

# Memo

To: Juvenile Defense Community

From: Elizabeth Kehoe

Date: 8/2/2006

Re: H.R. 4472, the Adam Walsh Child Protection and Safety Act of 2006

---

President Bush signed H.R. 4472, the Adam Walsh Child Protection and Safety Act of 2006, into law on Thursday July 27. You can view the legislation online at <http://thomas.loc.gov/> by searching by bill number (HR 4472) or by Public Law Number (109-248). Not only does this legislation create a national sex offender registry list, but it requires states and other jurisdictions (including the District of Columbia, Puerto Rico, etc.) to create and/or amend their own registries to be in compliance with the requirements in the legislation. Every person who is on a state's list will also be included on the national list. All of these lists shall be made available on the Internet. Each jurisdiction must comply with the requirements of this legislation within three years, but states may apply for up to two one year extensions. If a state does not comply with the Act, it will lose 10% of funds under the Omnibus Crime Control and Safe Streets Act of 1968 each year it is not in compliance. If the registry requirements in the Act are found by a jurisdiction's highest court to conflict with its constitution, then the Attorney General can find the jurisdiction to be in compliance if it has made reasonable alternative procedures consistent with the purposes of the Act.

## **Who Must Register**

In addition to youth transferred into the criminal justice system, certain juveniles adjudicated delinquent in juvenile court will be included on the state and national sex offender registries including those who are "14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of Title 18, United States Code), or was an attempt or conspiracy to commit such an offense." The U.S. Code's definition of aggravated sexual abuse includes offenders who engage in a sexual act by using force or by threatening force against the victim or if the offender renders the victim unconscious or administers an intoxicant without the person's knowledge to impair the victim's ability to control conduct and then engages in a sexual act with the person. Thus, if a juvenile is adjudicated delinquent of a crime comparable or more severe to these crimes, he or she will be subject to the Act's registration requirements as a Tier

**Elizabeth Gladden Kehoe**  
National Juvenile Defender Center  
1350 Connecticut Ave., NW, Suite 304  
Washington, DC 20036  
202-452-0010 x103  
202-452-1205 (fax)

III offender. However, “if the victim was at least 13 years old and the offender was not more than 4 years older than the victim” and the sexual conduct was consensual, the conduct is not a sex offense for the purposes of this Act, and the offender is not included in the registration requirements. (Sec. 111)

### **Retroactivity**

The legislation gives the Attorney General authority to decide whether the registry requirements will be applicable to sex offenders convicted before the Act was signed into law or before it is implemented in a jurisdiction. (Sec. 113).

### **Registry Requirements**

A sex offender required to register under this Act must register and keep the registration current in the jurisdiction where he or she resides, where he or she may be an employee *and* where he or she may be a student. Registration is required before release or not later than 3 business days following sentencing if the offender is imprisoned for the offense. For initial registration and for updating the registry, offenders must provide their name, Social Security number, address of residence, address where he or she is an employee, address where he or she is a student, license plate number and description of vehicle and any other information required by the Attorney General. Jurisdictions’ registries must include a physical description of the offender; the text of the law for violation of which they are required to register; the offender’s criminal history, including the date of all arrests and convictions (the legislation is silent as to whether juvenile adjudications will also be included); the status of parole, probation, or supervised release; registration status and the existence of any outstanding warrants; a current photograph; a set of finger and palm prints; a DNA sample; a photocopy of an identification card; and any other information required by the Attorney General. (Secs. 113 and 114).

The legislation creates three levels of sex offenders which dictate the duration of the registry obligations. (Sec. 111). Tier I sex offenders are required to register for 15 years. Tier II sex offenders have been convicted of offenses punishable by imprisonment for more than one year and which are comparable to or more severe than certain offenses listed in the Act including sex trafficking, coercion and enticement, transportation with intent to engage in criminal sexual activity, and abusive sexual contact. Tier II sex offenders are required to register for 25 years. Tier III sex offenders have also been convicted of offenses punishable by imprisonment for more than one year and are comparable to or more severe than those committed by Tier II offenders, including aggravated sexual abuse or sexual abuse, abusive sexual contact, and kidnapping of a minor. Tier III sex offenders are required to register for life. Offenders are able to reduce their time on the registry by maintaining a clean record for a specified amount of time depending on their offender level. Those who are Tier I sex offenders can reduce registration requirements by 5 years if they maintain a clean record for 10 years. Juveniles who are adjudicated delinquent for what would be a Tier III offense may be exempted from the registry after 25 years, but only so long as they maintain a clean record for that time and beyond. (Sec. 115).

Offenders must appear in person at different times to verify and update their registries. Tier I sex offenders must do so every year; Tier II offenders must do so every 6 months; and Tier III offenders must do so every three months. When an offender updates his or her registry, a number of entities must be informed, including law enforcement, schools, public housing agencies, and certain volunteer organizations, among others. (Secs. 116 and 121)

### **Failure to Register**

If a sex offender fails to comply with the requirements in the legislation, jurisdictions must provide a penalty that includes a maximum term of imprisonment greater than one year. If an offender required to register under this Act because of a conviction under federal law, DC law, tribal law or the laws of any US territory or an offender who travels in interstate commerce fails to register, he or she can be fined and/or imprisoned for not more than 10 years. (Sec. 141). A person who violates a sex offender registration requirement shall be deemed a fugitive, and federal and jurisdiction resources will be available to locate and apprehend such offenders. (Sec.142). Furthermore, failure to register is a deportable offense for aliens (Sec. 401).

### **Additional Crimes and Punishments**

If a sex offender required to register under this Act commits a crime of violence under federal law, the law of the district of Columbia, Indian tribal law, or the law of any territory or possession of the US, he or she may be imprisoned for not less than 5 years and not more than 30 years (this is in addition to the punishment imposed by the jurisdiction for the original crime). (Sec. 141). Additionally, if a person required to register under this Act, commits certain criminal offenses which allow for imprisonment longer than one year, the court shall revoke the person's supervised release and require the person to serve a term of imprisonment for not less than 5 years.

The legislation imposes mandatory minimums for federal offenses that are violent crimes against children, including life sentences, and increases penalties for certain crimes including coercion and enticement by sex offenders, child prostitution, sexual abuse and offenses, child pornography, and sex trafficking of children. (Secs. 202-209). It also creates a new crime for internet sales of date rape drugs. (sec. 201).

### **SMART Office**

An Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART Office) will be created within the Department of Justice to administer the registration requirements in the Act and to provide technical assistance. (Sec. 146).

## **Warrantless Searches**

Persons required to register under this Act who are under probation may be ordered to submit their person and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion of a violation of probation. Additionally, for someone on supervised release, the judge may order such person to submit all of these things, with or without a warrant. (Sec. 210)

## **Civil Commitment Programs**

The Act authorizes the Attorney General to make grants to jurisdictions to create secure civil commitment programs for “sexually dangerous persons” who are deemed to be a high risk for recommitting a sexual offense against a minor or who have been convicted of a sexually violent offense. According to this section of the legislation, a sexually dangerous person is “a person suffering from a serious mental illness, abnormality, or disorder, as a result of which the individual would have serious difficulty in refraining from sexually violent conduct or child molestation.” (Sec. 301)

For persons in the custody of the federal Bureau of Prisons or for people against whom all criminal charges have been dismissed solely for reasons relating to the mental condition of the person, the Attorney General (or someone authorized by the AG or Director of Bureau of Prisons) may certify that the person is a sexually dangerous person and require a hearing to confirm such certification. A psychiatric or psychological report may be conducted for the hearing, and if after the hearing, the court finds by clear and convincing evidence that the person is sexually dangerous, the court shall commit the person to the custody of the AG. The AG will ensure the person’s custody either in the relevant state or a federal facility until the person is no longer sexually dangerous to others. (Sec. 302).

## **Grant Programs**

The legislation creates grants and extends other grants for a number of programs including Big Brothers Big Sisters, National Police Athletic League, a pilot program for electronic monitoring of sex offenders, residential and non residential treatment programs through the Bureau of Prisons, funding for treatment of juvenile sex offenders (those who were under the age of 18 at the time of the offense), fingerprinting programs for children, awareness campaigns, etc. (Title VI)

The previous information highlights sections of the legislation particularly relevant to defenders; however, we urge defenders to read the legislation in its entirety. If you have any questions, please contact Elizabeth Kehoe at 202.452.0010 x103 or ekehoe@njdc.info.