



NCSL SUMMARY

P.L. 109-248 (HR 4472)

Adam Walsh Child Protection and Safety Act of 2006

Congressional Action

March 8, 2006: Passed House by voice vote

July 20, 2006: Passed Senate as amended by voice vote

July 25, 2006: House agreed to Senate amendments by voice vote

July 27, 2006: Signed by President George W. Bush

Other Status

August 2006: Regulations are being prepared by the U.S. Department of Justice.

February 28, 2007: Interim rule with request for comments (by April 30, 2007) issued. Addresses retroactivity. Precedes full guidelines and regulations to implement sex offender registration and notification provisions of the Adam Walsh Child Protection and Safety Act of 2006. Rule declares the sex offender requirements to be non-punitive, regulatory measures. Asserts that those are validly applied, and enforced by criminal sanctions, to sex offenders whose predicate offense occurred prior to creation of the requirements.

Provisions Affecting the States

The stated purpose of the Adam Walsh Child Protection and Safety Act of 2006 is to protect the public, in particular children, from violent sex offenders via a more comprehensive, nationalized system for registration of sex offenders.

The act states that the attorney general will issue guidelines and regulations in interpretation and implementation of the legislation.

The act calls for state conformity to various aspects of sex offender registration, including information that must be collected, duration of registration requirement for classifications of offenders, verification of registry information, access to and sharing of information, and penalties for failure to register as required. The act states that failure of a jurisdiction to comply with the federal requirements within three years of the implementation of the act will result in a 10 percent reduction to Byrne law enforcement assistance grants.

A number of new grant programs are authorized to assist states in improving sex offender registration and related requirements of the act.

Requirements

The Adam Walsh Child Protection and Safety Act requires that sex offender registration occur before an offender is released from imprisonment or within three days of a non-imprisonment sentence. Changes in registry information must be reported in that time period, as well.

Each sex offender is to provide the following registration information: Name; Social Security number; address or multiple addresses; employer and address; school (if a student) and address; license plate number and description of any vehicle owned or operated by the offender; and any other information required by the attorney general.

Each jurisdiction must include the following information for each offender in the registry: A physical description; the criminal offense; the criminal history of the offender, including dates of arrests and convictions and correctional or release status; a current photograph; fingerprints and palm prints; a DNA sample, a photocopy of a valid driver's license or ID card; and any other information required by the attorney general.

The law defines and requires a three-tier classification system for sex offenders, on which other requirements are based. The tier levels are established as:

- Tier I are those other than a tier II or tier III.
- Tier II are those other than Tier I with an offense punishable by imprisonment for more than one year and comparable to or more severe than the following federal offenses involving a minor: sex trafficking; coercion and enticement; transportation with intent to engage in criminal sexual activity; abusive sexual contact. Also includes any offense involving use of a minor in a sexual performance, solicitation of a minor to practice prostitution, or production or distribution of child pornography.
- Tier III are sex offenses punishable by imprisonment for more than one year and comparable to or more severe than the following federal offenses: sexual abuse or aggravated sexual abuse; abusive sexual contact against a minor less than 13 years old; offense involving kidnapping of a minor (parent or guardian excepted); or any offense that occurs after one has been designated a tier II sex offender.

The law makes further clarifications of a sex offense and offense against a minor.

Regarding juveniles, the act defines a conviction for purposes of registration and classification to include juvenile adjudications if the juvenile offender is at least 14 years of age at the time of the offense and the offense adjudicated is comparable to or more severe than the federal offense aggravated sexual abuse.

The law sets requirements on duration of the registration requirement, according to the classification system. Tier 1 sex offenders are required to register for 15 years; tier II for 25 years and tier III offenders must register for life. Registration periods may be reduced, also according to the tier system, for completing certain programs or having a clean record for specified periods of time.

Registered sex offenders are required to appear in person to verify their address and other registry information and for update of the required photo. Frequency of personal appearance is set according to the tier system. Tier 1 offenders must appear in person each year; tier II offenders every six months; and for tier III sex offenders in-person verification is required every three months.

States are required to have a criminal penalty that includes a maximum term of imprisonment greater than one year for failure of a sex offender to comply with requirements. Assistance by federal law enforcement agencies is available to assist jurisdictions in locating and apprehending sex offenders who abscond from the registration requirement.

The law requires that states make registry information available on the Internet, in readily accessible form and with certain mandatory exemptions. Each state's website must have search capabilities compatible to the National Sex Offender Public Registry. The attorney general is to develop software to enable jurisdictions to establish and operate uniform registries and Internet sites, and states will have one year to implement it after it becomes available. The act also requires prompt sharing of information on registered sex offenders among state, local and federal law enforcement agencies and other entities.

Grant Programs Authorized

The Adam Walsh Child Protection and Safety Act of 2006 authorizes a Sex Offender Management Assistance grant program to help states implement and comply with the law, with bonus payments for substantial implementation within two years of the Act. A Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART) Office is established in the Department of Justice to administer standards for sex offender registration, grant programs and assistance to states. Other grants to states or localities are authorized to assist with verification of sex offender addresses.

The law authorizes grants to states for establishing, enhancing or operating civil commitment programs for sexually dangerous people. It includes definition of a sexually dangerous person and provides that states must have such a program or a plan for establishment within two years of the enactment of this act to receive these grants.

Also authorized is a three-year grant program at \$5 million each year, supporting active, real-time and continuous monitoring (GPS) of offenders. States and localities may apply FY 2007 through FY 2009, and will be required to report on effectiveness and cost effectiveness.

The act authorizes Sex Offender Apprehension Grants, also 2007 through 2009, to assist states and localities in enforcing sex offender registration requirements.

Juvenile Sex Offender Treatment Grants are authorized, also 2007 through 2009, to assist state and local governments, public and private entities, in addressing treatment needs of juvenile sex offenders.

Grants to law enforcement agencies are authorized under the Bureau of Justice Assistance to help with investigation and enforcement of sexual crimes against children. This includes funds for personnel, computer hardware and software needed to investigate and enforce Internet-facilitated crimes against children. Grants also are authorized to law enforcement agencies for fingerprinting programs for children; and to government and nonprofit organizations for purposes of establishing and improving child Internet safety.

Section-by-Section Summary of the Act

Title I: Sex Offender Registration and Notification Act

Sec. 111. Definitions, including three-tier sex offender classifications.

Sec. 112. States must establish a statewide sex offender registry that conforms to federal standards. The attorney general will issue guidelines and regulations interpreting the federal law.

Sec. 113 (c). When a registered sex offender changes registry information, states are required to immediately provide information to all other jurisdictions in which the offender is required to register.

Sec. 113 (e). States must provide a criminal penalty that includes a maximum term of imprisonment greater than one year for failure of a sex offender to comply with registration requirements.

Sec. 114. Sets out all of the information states must acquire as part of registration, including a DNA sample and "any other information required by the attorney general."

Sec. 115. The duration of the sex offender registration requirement is established in accordance with the three-tier system set out in Sec. 111. Requires 15 years for tier I sex offender; 25 years for tier II; and life for a tier III sex offender.

Sec. 116. Offenders required to register must appear in person for address verification every three months, six months or one year, according to the three-tier classification, including taking updated photographs.

Sec. 117. State officials must notify offenders of the registry requirements prior to release from custody or immediately upon sentencing if not in custody, and ensure that the registration occurs.

Sec. 118. Sex offender registry information must be available via the Internet in single-query format. Each state's Internet site must be compatible for search capabilities within the National Sex Offender Public Website, and participate in that website as decided by the attorney general. Includes items required and optional for disclosure exemption.

Sec. 119, 120. The attorney general will establish a National Sex Offender Registry and a Public Website.

Sec. 121. Immediate information sharing is required when a sex offender registers or updates registry information. Notice is to be provided to the attorney general for update of the national registry, and information is to be provided to appropriate law enforcement, school and housing agencies, all other jurisdictions in which a sex offender must be registered, and other specified agencies, entities and organizations.

Sec. 122. The attorney general and appropriate law enforcement agencies also must be notified of failure of a sex offender to comply with registry requirements.

Sec. 123. The Attorney General shall consult with states and other jurisdictions to develop computer software for the creation and operation of uniform sex offender registries and websites.

Sec. 124, 125. States have three years, or until July 2009, to implement the requirements for sex offender registries, and one year from the creation of the software named in Sec. 123. States that fail to comply will lose 10 percent of funds allocated for that fiscal year under the Omnibus Crime Control and Safe Streets Act of 1968.

Sec. 125 (b). States are not required to take action that would violate that state's constitution, as determined by the state's highest court. However, the state must act in good faith with the attorney general to reconcile differences between this law and the state's constitution and the state must implement alternative procedures or accommodations to fulfill the purposes of this law. (Consultation with state governor, attorney general, legislature is not mentioned.)

Sec. 126. The attorney general will establish a Sex Offender Management Assistance grant program to offset costs to states in implementing provisions of this law, for fiscal years 2007, 2008, 2009. Authorizes appropriations but no amount specified.

Sec. 143. The Department of Justice will create a Project Safe Childhood program to integrate federal, state and local efforts to investigate and prosecute child exploitation cases, identify and rescue victims of child exploitation crimes, conduct local training, education and awareness. The Department of Justice also will conduct training of state and local law enforcement relating to computer-aided child exploitation crimes. Appropriates funds for various functions FY 2007 and as may be necessary for five succeeding fiscal years.

Sec. 144. The Department of Justice will help states locating sex offenders who might be relocated after a major disaster.

Sec. 145. The attorney general will expand training efforts for all levels of law enforcement to effectively respond to threats to children. Meetings and conferences will be convened to discuss problems of use of Internet technology to exploit children and to develop pro-active approaches. Authorized is \$1 million is for FY 2007 for these programs.

Sec. 146. Creates an Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART Office) within the Department of Justice, to administer grant programs and provide technical assistance to states and other entities involved with sex offender registration and notification.

Sec. 153. States may request the Department of Justice to conduct fingerprint checks of national crime information databases as part of an individual's background check by a child welfare agency or school.

Sec. 154. Prohibits state policy that would remove a missing person entry from a state law enforcement system or National Crime Information Center database based solely on the age of the person.

Sec. 202-216. Sets federal mandatory penalties for crimes against children, including sex trafficking in children. Extends statute of limitations for felony sex offenses.

Title II: Federal Criminal Law Enhancements Needed to Protect Children From Sexual Attacks and Other Violent Crimes

This title creates federal offenses for the sale of date rape drugs over the Internet, creates stricter federal penalties for people who commit federal crimes against minors such as engaging in conduct relating to child prostitution and sexual abuse or sex trafficking of children. No sections appear to affect state statutes.

Title III: Civil Commitment of Dangerous Sex Offenders

Sec. 301. The attorney general will issue grants to states to establish or enhance civil commitment programs. A state must establish a program, or submit a plan for the creation of one, to be eligible for a grant. (Does not mandate state provisions.)

Sec. 302. Creates "civil commitment of a sexually dangerous person," procedures for persons in federal custody against whom criminal charges have been dismissed solely due to the mental condition of the person (at U.S. Code 4248.) The attorney general "shall make all reasonable efforts to cause a state to assume such responsibility" for the custody and treatment of such people. If the state will not assume responsibility, the attorney general must place the individual in a suitable facility until a finding that he is no longer sexually dangerous, at which time he may receive conditional discharge. If the director of a facility in which a person is placed under federal civil commitment certifies that a person is sexually dangerous for reasons not related to a mental condition, the attorney general will release that person to the state for purpose of state proceedings for civil commitment; or, absent the state assuming responsibility, will release the person.

Title IV: Immigration Law Reforms to Prevent Sex Offenders From Abusing Children

This title amends the Immigration and Nationality Act to designate failure to register as a sex offender as a deportable offense and prohibits aliens who have committed sex offenses against children from having family-based petitions for citizenship approved unless determined appropriate by the secretary of the Department of Homeland Security. No sections appear to affect state statutes.

Title V: Child Pornography Prevention

Asserts interstate commerce aspects of the child pornography market, which relies substantially on mail and Internet. Establishes definitions, procedures and penalties under federal law. Includes provisions governing simulated sexual conduct. May preempt some state laws.

Title VI: Grants, Studies, and Programs for Children and Community Safety

Sec. 603 - 617. Authorizes mentoring grants under the Office of Juvenile Justice and Delinquency Prevention specifically to Big Brothers Big Sisters of America and the National Police Athletic League at-risk youth program.

Sec. 621. Grants are authorized from the Department of Justice to states, localities and tribes to assist with programs to utilize active, real-time monitoring devices for supervision of sex offenders, including equipment and personnel costs. Sets out minimum standards for the monitoring, and the attorney general will report to Congress by 2010 on effectiveness of electronic monitoring of sex offenders. Funding is authorized at \$5 million per year for FY 2007-2009.

Sec. 622. Addresses treatment and management of sex offenders in the federal Bureau of Prisons.

Sec. 623. Creates a new section of the Omnibus Crime Control and Safe Streets Act of 1968, to authorize grants to states, localities and tribes to assist in the enforcement of sex offender registration requirements, and grants to assist in the treatment of juvenile sex offenders. For registration requirements, authorizes appropriations for FY 2007-2009, with no monetary amount specified. Authorizes \$10 million per year for FY 2007-2009 for juvenile sex offender treatment grants.

Sec. 624. The attorney general may provide grants to train and employ personnel to assist in cases cleared through DNA backlog elimination. Authorizes appropriations 2007 through 2011, with no amount specified.

Sec. 625. The Bureau of Justice Assistance may provide grants to law enforcement jurisdictions with 50,000 or more residents to hire additional law enforcement or train current staff in combating sexual abuse of children, investigating the use of the Internet in the sexual abuse of children, and/or purchase computer equipment to investigate sexual abuse and facilitate the creation of sex offender registries. Jurisdictions with fewer than 50,000 residents may apply, based on need. The attorney general is to prioritize the awarding of the grants based on need. Authorization provided for FY 2007-2009, with no amount specified.

Sec. 627. The attorney general is to create a program authorizing grants to state, localities, and tribes for the purpose of creating voluntary finger-printing programs for children, hiring law enforcement to conduct these programs, and providing the necessary computer equipment for these programs. Limitations for the use of the children's fingerprints are included, with criminal penalties for violating the restrictions. Beginning in FY 2007, \$20 million total is authorized for a five-year period.

Sec. 628. Authorizes grants to Rape, Abuse and Incest National Network, for victim assistance services, for FY 2007-2010.

Sec. 630. The attorney general will make grants to states, localities and nonprofit organizations to establish programs to educate children and parents on Internet safety. These grants are subject to the availability of appropriations, and no specific amount is named.

Sec. 631. The attorney general may award grants to state, localities and tribes for the purpose of periodically verifying the residence of all or some registered sex offenders in their jurisdiction. The attorney general is required to report to Congress on the effectiveness of this activity. Authorizes sums as necessary to carry out this section for FY 2007-2009.

Sec 632. Authorizes funds to United States Marshals Service for "fugitive safe surrender program."

Sec. 633. The secretary of Health and Human Services and the attorney general will create a national registry of substantiated cases of child abuse or neglect. States and/or localities are to provide the information to be listed in the registry via electronic means and containing specific information decided by the secretary. Allows that an existing state or local equivalent registry of child abuse cases will suffice for the national registry.

Sec. 636. The Government Accountability Office (GAO) is to conduct a study to determine the feasibility of using driver's license registration processes within the states to improve compliance with sex offender registration requirements, assess systems capabilities in the states, and determine potential costs to states.

Title VII: Internet Safety Act

This title creates federal offenses and penalties for child exploitation via the Internet and for knowingly embedding words and digital images into web source code for the purpose of deceiving minors into accessing material constituting obscenity. It also instructs the attorney general to increase the number of computer forensic examiners to be dedicated to investigating crimes involving the sexual exploitation of children, and forms additional Internet Crimes Against Children Task Forces. No sections appear to affect state statutes.

Full text of the federal Adam Walsh Child Protection and Safety Act of 2006 is at
<http://thomas.loc.gov/cgi-bin/query/D?c109:5:./temp/~c1099XPSNu:>

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