clustering," the Legislature enacted residency restrictions for certain offenders who are required to register. Statute prohibits an adult probation officer in counties with more than 2.5 million persons (currently Maricopa County) from approving the residence of a registered sex offender on probation in any multifamily dwelling unless the number of registered sex offenders on probation residing in the dwelling is less than ten percent of the total number of units in the dwelling. Additionally, adult probation officers in counties with more than 2.5 million persons are not permitted to approve the residence of more than one level three sex offender on probation in a multifamily dwelling.

Legislation enacted in 2007 and 2008 created additional residency restrictions for level three offenders who are not currently serving a term of probation. The restrictions prohibit level three offenders from residing within 1,000 feet of a public or private school or a child care facility within Arizona.

JUVENILES

Juveniles Prosecuted as Adults

In 1996, voters approved Proposition 102, also known as the Juvenile Justice Initiative, which amended the Arizona Constitution to allow a juvenile criminal defendant 15 years of age and older to be tried as an adult if the juvenile is accused of certain violent felony offenses or if the juvenile is a chronic felony offender (Ariz. Const. Art. 4, Pt. 2, §22). Laws 1997, Chapter 220, implemented the Juvenile Justice Initiative by amending and creating numerous statutes pertaining to how Arizona prosecutes, incarcerates and cares for juvenile criminal offenders. Specifically, statute requires the county attorney to prosecute a juvenile who is 15, 16 or 17 years of age as an adult if the juvenile is accused of any of the following offenses: 1) first degree murder; 2) second degree murder; 3) forcible sexual assault; 4) armed robbery; 5) any other violent felony offense; or 6) any felony offense committed by a chronic felony offender.

The county attorney also has the discretion to prosecute a 14 year old juvenile offender as an adult if the juvenile is accused of a class 1 felony, a class 2 felony or a class 3 felony relating to a preparatory offense, homicide, assault, kidnapping, certain sexual offenses, criminal trespass, criminal damage to property, arson, robbery, organized crime, fraud or terrorism.

Juvenile Sex Offenders

In 2007, the Legislature enacted several changes to Arizona statutes relating to sex offenders adjudicated delinquent for, or convicted of, certain sexual offenses. Laws 2007, Chapter 176, permits the transfer of juveniles being prosecuted as adults for specific sexual offenses to the juvenile court, allows certain probationers to request annual probation review hearings and impacts the placement of certain sex offenders in a group mental health treatment program.

A juvenile prosecuted as an adult for sexual offenses or for the sexual exploitation of

children may request a hearing to determine if the jurisdiction of the criminal prosecution should be transferred to the juvenile court. The court itself may also motion to have a transfer hearing for a juvenile; however, the court is statutorily required to hold the hearing if a juvenile is prosecuted as an adult for an offense that was committed more than 12 months before the date of the filing of the criminal charge.

Before transferring the jurisdiction of the prosecution to the juvenile court, the judge must find, by clear and convincing evidence, that the transfer would best serve both the safety of the public and the rehabilitation of the juvenile. In making this decision, a judge must consider certain factors, including the seriousness of the offense involved, the record and previous history of the juvenile, the degree of the juvenile's participation in the offense and the juvenile's mental and emotional condition.

If the transfer is approved, the juvenile may be released to the court, to a detention center designated by the juvenile court or to the custody of the juvenile's parent or guardian. If the juvenile is released to a parent or guardian, it is their responsibility to bring the juvenile before the juvenile court at the appropriate time.

Additionally, certain probationers convicted of specific sexual offenses may request a probation review hearing (hearing) at least once a year in an effort to eliminate their duty to register. In order to be eligible to request the hearing a probationer must be under 22 years of age and must have been convicted of an offense that occurred when the probationer was under 18 years of age, requiring the probationer to register as a sex offender.

The probation department charged with supervising the probationer is required to prepare and submit a probation report to the court prior to the hearing. The prosecutor, the attorney for the probationer, the victim or the victim's attorney and the probation officer managing the probationer must be notified of the hearing. The court, upon the conclusion of a hearing, has the authority to suspend or terminate any duty to register. Before the hearing, the court may also hold a prehearing with the parties involved to discuss and advise

the court concerning the modification or termination of the juvenile's probation, registration as a sex offender or community notification.

If the court or the adult or juvenile probation department places a sex offender in a group sex offender treatment program, the treatment provider, whether that be ADC, the Department of Juvenile Corrections or another treatment provider, must place the offender in a treatment program with similar offenders of a similar age and developmental maturity level. Sex offender treatment programs are required to adhere to the code of ethics from the Association for the Treatment of Sexual Abusers and are prohibited from using materials that contain obscene images of children.

Varying forms of treatment are available for all sex offenders; however, offenders ordered to participate in this type of group treatment must be 21 years of age or younger and must have been adjudicated delinquent for, or convicted of, a sexual offense or an offense involving the sexual exploitation of children that does not involve the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.

ADDITIONAL RESOURCES

- Arizona Department of Public Safety Sex Offender InfoCenter
<https://az.gov/webapp/offender/main.do>
- United States. U.S. Department of Justice, Office of the Attorney Journal. The National Guidelines for Sex Offender Registration and Notification. Washington: GPO, 2007.
<http://www.ojp.usdoj.gov/smart>
- Joint Legislative Budget Committee Staff Program Summary, Department of Health Services, Sexually Violent Persons
<http://www.azleg.state.az.us/jlbc/psdhssvp.pdf>
- Maricopa County Attorney's Office Sex Offender Notification Information Brief
http://www.mcaodocuments.com/brochures/Sex_Offender_b.pdf
- Prosecution of Juveniles as Adults: Arizona Constitution, Article 4, Part 2, Section 22; A.R.S., Title 13, Chapter 5, § 13-501
- Registration of Sex Offenders Statutes: A.R.S., Title 13, Chapter 38, Article 3
- Residency Restrictions Statutes: A.R.S., Title 13, Chapter 9, § 13-922
- Annual Probation Review Hearing: A.R.S., Title 13, Chapter 9, § 13-923
- Sexually Violent Persons Statutes: Title 36, Chapter 37, Article 1