



POLICY AND PROGRAM REPORT



Justice System: Focus on Sex Offenders

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This section of the *Policy and Program Report* focuses on sex offenders, a subject that affects every aspect of the justice system, including aid to victims, corrections, courts, criminal procedure, family law, juvenile justice, and punishments.

The combination of federal and Nevada law addressing sex offenders calls for lifetime supervision of serious offenders, provides notice to the public about offenders residing or working in the community, requires nationwide tracking of records on offenders, requires offenders to register with local law enforcement agencies, and sets limits on parole and probation in order to protect public health and safety.

FEDERAL SEX OFFENDER LAWS

Since 1994, the United States Congress has passed at least eight laws relating to sex offenders. The following paragraphs describe four of the most widely known federal sex offender laws.

Jacob Wetterling Act of 1994

The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, passed in 1994, requires states to maintain a registry of sex offenders and persons who commit crimes against children. States must verify the addresses of sex offenders for at least ten years, and sexually violent predators must verify their addresses quarterly for life. The Act has been amended several times since 1994.

Megan's Law (1996)

In 1996, the Congress amended the Jacob Wetterling Act by passing the federal version of Megan's Law, which requires state and local law enforcement agencies to release information about persons registered with the state under the Jacob Wetterling Act in order to protect the public. The law provides for public dissemination of information from state sex offender registries for any purpose permitted under state law.

Pam Lychner Act of 1996

The Pam Lychner Sex Offender Tracking and Identification Act of 1996 requires the U.S. Attorney General to establish a national database, known as the National Sex Offender Public Registry (NSOPR), for tracking certain sex offenders. The Act allows for the dissemination of information collected by the Federal Bureau of Investigation (FBI) to federal, state, and local law enforcement officials and includes provisions relating to notification of the FBI and state agencies when a sex offender moves to another state.

Adam Walsh Act of 2006

The Adam Walsh Child Protection and Safety Act of 2006 created the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, known as the "SMART Office," within the U.S. Department of Justice. The Office administers grant programs authorized by the Act, coordinates training and technical assistance, and administers standards for sex offender notification and registration.

Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act, creates a NSOPR on the Internet, which integrates state sex offender registries and is available to law enforcement regardless of location. Offenders are assigned to one of three tiers; offenders in the higher tiers must check in with law enforcement more frequently.

STATUS OF NEVADA'S SEX OFFENDER LAWS

In 2007, the Legislature passed two bills implementing the federal Adam Walsh Act of 2006—Assembly Bill 579 (Chapter 485, *Statutes of Nevada*) and Senate Bill 471 (Chapter 528, *Statutes of Nevada*).

Together, A.B. 579 and S.B. 471:

- Require community notification for sex offenders within three tiers related to the crime committed;
- Require community notification of all sex offenders and other offenders who committed a crime against a child, regardless of their tier classification;
- Require sex offenders to register with a local law enforcement agency every 90 days for Tier III, every 180 days for Tier II, and annually for Tier I;
- Require sex offenders to register for the first time prior to release from prison or, if not imprisoned, within three days of sentencing;
- Require sex offenders to provide a biological specimen at the time of registration;
- Require electronic monitoring of certain offenders;
- Increase the number of years a person convicted of sexual assault of a child not resulting in substantial bodily harm must serve before becoming eligible for parole;
- Prohibit some Tier III offenders from living within 1,000 feet of locations frequented by children;
- Prohibit some offenders from knowingly being within 500 feet of locations frequented by children;
- Make a violation of certain provisions by a Tier III offender under lifetime supervision punishable as a category B felony;
- Expand the types of information provided by the community notification website;
- Make certain juveniles subject to offender notification and registration requirements;
- Provide a criminal penalty for using information obtained from the community notification website to commit a crime; and
- Repeal *Nevada Revised Statutes* (NRS) sections that are inconsistent with the Adam Walsh Act.

The provisions of A.B. 579 and S.B. 471 were set to take effect on July 1, 2008. However, prior to that date, lawsuits were filed in both State and federal court seeking to stop implementation of the two bills in Nevada.

On April 3, 2008, the Honorable William O. Voy, Eighth Judicial District Court, Family Division-Juvenile, declared the provisions of A.B. 579 and S.B. 471, as applied to juvenile sex offenders, unconstitutional, and on June 26, 2008, the Honorable David T. Wall, Eighth Judicial District Court, granted a preliminary injunction staying the implementation of the provisions in Clark County.

On June 30, 2008, the Honorable James C. Mahan, U.S. District Court, District of Nevada, granted a preliminary injunction staying the provisions of A.B. 579 and S.B. 471 for the entire State, and on October 7, 2008, granted a permanent injunction. The State of Nevada, represented by the Attorney General, appealed, and on February 10, 2012, the U.S. Court of Appeals for the Ninth Circuit reversed Judge Mahan's order enjoining the implementation of A.B. 579 and, finding that the dispute over S.B. 471 was moot, directed the federal district court to consider vacating its order on S.B. 471 in favor of a binding consent decree.

On January 16, 2014, a new lawsuit was filed to stop implementation of the provisions. As of the writing of this report, the Nevada Supreme Court has yet to decide the matter. Additionally, the 2015 Legislature approved S.B. 99, which made substantial changes to Nevada's sex offender laws but was vetoed by Governor Brian Sandoval and will be returned to the 2017 Legislature for consideration. As such, Nevada's sex offender laws continue to be unsettled and will require further clarification. The sex offender laws in effect today are those that existed prior to the enactment of A.B. 579 and S.B. 471 in 2007, with additional substantive revisions made after 2005 in other bills, as described in the rest of this report.

NEVADA ADULT SEX OFFENDER LAWS (PRE-2007 AND PASSAGE OF A.B. 579)

Requirements After Conviction

If a defendant is convicted of a crime against a child or a sexual offense, the court must notify the Central Repository for Nevada Records of Criminal History and inform the defendant of the registration requirements. The registration requirements include:

- Registration in Nevada during any period in which the defendant is a Nevada resident or a nonresident student or worker;
- Registration in any other jurisdiction during any period in which the defendant is a resident of that jurisdiction or a nonresident student or worker;
- Registration with the appropriate law enforcement agency if the defendant moves from Nevada;
- Notice to the local law enforcement agency where the defendant previously resided of any change of address;
- Notice to the local law enforcement agency if the defendant enrolls or expects to enroll in an institution of higher education or changes the date of commencement or termination of enrollment; and
- Notice to the local law enforcement agency if the defendant is, or expects to be, a worker at an institution of higher education or changes the date of commencement or termination of such work.

If the Central Repository receives notice from a court that an offender has been convicted of a crime against a child or a sexual offense, the Repository must notify the local law enforcement agency so that a record of registration may be established. If a record was previously established, the Repository must update the record and notify the law enforcement agency. If the offender is granted probation or otherwise not confined, the Repository must immediately notify the appropriate law enforcement agency where the offender resides. If the offender is confined or incarcerated, before the offender is released, the Repository must update the record of registration and notify the appropriate law enforcement agency where the offender will reside. Finally, if the Central Repository receives notice from another jurisdiction or the FBI that an offender is now residing in Nevada or is in the State as a nonresident student or worker, the Repository must notify the appropriate local law enforcement agency and establish a record of registration.

Each offender convicted of a crime against a child or a sexual offense must register with the local law enforcement agency or agencies not later than 48 hours after arriving, establishing a residence, or becoming a nonresident student or worker in a county or city. To register, the offender must appear in person, provide all information requested, and sign and date the record in the presence of an officer. After an offender registers, the law enforcement agency must forward the record to the Central Repository.

The offender must continue to comply with the registration requirements until that responsibility is terminated in accordance with NRS. In general, the offender may file a petition in district court for termination of registration if the offender has complied with the requirements for 15 consecutive years, during which the offender has not been convicted of any offense that poses a threat to the safety or well-being of others. After a hearing, the court must terminate the duty of the offender to register if the court determines the offender is not likely to pose a threat to the safety of others. However, offenders who are sentenced to lifetime supervision, who are declared to be sexually violent predators, or who are repeat offenders may not petition for termination of the registration requirements.

A person may not petition a court to seal records relating to a conviction of a crime against a child or a sexual offense, either after a conviction or after completing a program of reentry into the community. The Central Repository may inspect any sealed records that contain information relating to sexual offenses and may notify employers of the information. Upon request, the Central Repository must disseminate to a current or prospective employer information contained in a record of registration concerning a current or prospective employee or volunteer who is a sex offender or was convicted of a crime against a child.

Lifetime Supervision

A defendant convicted of certain sexual offenses must be sentenced, in addition to any other penalties, to lifetime supervision, commencing after any period of probation or release from prison and parole. A person sentenced to lifetime supervision may petition the sentencing court or the State Board of Parole Commissioners for release from lifetime supervision if the person meets requirements set forth in NRS. A person who is released nevertheless remains subject to the provisions for registration and community notification.

The special sentence of lifetime supervision applies to the following offenses or attempted offenses: battery with intent to commit sexual assault; certain acts of murder and other crimes determined to be sexually motivated; incest; lewdness with a child; luring; production of child pornography; promotion of a sexual performance by a minor; possession of child pornography (subsequent offense); a sex act with a dead body; sexual assault; and solicitation of a minor.

Probation

If a defendant is convicted of a sexual offense for which probation or a suspended sentence is allowed, the Division of Parole and Probation, Department of Public Safety (DPS), must arrange for a psychosexual evaluation of the defendant as part of its presentence investigation and report, in accordance with the detailed requirements of NRS. If the court grants probation or suspends the sentence, the order must include 18 specific conditions.

The defendant must—among other conditions—submit to search and seizure at any time without a warrant; reside only at an approved location; work or volunteer only in an approved position; participate in a program of professional counseling; abstain from consumption of alcohol; not use aliases or fictitious names; not access the Internet without approval; and not be in or near a school, playground, park, motion picture theater, or business that caters primarily to children without approval.

After receiving an honorable discharge from probation, the defendant is still subject to the community notification and registration requirements described in this report.

Statewide Registry and Community Notification Website

As required by NRS, the DPS has established within the Central Repository a statewide registry of sex offenders, offenders convicted of a crime against a child, and a community notification website. Except as otherwise provided by law, the registry is available only to law enforcement officers in the regular course of their duties, employees and officers of the Repository, and other persons conducting investigations or research with the permission of the Director of the Department.

A person requesting information from the website must provide the name of the subject of the search and other required information concerning the identity and location of the subject. For each inquiry, the Repository must explain the levels of notification assigned to sex offenders and explain that the Repository is prohibited from disclosing certain information concerning offenders listed in the registry. If the request matches a record in the registry, the Repository must disclose information concerning an offender who is assigned to Tier II or Tier III, but not Tier I. The Repository must provide the offender's address, name, offense resulting in conviction, physical description, year of birth, and other information.

Information from the website must not be used for any purpose related to accommodations, credit, education, employment, fellowships, housing, insurance, loans, or scholarships, or for benefits, privileges, or services provided by a business establishment. A person who violates these restrictions is liable in a civil action brought by an injured party or the State of Nevada.

Information accessed at or disclosed by the statewide registry or community notification website must not reveal the name of any individual victim of the offense.

Community Notification

The Attorney General, in consultation with the Advisory Council for Community Notification, must establish guidelines and procedures for community notification. The guidelines and procedures address assessing the risk of recidivism of sex offenders within Nevada, and they incorporate such relevant factors as the offender's age and criminal history and whether the offender receives therapy or treatment.

The Attorney General's guidelines must provide for three levels of community notification:

1. Tier I indicates a low risk of recidivism, and the local law enforcement agency where the offender resides or is a student or worker must notify other law enforcement agencies likely to encounter the offender;
2. Tier II indicates a moderate risk of recidivism, and the local law enforcement agency must also notify schools and religious and youth organizations likely to encounter the offender; and
3. Tier III indicates a high risk of recidivism, and in addition to the requirements for Tier I and Tier II, the local law enforcement agency must notify the public by appropriate means.

If the sex offender is assigned to Tier II or Tier III and has committed a sexual offense against a person less than 18 years of age, the local law enforcement agency must also notify motion picture theaters and businesses that are likely to encounter the offender.

After a sex offender other than a sexually violent predator has been subject to community notification for at least ten consecutive years, during which the offender is not convicted of an offense that poses a threat to the safety or well-being of others, the offender may petition the Attorney General for a reassessment of the risk of recidivism. After a reassessment, an offender may be reassigned to one tier below the current assignment and, if currently assigned to Tier I, may be relieved from being subject to community notification.

Sexually Violent Predators

If a sex offender has been convicted of a sexually violent offense, the prosecuting attorney may petition the sentencing court for a declaration that the offender is a sexually violent predator. After a hearing and an evaluation by a panel, if the court determines that the offender suffers from a mental disorder or personality disorder, the court must enter an order declaring the offender to be a sexually violent predator. Each sexually violent predator must be assigned to Tier III for purposes of community notification and may not receive a risk reassessment.

Every 90 days, the Central Repository must mail a verification form to each resident offender who is declared to be a sexually violent predator and who is not incarcerated. The offender must complete

the form and return it to the Repository within ten days to verify that he or she still resides at the address last registered. The verification form must include a current set of fingerprints, a current photograph, and other information necessary to update the record.

Parole

The State Board of Parole Commissioners may not release an offender convicted of a sexual offense until the local law enforcement agency where the offender will be released has had the opportunity to give notice under the community notification guidelines and procedures. If the Board releases a sex offender on parole, it must, in addition to any conditions, require the parolee to comply with a list of mandatory conditions similar to those imposed on a sex offender who is placed on probation (as described earlier in this report).

If the offender was convicted of committing lewdness with a child, luring, sexual assault, solicitation of a minor, or other serious crimes against a child under the age of 14, the Board must, as appropriate, require the parolee to participate in psychological counseling, prohibit the parolee from being alone with a child, and prohibit the parolee from being on or near the grounds of a place primarily designed for use by children.

JUVENILE SEX OFFENDERS

Jurisdiction

As discussed earlier in this report, Nevada's juvenile courts have jurisdiction over children alleged or adjudicated to be in need of supervision or to have committed a delinquent act. In certain situations, however, young offenders are handled in the adult rather than the juvenile justice system. One of these situations is when a juvenile who is at least 16 years of age and who has previously been adjudicated delinquent for an act that would have been a felony if committed by an adult is charged with committing sexual assault or attempted sexual assault involving the use or threat of force or violence against the victim.

Also, upon the motion of the district attorney and after an investigation and a hearing, the juvenile court must transfer certain cases to adult court, through the process known as "presumptive certification." This process applies when a juvenile who is at least 16 years of age is charged with a sexual assault involving the use or threatened use of force against the victim. Finally, upon the motion of the district attorney and after an investigation and hearing, the juvenile court may transfer other cases to adult court if a child is charged with an offense that would be a felony if committed by an adult and was at least 14 years of age at the time.

Procedure

When a district attorney files a petition with the juvenile court alleging that a child committed an unlawful act that would have been a sexual offense if committed by an adult, the district attorney must provide the victim and the victim's parent or guardian with a document advising them of their rights.

If the juvenile court finds a child delinquent for an unlawful act that, if committed by an adult, would have constituted burglary, false imprisonment, home invasion, or kidnapping, the court must at the request of the district attorney conduct a hearing to determine whether the act was sexually motivated. If the court determines at the hearing that the act was sexually motivated, it must enter its finding in the record.

Supervision and Community Notification

If a child is adjudicated delinquent for an unlawful act and the juvenile court determines at a hearing that the act was sexually motivated, or if a child is adjudicated delinquent for an act that would have been a sexual offense if committed by an adult, the court must:

- Place the child under the supervision of a parole or probation officer for at least three years;
- Notify the Attorney General so that the Attorney General can arrange for a risk assessment pursuant to the guidelines on community notification;
- Notify the child and the parent or guardian that the child is subject to community notification as a juvenile sex offender and may be subject to community notification as an adult sex offender; and
- Order the child and the child's parent or guardian, while the child is subject to community notification, to inform the parole or probation officer of any change of address at which the child resides within 48 hours of the change.

In addition, the parole or probation officer must notify the local law enforcement agency in the jurisdiction where the child resides and keep the applicable law enforcement agencies informed of any change of address of the child's residence.

Unless the juvenile court has terminated the requirement as provided in NRS:

- The court must prohibit the child from attending a school that the victim of the act is attending, and must order the parent or guardian to inform the parole or probation officer each time the child expects to change the school the child attends; and
- The parole or probation officer must notify the school district in which the child resides, or the private school if the child attends private school, and the notice must include the name of the victim, if the victim attends school in Nevada and if the parent or guardian of the victim consents.

However, the juvenile court may allow a child adjudicated delinquent for a sexually motivated act or sexual offense to attend the school the victim is attending if, upon request, the court develops and approves an alternative plan of supervision that protects the interests and safety of the victim.

Child Subject to Adult Registration and Community Notification Requirements

If a child who has been adjudicated delinquent for a sexual offense or sexually motivated act is still subject to community notification as a juvenile sex offender when the child reaches 21 years of age, the juvenile court must hold a hearing to determine whether the child should be deemed an adult sex offender, for purposes of registration and community notification.

If the juvenile court determines that the child has been rehabilitated to its satisfaction and is not likely to pose a threat to public safety, based on factors set forth in NRS, the juvenile court must relieve the child from registration and community notification requirements. Otherwise, the court must deem the child to be an adult sex offender, for purposes of registration and community notification, and must notify the Central Repository.

Records and Reports

While a child is subject to community notification as a juvenile sex offender, the records relating to the child must not be sealed. If the child is deemed an adult sex offender, the records must not be sealed, and each delinquent act the child committed that would have been a sexual offense if committed by an adult is considered a criminal conviction for purposes of community notification and registration.

The Division of Child and Family Services, Department of Health and Human Services, must collect from the juvenile courts, juvenile probation departments, and youth correctional facilities detailed confidential information on each child adjudicated delinquent for an unlawful act that would have been a sexual offense if committed by an adult. The Director of the Department must establish a program to compile and analyze the data, to provide statistical data on recidivism, and to assess the effectiveness of treatment programs. The Director must submit a report to the Advisory Commission on the Administration of Justice and the Legislature every biennium.

ACTIVITIES DURING THE 2015-2016 INTERIM

The Advisory Commission on the Administration of Justice will meet to discuss activities related to sexually dangerous persons.

SOURCES OF ADDITIONAL INFORMATION

Advisory Commission on the Administration of Justice: <http://www.leg.state.nv.us/Interim/78th2015/Committee/StatCom/AdminJustice/?ID=18>.

National Sex Offender Public Website: <https://www.nsopw.gov/>.

Nevada Sex Offender Registry: <http://www.nvsexoffenders.gov/>.

SMART Office, U.S. Department of Justice: <http://www.smart.gov/>.

STATE CONTACT INFORMATION

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<p>Department of Health and Human Services Division of Child and Family Services Kelly Wooldridge, Administrator 4126 Technology Way, Floor 3 Carson City, Nevada 89706 Telephone: (775) 4400 Fax: (775) 684-4455 Website: http://dcfs.nv.gov</p>	<p>State Board of Parole Commissioners Connie S. Bisbee, Chair 1677 Old Hot Springs Road, Suite A Carson City, Nevada 89706 Telephone: (775) 687-5049 Fax: (775) 687-6736 Website: http://parole.nv.gov/</p>
<p>Department of Public Safety Division of Parole and Probation Natalie Wood, Chief 1445 Old Hot Springs Road, Suite 104 Carson City, Nevada 89706 Telephone: (775) 684-2600 Fax: (775) 684-2697 Website: http://npp.dps.nv.gov/</p>	

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