



Legislation Text

File #: CNCA-57, Version: 1

TITLE 57 - PRISONS AND REFORMATORIES

Code of Federal Regulations

Indian country detention facilities and programs, see 25 C.F.R. § 10.1 et seq.

CHAPTER 1

SEX OFFENDER REGISTRATION AND NOTIFICATION

Cross References

Abuse of children-Penalties, see 21 CNCA § 843.

Abuse or exploitation of vulnerable adult by non-caretaker, see 21 CNCA § 843.3.

Acts prohibited, see 21 CNCA § 1040.13.

Assaults with intent to commit crime; Punishment, see 21 CNCA § 681.

Caretaker-Abuse, neglect or financial exploitation of charge, see 21 CNCA § 843.1.

Child stealing-Punishment, see 21 CNCA § 891.

Child under 18 years of age-Inducing, keeping, detaining or restraining for prostitution-Punishment, see 21 CNCA § 1088.

Crime against nature, see 21 CNCA § 886.

Deferred judgment procedure, see 22 CNCA § 991C.

Facilitating, encouraging, offering or soliciting sexual conduct or engaging in sexual communication with a minor or person believed to be a minor, see 21 CNCA § 1040.13a.

Guardians, parents, custodians-Consent to participation of minors in child pornography, see 21 CNCA § 1021.3.

Incest-Penalty, see 21 CNCA § 885.

Indecent exposure-Indecent exhibitions-Obscene material or child pornography-Solicitation of minors, see 21 CNCA § 1021.

Kidnapping defined, see 21 CNCA § 741.

Lewd or indecent proposals or acts as to child under 18, see 21 CNCA § 1123.

Loitering around residence to watch occupants, see 21 CNCA § 1171.

Minors-Child pornography, see 21 CNCA § 1021.2.

Offering or transporting child for purpose of prostitution-Penalty, see 21 CNCA § 1087.

Publication, distribution or participation in preparation of any obscene material or presentation-Unsolicited mailings-Penalty, see 21 CNCA § 1040.8.

Punishment, see 21 CNCA § 867.

Purchase, procurement or possession of child pornography-Penalty, see 21 CNCA § 1024.2.

Rape defined, see 21 CNCA § 1111.

Sentence-Powers of Court-County community service sentencing programs, see 22 CNCA § 991A.

Sexual battery, see 21 CNCA § 1123.1.

Zone of safety, see 21 CNCA § 1125.

§ 1. Short title

This act shall be known and may be cited as the Cherokee Nation Sex Offender Registration and Notification Act.

History

Source. LA 22-08, eff. January 12, 2009.

Amended. LA 08-12, eff. March 23, 2012.

§ 2. Purpose-Findings-Legislative intent

A. The Council finds that repeat sex offenders, sexual offenders who use physical violence or duress, and sex offenders who prey on children, the elderly, and the mentally impaired are sex offenders who present an extreme threat to the public safety and pose a high risk of re-offending after release from custody. The Council further finds that the privacy interest of persons adjudicated guilty of these crimes is less important than the Nation's compelling interest in public safety. Sex offenders are extremely likely to use physical violence and to repeat their offenses, and most sex offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sex offender victimization to society at large, while incalculable, extremely high. The Council also finds that federal crime statistics show that one out of every three Native American women is raped in her lifetime. Moreover, Native American women experience 7 sexual assaults per 1,000, compared with 4 per 1,000 among Blacks, 3 per

1,000 among Caucasians, 2 per 1,000 among Hispanics, and 1 per 1,000 among Asian-American women.

B. The high level of threat that a sex offender presents to the public safety, and the long-term effects suffered by victims of sex offenses, provide the Nation with sufficient justification to implement a strategy that includes:

1. Requiring the registration of sex offenders, with a requirement that complete and accurate information be maintained and accessible for use by law enforcement authorities, communities, and the public.
2. Providing for community and public notification concerning the presence of sex offenders.
3. Prohibiting sex offenders from working with children or the elderly, either for compensation or as a volunteer.

C. The Nation has a compelling interest in protecting the public from sex offenders and in protecting children and the elderly from predatory sexual activity, and there is sufficient justification for requiring sex offenders to register and for requiring community and public notification of the presence of sex offenders. Further, the Nation's control over internal relations is effected by the presence of sex offenders within the community and the regulation of such individuals is necessary to protect the health and welfare of the Nation's citizens.

D. It is the purpose of the Council that, upon the court's written finding in a civil proceeding that an individual is a sex offender with a relationship to the community, in order to protect the public, it is necessary that the sex offender be registered with the Marshal Service and that members of the community and the public be notified of the sex offender's presence in the community. The designation of a person as a sex offender is neither a sentence nor a punishment but simply a status designation.

E. By adopting the simple remedy of providing information regarding convictions for sex offenses to the public, the Nation assists communities in being better able to protect themselves through their increased awareness.

F. It is the intent of the Council to address the problem of sex offenders by;

1. Requiring sex offenders to register with the Marshal, as provided in this Act; and
2. Requiring community and public notification of the presence of a sex offender, as provided in this Act.

G. The Council further declares that it is the policy of the Nation to require the exchange, in accordance with this Act, of relevant information about sex offenders among public agencies and officials and to authorize the release in accordance with this Act of necessary and relevant information about sex offenders to members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive.

H. It is also the intent of the legislature to address the mandate of the United States that Indian tribes comply with federal law requiring tribal registration of sex offenders living, working, or attending school within their jurisdictions or to lose tribal jurisdiction over such registration to the state should the tribe fail to comply, as provided in Section 127 of the Adam Walsh Act (PL 109-248, July 27, 2006). The regulation of sex offenders thereby directly effects the political integrity of the Nation and regulation of such individuals directly effects tribal self-government.

I. The Cherokee Nation Marshal Service is authorized hereby to contract or enter any memorandum of understanding or agreement with any other agency of any government or with private contractors to complete any of the duties assigned by this Act to the Marshal Service, or as necessary to comply with the federal Adam Walsh Act (PL-109-248, July 27, 2006). In any case where such a contract or agreement requires a waiver of sovereign immunity by the Cherokee Nation, the Principal Chief is hereby authorized to sign such waiver without seeking a resolution from the Cherokee Nation Council.

History

Source. LA 22-08, eff. January 12, 2009.

Amended. LA 08-12, eff. March 23, 2012.

United States Code

Election by Indian tribes, see 42 U.S.C. § 16927.

§ 3. Definitions

As used in this act, the term:

1. "**Adam Walsh Act**" means the federal legislation embodied in PL 109-248 (July 27, 2006) and any subsequent amendments thereto.
2. "**Aggravated sex offender**" means any person who has received a conviction for a crime, including a deferred sentence imposed in violation of 22 CNCA § 991C, for a crime provided for in 21 CNCA § 843 if the offense involved sexual abuse or sexual exploitation as these terms are defined in that section, or any of 21 CNCA § 885, 1111, 1123, or 1123.1.
3. "**Change in enrollment or employment status**" means the commencement or termination of enrollment or employment or a change in location of enrollment or employment.
4. "**Cherokee Nation Indian Country**" means any trust or restricted lands within the Indian Territory that were ceded by the United States to the Cherokee Nation pursuant to the Treaties of May 6, 1828, February 14, 1833, and December 29, 1835, 7 Stat. 478, the Indian Removal Act of 1830, 4 Stat. 411, and the fee patent executed by President Martin Van Buren on December 31, 1838, diminished only by sales under the Acts of February 28, 1877, 19 Stat. 265, June 2, 1886, 24 Stat. 121, March 3, 1893, ch. 209, 27 Stat. 612, 645, and Proclamation No. 5, 20 Stat. 1222 (1893), or as otherwise determined by federal law or courts of competent jurisdiction including those lands later acquired or acknowledged through federal action or court decision.
5. "**Conviction**" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. A conviction includes receipt of a suspended sentence or any probationary term, and includes those for which an individual is currently serving a sentence or any form of probation or parole including receipt of a deferred sentence imposed in violation of 22 CNCA § 991c. A conviction includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction by a state, the United States, or an acceptable foreign jurisdiction. A sanction includes, but is not limited to, a fine, probation, community control, parole, conditional

release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility. A conviction shall also include court-ordered civil commitment. A sanction is by an acceptable foreign jurisdiction if it is by Canada, Great Britain, Australia, New Zealand, or any foreign jurisdiction for which the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally enforced the right to a fair trial in that country during the year in which the conviction occurred. For purposes of this act with respect to juvenile offenders, a conviction shall include only: (1) a conviction of a juvenile who has been certified as an adult, or (2) an adjudication of delinquency of a juvenile aged fourteen (14) years or over when the adjudication was for (a) a crime involving a sexual act with another by force or the threat of serious violence, or (b) a crime involving a sexual act with another by rendering the victim unconscious or by involuntarily drugging the victim, provided that no other conviction of a juvenile or adjudication of a juvenile as delinquent shall be considered a conviction for purposes of this Act. To the extent that such information is considered confidential by any other law, such information shall be made public pursuant to this act.

6. **"Electronic mail address"** means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

7. **"Entering the Nation"** includes but is not limited to being discharged from a correctional facility or jail or secure treatment facility after imprisonment by order of Cherokee Nation Courts or being under supervision within the Nation for the commission of a violation enumerated in 57 CNCA § 4.

8. **"Habitual sex offender"** means any person who has received a conviction for any crime or an attempt to commit a crime listed in 57 CNCA § 4(A)(1) or (A)(3) and who subsequently receives another conviction of a crime or an attempt to commit a crime listed in 57 CNCA § 4(A)(1) or (A)(3) or who has received a third conviction for any crime or an attempt to commit a crime listed in 57 CNCA § 4(A)(2).

9. **"Instant message name"** means an identifier that allows a person to communicate in real time with another person using the Internet.

10. **"Institution of higher education"** means a career center, community college, college, state university, or independent postsecondary institution.

11. **"Marshal"** or **"the Marshal"** means the "office of Marshal" as created by the 1999 Cherokee Nation Constitution, Article VII, § 14.

12. **"Marshal Service"** means the executive branch agency developed, managed, directed, and overseen by the Marshal.

13. **"Nation"** means the Cherokee Nation.

14. **"Other jurisdiction"** means a state, the United States, Canada, Great Britain, Australia, New Zealand, or any foreign jurisdiction for which the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally enforced the right to a fair trial in that country during the year in which the conviction occurred.

15. **"Residence"** or **"resides"** means any place where the person has a home, or any place where a person lives for five (5) or more consecutive days, or seven (7) cumulative days in any sixty-day (60-day) period, or an aggregate period of thirty (30) days or more in a calendar year.

16. **"State"** means a state, territory, or possession of the United States, a federally-recognized Indian tribe, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the United States Virgin Islands.

17. **"Student"** shall mean an individual who enrolls in or attends an educational institution, including a public or private secondary school, trade or professional school, or an institution of higher education.

18. **"Work"** shall include self-employment or any employment for an entity whether compensated or not.

History

Source. LA 22-08, eff. January 12, 2009.

Amended. LA 08-12, eff. March 23, 2012.

United States Code

Declaration of purpose, see 42 U.S.C. § 16901 et seq.

§ 4. Persons and crimes to which act applies

A. The provisions of the Cherokee Nation Sex Offender Registration and Notification Act shall apply to any individual designated as a sex offender. The designation of sex offender shall be given to any person residing, working or attending school within Cherokee Nation who:

1. Has, regardless of the date on which the offense or conviction occurred, received a conviction for a first offense for a crime or an attempt to commit a crime or conspiracy to commit a crime provided for in:

a. 21 CNCA § 535 if the offense involved the detention of a minor;

b. 21 CNCA § 681 if the offense involved sexual assault;

c. 21 CNCA § 741 if the offense involved sexual abuse or sexual exploitation and the offender is not the parent;

d. 21 CNCA § 843 if the offense involved sexual abuse or sexual exploitation as those terms are defined in that section;

e. 21 CNCA § 843.1 or 843.3 if the offense involved sexual abuse or sexual exploitation;

f. 21 CNCA § 1021(A)(3), 1021(A)(4), 1021(B), 1021.2, 1021.3, 1024.2, 1040.8, or 1040.13 if the offense involved child pornography;

g. 21 CNCA § 866, 885, 886, or 891 if the offense involved sexual abuse or sexual exploitation; or

h. 21 CNCA § 1040.13a, 1087, 1088, 1111, 1123, 1123.1 or 1171; or

2. Has, regardless of the date on which the offense or conviction occurred, received a conviction for a second

offense for a crime or for an attempt to commit a crime or for conspiracy to commit a crime provided for in 21 CNCA § 1021(A)(1) or 1021(A)(2); or

3. Has, regardless of the date on which the offense or conviction occurred, received a conviction for a federal offense committed on Cherokee Nation Indian Country for a crime or for an attempt to commit a crime or for conspiracy to commit a crime provided for in 18 U.S.C. § 1591, 1801, 2241, 2242, 2243, 2244, 2245, 2251, 2251A, 2252, 2252A, 2252B, 2252C, 2260, 2421, 2422, 2423, 2424, 2425, or any other federal crime for which the United States Attorney General or the Adam Walsh Act require registration as a sex offender.

B. The provisions of the Cherokee Nation Sex Offender Registration and Notification Act shall apply:

1. To any person who is convicted of a crime, an attempt to commit a crime, or a conspiracy to commit a crime enumerated in subsection (A) of this section in the Courts of Cherokee Nation; and

2. To any person who is convicted of a crime, an attempt to commit a crime, or a conspiracy to commit a crime enumerated in subsection (A) of this section in a federal court for a crime committed in Cherokee Nation Indian Country; and

3. To any person who resides, works or attends school within Cherokee Nation and who has received a conviction for a crime, an attempt to commit a crime, or a conspiracy to commit a crime which if committed or attempted in Cherokee Nation, would be one of those crimes enumerated in subsection (A) of this section or an attempt of one of those as enumerated in subsection (A) of this section. For military offenses, the crimes for which an individual must register pursuant to this act shall be those specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119.

C. The provisions of the Cherokee Nation Sex Offender Registration and Notification Act shall not apply to any such person while the person is incarcerated or civilly committed.

History

Source. LA 22-08, eff. January 12, 2009.

Amended. LA 08-12, eff. March 23, 2012.

United States Code

Abusive sexual contact, see 18 U.S.C. § 2244.

Aggravated sexual abuse, see 18 U.S.C. § 2241.

Certain activities relating to material constituting or containing child pornography, see 18 U.S.C. § 2252A.

Certain activities relating to material involving the sexual exploitation of minors, see 18 U.S.C. § 2252.

Coercion and enticement, see 18 U.S.C. § 2422.

Establishment; organization; administration, see 10 U.S.C. § 951 Note.

Filing factual statement about alien individual, see 18 U.S.C. § 2424.

Misleading domain names on the Internet, see 18 U.S.C. § 2252B.

Misleading words or digital images on the Internet, see 18 U.S.C. § 2252C.

Offenses resulting in death, see 18 U.S.C. § 2245.

Production of sexually explicit depictions of a minor for importation into the United States, see 18 U.S.C. § 2260.

Selling or buying of children, see 18 U.S.C. § 2251A.

Sexual abuse of a minor or ward, see 18 U.S.C. § 2243.

Sexual abuse, see 18 U.S.C. § 2242.

Sexual exploitation of children, see 18 U.S.C. § 2251.

Sex trafficking of children or by force, fraud, or coercion, see 18 U.S.C. § 1591.

Transportation generally, see 18 U.S.C. § 2421.

Transportation of minors, see 18 U.S.C. § 2423.

Use of interstate facilities to transmit information about a minor, see 18 U.S.C. § 2425.

Video voyeurism, see 18 U.S.C. § 1801.

§ 5. Tiering

A person subject to sex offender registration in Cherokee Nation shall be assigned a tier based on the considerations enumerated in 57 CNCA §§ 5.1 through 5.3, inclusive.

History

Source. LA 22-08, eff. January 12, 2009.

Amended. LA 08-12, eff. March 23, 2012.

§ 5.1. Tier I offenses

A. Sex offenses. A "Tier I" offense includes any sex offense, for which a person has been convicted, or an attempt or conspiracy to commit such an offense that is not a "Tier II" or "Tier III" offense.

B. Offenses involving minors. A "Tier I" offense also includes any offense for which a person has been convicted by any jurisdiction, local government, or qualifying foreign country pursuant to Section 2.02(C) that involves the false imprisonment of a minor, video voyeurism of a minor, or possession or receipt of child

pornography.

C. Tribal offenses. Any sex offense covered by this act where punishment was limited to one (1) year in jail shall be considered a "Tier I" sex offense.

D. Certain federal offenses. Conviction for any of the following federal offenses or an attempt or conspiracy to commit such an offense shall be considered a conviction for a "Tier I" offense:

1. 18 U.S.C. § 1801 (video voyeurism of a minor);
2. 18 U.S.C. § 2252 (receipt or possession of child pornography);
3. 18 U.S.C. § 2252A (receipt or possession of child pornography);
4. 18 U.S.C. § 2252B (misleading domain names on the internet);
5. 18 U.S.C. § 2252C (misleading words or digital images on the internet);
6. 18 U.S.C. § 2422(a) (coercion to engage in prostitution);
7. 18 U.S.C. § 2423(b) (travel with the intent to engage in illicit conduct);
8. 18 U.S.C. § 2423(c) (engaging in illicit conduct in foreign places);
9. 18 U.S.C. § 2423(d) (arranging, inducing procuring or facilitating the travel in interstate commerce of an adult for the purpose of engaging in illicit conduct for financial gain);
10. 18 U.S.C. § 2424 (failure to file factual statement about an alien individual); or
11. 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct).

Certain military offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C) (i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note) that is similar to those offenses outlined in Section 3.01 (A), (B), or (C) shall be considered a "Tier I" offense.

History

Source. LA 08-12, eff. March 23, 2012.

§ 5.2. Tier II offenses

A. Recidivism and felonies. Unless otherwise covered by 57 CNCA § 5.3, any sex offense that is not the first sex offense for which a person has been convicted or an attempt or conspiracy to commit such an offense and that is punishable by more than one (1) year in jail is considered a "Tier II" offense.

B. Offenses involving minors. A "Tier II" offense includes any sex offense against a minor for which a person has been convicted, or an attempt or conspiracy to commit such an offense that involves:

1. The use of minors in prostitution, including solicitations;
 2. Enticing a minor to engage in criminal sexual activity;
 3. A non-forcible sexual act with a minor sixteen (16) or seventeen (17) years old;
 4. Sexual contact with a minor thirteen (13) years of age or older, whether directly or indirectly through the clothing, that involves the intimate parts of the body;
 5. The use of a minor in a sexual performance; or
 6. The production or distribution of child pornography.
- C. Certain federal offenses. Conviction for any of the following federal offenses or an attempt or conspiracy to commit such an offense shall be considered a conviction for a "Tier II" offense:
1. 18 U.S.C. § 1591 (sex trafficking by force, fraud, or coercion);
 2. 18 U.S.C. § 2423(d) (arranging, inducing procuring or facilitating the travel in interstate commerce of a minor for the purpose of engaging in illicit conduct for financial gain);
 3. 18 U.S.C. § 2244 (Abusive sexual contact, where the victim is 13 years of age or older);
 4. 18 U.S.C. § 2251 (sexual exploitation of children);
 5. 18 U.S.C. § 2251A (selling or buying of children);
 6. 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor);
 7. 18 U.S.C. § 2252A (production or distribution of material containing child pornography);
 8. 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the United States);
 9. 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity);
 10. 18 U.S.C. § 2422(b) (coercing a minor to engage in prostitution);
 11. 18 U.S.C. § 2423(a) (transporting a minor to engage in illicit conduct).
- D. Certain military offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note) that is similar to those offenses outlined in Section 3.02(A), (B), or (C) shall be considered a "Tier II" offense.

History

Source. LA 08-12, eff. March 23, 2012.

§ 5.3. Tier II Offenses

A. Recidivism and felonies. Any sex offense that is punishable by more than one year in jail where the offender has at least one (1) prior conviction or an attempt or conspiracy to commit such an offense for a Tier II sex offense, or has previously become a Tier II sex offender, is a "Tier III" offense.

B. General offenses. A "Tier III" offense includes any sex offense, for which a person has been convicted, or an attempt or conspiracy to commit such an offense that involves:

1. Non-parental kidnapping of a minor;
2. A sexual act with another by force or threat;
3. A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate; or
4. Sexual contact with a minor twelve (12) years of age or younger, including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing.

C. Certain federal offenses. Conviction for any of the following federal offenses shall be considered conviction for a "Tier III" offense:

1. 18 U.S.C. § 2241 (aggravated sexual abuse);
2. 18 U.S.C. § 2242 (sexual abuse);
3. 18 U.S.C. § 2243 (sexual abuse of a minor or ward);
4. Where the victim is twelve (12) years of age or younger, 18 U.S.C. § 2244 (abusive sexual contact).

Certain military offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C) (i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note) that is similar to those offenses outlined in Section 3.03(A), (B), or (C) shall be considered a "Tier III" offense.

History

Source. LA 08-12, eff. March 23, 2012.

§ 6. Designation as sex offender-Determination of offender's tier level

A. When an offender who meets the sex offender criteria described in 57 CNCA § 4 is before the Court for sentencing for a current offense, regardless of whether or not the individual is sentenced to a term of incarceration, receives a suspended sentence or any probationary term, including a deferred sentence imposed in violation of 22 CNCA § 991c, the Court must, as near as possible to the time of pronouncing the judgment and sentence, hold a separate civil hearing to designate the individual as a sex offender to whom this act applies. At the designation hearing, the Court shall:

1. Designate the person as a sex offender;

2. Make a determination of the tier level pursuant to 57 CNCA § 5 and assign to the person a tier level of I, II, or III;

3. Notify the person of the obligation to register as a sex offender as provided for in 57 CNCA § 7;

4. Notify the Marshal Service of the order of designation within twenty-four (24) hours. The Marshal Service shall ensure that the sex offender's fingerprints and palm prints are taken and registration information is collected within seventy-two (72) hours after receipt of the Court's written sex offender designation and findings; and

5. Notify the individual of the requirements of registration and community and public notification requirements under this act.

B. If the offender is sentenced to a term of imprisonment or supervision, a copy of the Court's written sex offender finding must be submitted to the facility where the offender will be incarcerated.

C. The Clerk of the Court that convicts and sentences a sex offender for the offense or offenses requiring registration under this act shall forward to the Marshal Service a certified copy of any order entered by the Court imposing any special condition or restriction on the sex offender which restricts or prohibits access to the victim or to minors.

D. If any person or agency obtains information which indicates that an individual who lives, works, or attends school in Cherokee Nation Indian Country, or who has received a conviction for a crime in Cherokee Nation Indian Country enumerated in 57 CNCA § 4 prior to the passage of this act, meets the sex offender criteria but that no jurisdiction, including Cherokee Nation, has made a written finding that the offender is a sex offender, such person or agency shall notify the Attorney General's Office. The Attorney General's Office shall file a civil petition with the District Court of Cherokee Nation requesting that the individual be designated as a sex offender. The Court shall hold a hearing to determine if the offender's criminal record meets the sex offender criteria of this act. If the Court finds that the offender meets the sex offender criteria because the offender has received a conviction for a violation of a law or laws enumerated in or similar to those listed in 57 CNCA § 4, the Court shall:

1. Designate the person as a sex offender;

2. Make a determination of the tier level of the person pursuant to 57 CNCA § 5 and assign to the person a tier level of I, II, or III;

3. Make a determination as to the remaining duration of registration for any Tier I or Tier II offender calculating the beginning of registration from the date of the individual's conviction for those who were not subject to incarceration for the offense or based on the release from custody for those subject to incarceration for the offense and providing;

4. Notify the person of the obligation to register as a sex offender as provided for in 57 CNCA § 7;

5. Notify the Marshal Service of the order of designation within twenty-four (24) hours. The Marshal Service shall ensure that the sex offender's fingerprints and palm prints are taken and registration information is collected within seventy-two (72) hours after receipt of the Court's written sex offender designation and findings; and

6. Notify the individual of the requirements of registration and community and public notification requirements under this act.

If the Attorney General's Office fails to establish that an offender meets the sex offender criteria under this section, and the Court does not make a written finding that an offender is a sex offender, the offender is not required to register with the Marshal Service as a sex offender. The Marshal Service, the Attorney General's Office, or any other law enforcement agency shall not administratively designate an offender as a sex offender without a written finding from the Court that the offender is a sex offender. The Cherokee Nation Marshal Service and Attorney General's Office shall make every effort to register all such offenders as soon as practicable; for such offenders who are currently incarcerated, under supervision or otherwise remaining in the criminal justice system within Cherokee Nation as quickly as possible and shall attempt to register such Tier III offenders within ninety (90) days of, such Tier II offenders within six (6) months of, and such Tier I offenders within one (1) year of the passage of this Act.

E. A person who resides, works, or attends school in Cherokee Nation Indian Country and who has not been designated as a sex offender by Cherokee Nation District Court but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in any federal, state, military, tribal or other jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sex offender, shall register in the manner provided in this act and shall be subject to community and public notification as provided in this act. A person who meets the criteria of this subsection is subject to the requirements and penalty provisions of this act until the person provides the Marshal Service with an order issued by the court or government entity that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the federal, military, tribal, state, or other jurisdiction in which the order was issued, which states that such designation has been removed or demonstrates to the Marshal Service that such designation, if not imposed by a court, has been removed by operation of law or court order in the federal, military, state, tribal or other jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sex offender under the laws of Cherokee Nation.

History

Source. LA 22-08, eff. January 12, 2009.

Amended. LA 08-12, eff. March 23, 2012.

§ 7. Registration-Time limits-Duration-Petition for release from registration requirement-Information to be provided to offender

A. Any person who meets the definition of sex offender as set forth in this act shall register, in person, as follows:

1. With the Cherokee Nation Marshal Service:

a. if the person is not incarcerated, within one (1) business day of receiving a conviction including a deferred sentence imposed in violation of 22 CNCA § 991c, or

b. not less than ten (10) business days prior to the release of the person from incarceration, except as provided in subsection (B) of this section; and

2. With the local law enforcement authority having jurisdiction in the area where the person resides or intends to reside either temporarily or permanently. The registration is required within three (3) business days after entering the jurisdiction of the local law enforcement authority;

3. With the local law enforcement authority having jurisdiction in the area where the person works or intends to work. The registration is required within three (3) business days after entering the jurisdiction of the local law enforcement authority; and

4. With the security office of the educational institution and the local law enforcement authority having jurisdiction in the area where the person is enrolled as a student either full-time or part-time. The registration is required within three (3) business days after entering the jurisdiction of the local law enforcement authority;

5. With the Cherokee Nation Marshal Service and the local law enforcement authority no less than three (3) business days prior to abandoning or moving from the address of the previous registration or any change to employment or change to student status. For purposes of this section, "local law enforcement authority" means:

a. i. the Cherokee Nation Marshal Service if the person resides or intends to reside or stay on Cherokee Nation Indian Country, or

ii. the municipal police department, if the person resides or intends to reside or stay at any place outside of Cherokee Nation Indian Country but within the jurisdiction of any municipality, or

iii. the county sheriff, if the person resides or intends to reside or stay at any place outside of Cherokee Nation Indian Country and outside the jurisdiction of any municipality, and

b. i. the Cherokee Nation Marshal Service if the person works or intends to work at any place on Cherokee Nation Indian Country, or

ii. the municipal police department, if the person works or intends to work at any place outside of Cherokee Nation Indian Country but within the jurisdiction of any municipality, or

iii. the county sheriff, if the person works or intends to work at any place outside of Cherokee Nation Indian Country and outside the jurisdiction of any municipality, and

c. the police or security department of any educational institution if the person:

i. enrolls as a full-time or part-time student,

ii. is a full-time or part-time employee at an institution of higher learning, or

iii. resides or intends to reside or stay on any property owned or controlled by the institution of higher learning.

B. Any person who:

1. Has received a conviction for an offense in another jurisdiction, which offense if committed or attempted in

Cherokee Nation, would have been punishable as one or more of the offenses listed in 57 CNCA § 4, and

2. Who enters Cherokee Nation and who has not been designated as a sex offender by a Court of the Cherokee Nation but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sex offender shall register, in person, as follows:

a. With the Cherokee Nation Marshal Service when:

i. the person enters and intends to be in the Nation for any purpose for five (5) consecutive days or longer, calculated beginning with the first day,

ii. has any type of full-time or part-time employment, with or without compensation for more than five (5) cumulative days in any sixty (60) day period, or

iii. is enrolled as a full-time or part-time student within Cherokee Nation. Such registration is required within three (3) business days after entering the Nation;

b. With the Cherokee Nation Marshal Service no less than three (3) business days prior to abandoning or moving from the address of the previous registration; and

C. When a person has been designated as a sex offender by Cherokee Nation District Court, the person shall be required to register as follows:

1. For a period of fifteen (15) years, if the person is a Tier I registrant;

2. For a period of twenty-five (25) years, if the person is Tier II registrant; and

3. For life, if the person is a Tier III registrant.

The registration period shall begin, (1) if the person is sentenced to incarceration for the registration offense, from the date the person is released from custody, or (2) if the person receives a non-incarcerative sentence for the registration offense, from the date the offender is sentenced. The information received pursuant to the registration with the Cherokee Nation Marshal Service required by this section shall be maintained by the Cherokee Nation Marshal Service for at least ten (10) years from the date of the last registration. Any person required to register by another jurisdiction shall be required to maintain such registration pursuant to 57 CNCA § 6(E).

D. Any person who:

1. has been assigned to the Tier I designation and who has been registered for a period of ten (10) years; or

2. has been assigned to the Tier III designation and was required to register on the basis of a juvenile delinquency adjudication and who has been registered for a period of twenty-five (25) years;

may petition the District Court for the purpose of removing the tier level and sex offender designation and

allowing the person to no longer be subject to the registration requirements of the Sex Offender Registration and Notification Act, thereby reducing the registration period. The District Court may reduce the registration duration and lift the registration requirements for such an offender only if the offender can show by clear and convincing evidence the following:

- a. The registrant has not been convicted of any offense, regardless of its designation as a misdemeanor or felony during the registration period, and
- b. The registrant has successfully completed any periods of supervised release, probation, and parole without any revocation or acceleration, and
- c. The registrant has successfully completed an appropriate sex offender treatment program certified by either the Attorney General of the United States or the Attorney General of Cherokee Nation.

E. When registering an individual as provided in this section the Cherokee Nation Marshal Service shall:

1. Inform the registrant of the duty to register and obtain the information required for registration as described in this section;
2. Inform the registrant that if the registrant changes address within Cherokee Nation Indian Country, the registrant shall give notice of the move and the new address to the Cherokee Nation Marshal Service in writing no later than three (3) business days before the offender establishes residence or is temporarily domiciled at the new address;
3. Inform the registrant that if the registrant changes address outside of Cherokee Nation Indian Country, the registrant shall give notice of the move and shall register the new address with the Cherokee Nation Marshal Service and with a designated law enforcement agency in the new jurisdiction not later than ten (10) calendar days before the offender establishes residency or is temporarily domiciled in the new jurisdiction, if such jurisdiction has a registration requirement;
4. Inform the registrant that if the registrant participates in any full-time or part-time employment, outside of Cherokee Nation Indian Country, with or without compensation for more than fourteen (14) cumulative days in any sixty (60) day period or an aggregate period of thirty (30) days or more in a calendar year, then the registrant has a duty to register as a sex offender in the jurisdiction where the offender is so employed;
5. Inform the registrant that if the registrant enrolls in any type of school outside of Cherokee Nation Indian Country as a full-time or part-time student then the registrant has a duty to register as a sex offender in the jurisdiction where the school is found;
6. Inform the registrant that if the registrant enrolls in any school within the Cherokee Nation as a full-time or part-time student, then the registrant has a duty to register as a sex offender with both the Cherokee Nation Marshal Service and the security office of the school, if any; and
7. Inform the registrant that if the registrant participates in any full-time or part-time employment at any school, with or without compensation, or participates in any vocational course or occupation at any school in Cherokee Nation, then the registrant has a duty to notify the Cherokee Nation Marshal Service and the security office of the school in writing of such employment or participation at least three (3) days before commencing or upon terminating such employment or participation; and

8. Inform the registrant that if the registrant graduates, transfers, drops, terminates or otherwise changes enrollment or employment at any school in Cherokee Nation, then the registrant shall notify the Cherokee Nation Marshal Service and the school security department in writing of such change in enrollment or employment within three (3) business days of the change;

9. Inform the registrant that if the registrant changes his or her name or alias, telephone or pager information, vehicle, color of vehicle or vehicle registration, or any e-mail or instant message address or other internet address or identifier, or makes plans to travel outside of the United States, the registrant must notify the Cherokee Nation Marshal Service within three (3) business days of the change;

10. Require the registrant to read and sign a form stating that the duty of the person to register under the Sex Offender Registration and Notification Act has been explained.

F. Any person who resides outside Cherokee Nation Indian Country and who has been convicted of an offense or received a deferred judgment for an offense in Cherokee Nation, or in another jurisdiction, which offense if committed or attempted in Cherokee Nation would have been punishable as one or more of the offenses listed in 57 CNCA § 4, and who is the spouse of a person living in Cherokee Nation shall be registered with the Cherokee Nation Marshal Service when the person enters and intends to be in Cherokee Nation Indian Country for any purpose for five (5) consecutive days or longer, calculated beginning with the first day or an aggregate period of five (5) days or longer in a calendar year. Such registration is required at least three (3) business days prior to entering Cherokee Nation Indian Country.

G. The duty to register as a sex offender in Cherokee Nation shall not be prevented if, at the time of registration, it is determined that the person owns or leases a residence in violation of 57 CNCA § 17.

History

Source. LA 22-08, eff. January 12, 2009.

Amended. LA 08-12, eff. March 23, 2012.

§ 8. Required registration information-Conviction data, fingerprints and palm prints-Notice of certain changes to registration information

A. Any registration with the Cherokee Nation Marshal Service required by the Sex Offender Registration and Notification Act shall be in a form approved by the Marshal Service and shall include, at a minimum, the following information, in digitized form, about the person registering:

1. The name of the person and all aliases, pseudonyms and nicknames used or under which the person has been known, including ethnic or tribal names;

2. A complete description of the person, including, social security number (both actual and purported numbers), age, race, sex, date of birth (both actual and purported dates), height, weight, hair and eye color, identifying marks and tattoos, a photograph and fingerprints and palm prints;

3. When requested by the Cherokee Nation Marshal Service, such registrant shall submit to a blood, saliva or other scientifically accepted test for purposes of a deoxyribonucleic acid (DNA) profile to be submitted to the

Combined DNA Index System Database (CODIS). Submission to testing for individuals registering shall be within thirty (30) days of registration. Registrants who already have valid samples on file in CODIS shall not be required to submit duplicate samples for testing;

4. The offenses listed in 57 CNCA § 4 for which the person has received a conviction, where the offense was committed, where the person received the conviction, the date of the conviction, a brief description of the crime or crimes committed by the offender, and the name under which the person received the conviction;

5. All telephone numbers for fixed locations and cellular numbers, including pager numbers;

6. The name and location of each hospital or penal institution to which the person was committed for each offense listed in 57 CNCA § 4;

7. Where the person previously resided, where the person currently resides either permanently or temporarily, how long the person has resided there, how long the person expects to reside there, and how long the person expects to remain in the Cherokee Nation:

a. Addresses shall include a rural route address and a post office box.

b. A post office box shall not be provided in lieu of a physical residential address. In instances where there is no physical address, the registrant shall give a specific description to the location.

c. If the sex offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, the sex offender shall also provide to the Marshal Service written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home.

d. If a sex offender's place of residence is a vessel, live-aboard vessel, or houseboat, the sex offender shall also provide to the Marshal Service written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

8. A description of all occupants residing with the person registering, including, but not limited to, name, date of birth, gender, relation to the person registering, and how long the occupant has resided there;

9. If the sex offender is enrolled, employed, or carrying on a vocation at an institution of higher education, the sex offender shall also provide to the Marshal Service the name, address, and county of each institution, including each campus attended, and the sex offender's enrollment or employment status;

10. The name of any entity for whom the sex offender works whether for remuneration or voluntarily or as an unpaid intern or whether the person is self-employed, the position held by the sex offender, and the address where the sex offender will work or, if not a fixed location, as definite a description of the work location as is possible;

11. All professional licenses held by the person;

12. The license plate number, vehicle identification number, and description of all vehicles owned, operated, or regularly driven by the sex offender, including watercraft and airplanes, and a description of where these

vehicles are habitually parked, docked, or otherwise kept;

13. A copy of the person's passport, and if the person is an alien, a copy of the person's immigration documentation;

14. A copy of the person's driver's license and/or any other identification cards;

15. The tier level of the person;

16. Any and all electronic mail addresses, instant message names, or other designations or monikers used for self-identification or routing in Internet communications or postings prior to using such electronic mail address or instant message name and any such electronic mail address or instant message name existing or otherwise in use at the time of registration;

17. The name of the federally-recognized Indian tribe in which the person is enrolled, and a copy of the person's tribal enrollment card or Certificate Degree of Indian Blood;

18. The text of the registration offense;

19. Criminal history of the person, including dates of all arrests and convictions, status of parole, probation or supervised release, registration status, and outstanding arrest warrants;

20. The age, gender, and race of the offender's victims; and

21. Any other information determined necessary by the department, including non-privileged personnel and treatment records and evidentiary genetic markers when available.

B. 1. Any person subject to the provisions of the Sex Offender Registration and Notification Act who:

a. changes their name or alias, a permanent or temporary address, telephone or pager information, employment or termination thereof, school attendance, vehicle, color of vehicle or vehicle registration, or any e-mail or instant message address or other internet address or identifier, shall report in person to the Cherokee Nation Marshal Service and give a written notice of the change and the new address, name, employment, school, e-mail or instant message address, vehicle information, no later than three (3) business days prior to the change taking. Within three (3) business days of receipt of the updated information, the Marshal Service shall notify the jurisdictions listed in 57 CNCA § 10(A).

shall report in person to the Cherokee Nation Marshal Service and give a written notice of the change and the new address, name, employment, school, e-mail or instant message address, vehicle information, no later than three (3) business days prior to the change taking. Within three (3) business days of receipt of the updated information, the Marshal Service shall notify the jurisdictions listed in 57 CNCA § 10(A), and shall update the information in the registration database, or

b. makes plans to travel outside of the United States shall report in person to the Cherokee Nation Marshal Service and give a written notice no later than twenty-one (21) business days prior to the beginning of the travel. Within three (3) business days of receipt of the updated information, the Marshal Service shall notify the jurisdictions listed in 57 CNCA § 10(A), and shall update the information in the registration database. The Marshal Service shall notify the United States Marshals Service within twenty-four (24) hours of receipt of

information that an individual will be traveling outside of the United States.

2. If a new address of a residence, school or workplace is outside of Cherokee Nation Indian Country:

a. the Cherokee Nation Marshal Service shall, within three (3) business days, notify the new local law enforcement authority by teletype, electronic transmission, or letter of the change of address;

b. the offender shall notify the new local law enforcement authority of any previous registration; and

c. the new local law enforcement authority shall notify the most recent registering agency by electronic transmission, teletype or letter of the offender's registration of the new address in the new jurisdiction.

3. A sex offender who remains at an address after reporting his or her intent to vacate such address shall, within three (3) days after the date upon which the offender indicated he or she would or did vacate such residence, report in person to the Marshal Service for the purpose of reporting his or her address at such residence. An offender who makes a report as required under paragraph 1 but fails to make a report as required under this paragraph commits a crime.

History

Source. LA 22-08, eff. January 12, 2009.

Amended. LA 08-12, eff. March 23, 2012.

§ 9. Notice of and access to registries-Biological samples-Habitual or aggravated sex offender designation -Immunity

A. Conviction data, digital DNA results, and fingerprints and palm prints shall be promptly transmitted at the time of registration to the Federal Bureau of Investigation (FBI) if the information was not previously sent at the time of conviction, and to the Oklahoma State Bureau of Investigation (OSBI) or other law enforcement agency if required pursuant to a Memorandum of Agreement or Understanding.

B. The Marshal Service shall maintain a file of all sex offender registrations. A copy of the information contained in the registration shall promptly be available to all tribal, federal, state, and local law enforcement agencies, the Group Leader of Education, the Group Leader of Health, and the National Sex Offender Registry maintained by the Federal Bureau of Investigation. The file shall promptly be made available for public inspection or copying pursuant to rules promulgated by the Cherokee Nation Marshal Service. The Cherokee Nation Marshal Service shall promptly provide all municipal police departments and all county sheriff departments a list of those sex offenders registered and living on Cherokee Nation Indian Country within such agency's respective municipality or county.

C. The Group Leader of Education is authorized to copy and shall distribute information from the sex offender registry to individual public and private educational facilities within Cherokee Nation Indian Country with a notice using the following or similar language: "A person whose name appears on this registry has been convicted of a sex offense. Continuing to employ a person whose name appears on this registry may result in civil liability for the employer or criminal prosecution pursuant to 57 CNCA § 15."

D. The Group Leader of Health is authorized to distribute information from the sex offender registry to any

nursing home or long-term care facility. Nothing in this subsection shall be deemed to impose any liability upon or give rise to a cause of action against any person, agency, organization, or company for failing to release information in accordance with the Sex Offender Registration and Notification Act.

E. The Marshal Service's sex offender registration list is a public record and shall be available upon request, without restriction, at a cost that is no more than what is charged for other records provided by the Marshal Service pursuant to the Cherokee Nation Freedom of Information Act, 67 CNCA § 101 et seq.

1. The Department is authorized to disseminate this public information by any means deemed appropriate.
2. When the Marshal Service provides information regarding a registered sex offender to the public, Marshal Service personnel must advise the person making the inquiry that positive identification of a person believed to be a sex offender cannot be established unless a fingerprint comparison is made, and that it is illegal to use public information regarding a registered sex offender to facilitate the commission of a crime.
3. Except in cases when the release is to law enforcement, to a prosecuting attorney, to a court, or pursuant to a valid court order, the release of the sex offender registration list under this section shall not include the following information:
 - a. social security number of the sex offender,
 - b. victim identification,
 - c. arrests not resulting in conviction,
 - d. travel and immigration document numbers.
4. E-mail addresses and instant mail addresses shall not be released to the public generally, however, the Marshal Service shall allow the public to inquire as to whether a specified address belongs to a registered sex offender, and when such an address is registered to a sex offender, the Marshal Service is permitted to confirm such registration.

F. When the Marshal Service sends a copy of or otherwise makes the sex offender registry available to any public or private school offering any combination of prekindergarten through twelfth grade classes or child care facility licensed by the State of Oklahoma or the Nation, the agency shall provide a notice using the following or similar language: "A person whose name appears on this registry has been convicted of a sex offense. Continuing to employ a person whose name appears on this registry may result in civil liability for the employer or criminal prosecution pursuant to 57 CNCA § 15 or under the statutes of the State of Oklahoma."

G.1. Samples of blood, saliva, or other biological material for DNA testing required by subsection (A) of this section shall be taken by employees of the Marshal Service. Said individuals shall be properly trained to collect blood, saliva, or such biological samples as are required for testing. Persons collecting samples for DNA testing pursuant to this section shall be immune from civil liabilities arising from this activity.

2. If the Marshal Service collects DNA, it shall ensure the collected samples are mailed or hand-delivered to the contracted lab within ten (10) days of the time the subject appears for testing or such period as is required by the laboratory, whichever is shorter. The Marshal Service shall use sample kits provided by the contracted lab and procedures promulgated by the contracted lab.

3. Persons subject to DNA testing pursuant to this section shall be required to pay to the Marshal Service a fee to be established by the Marshal Service.

H. If the probation and parole officer supervising a person subject to registration receives information to the effect that the status of the registered sex offender has changed in any manner that affects proper supervision of the person including, but not limited to, a change in the physical health of the person, address, employment, or educational status, higher educational status, incarceration, or terms of release, the supervising officer or administrator shall notify the Marshal Service of that change.

History

Source. LA 22-08, eff. January 12, 2009.

Amended. LA 08-12, eff. March 23, 2012.

§ 10. Forwarding of registration information and tier level-Community notification-Absconders

A. Within three (3) business days from the date on which a person registers as a sex offender or updates information under this act, the Marshal Service shall forward the registration information, as provided in 57 CNCA § 9, and tier level to:

1. the Federal Bureau of Investigation;
2. the United States Marshals Service;
3. the Bureau of Indian Affairs;
4. the city or county law enforcement authority and district attorney's office in the county in which the person expects to reside, work, or attend school, if the person expects to reside, work, or attend school outside of Cherokee Nation Indian Country;
5. the Oklahoma Department of Corrections;
6. Cherokee Nation Human Resources and any other agency responsible for conducting employment-related background checks;
7. Cherokee Nation Indian Child Welfare and the Oklahoma Department of Human Services;
8. the probation office of the registrant, if any, and
9. any other organization or agency as required by the Adam Walsh Act.

B. The Marshal Service is responsible for the online maintenance of current information regarding each registered sex offender and such information shall be accessible to the public. The registry shall include the information listed in paragraph 2 of subsection (D) of this section. The site shall enable searches by name, county, city and/or town, or zip code or geographic radius.

1. The information required to be included on the sex offender website shall be posted on the website within three (3) business days;

2. The sex offender website shall include a function under which organizations and members of the public who provide an e-mail address to which notices can be sent can request notification when a sex offender commences residence, employment, or school attendance within the zip code or a geographic area specified by the requestor;

3. Upon posting on the website of new residence, employment, or school attendance information, for a sex offender within an area specified by the requestor, the system will automatically send an e-mail notice to the requestor that identifies the sex offender;

4. The website shall include links to sex offender safety and education resources;

5. The website shall include a warning that information on the site should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address and that any such action could result in civil or criminal penalties;

6. The website shall include instructions on how to seek correction of information that an individual contends is erroneous.

C. The Marshal Service must maintain access for state, local, and federal law enforcement agencies to obtain instantaneous locator file and offender characteristics information on all released registered sex offenders for purposes of monitoring, tracking, and prosecution.

D. 1. Upon registration of any person designated as a sex offender, or upon updating of registration information of any person designated as a sex offender, the Marshal Service shall post on the website and may notify, by any method of communication it deems appropriate, anyone that the Marshal Service deems appropriate, including, but not limited to:

a. the family of the sex offender,

b. any prior victim of the sex offender if the whereabouts of such victim(s) is known,

c. residential neighbors and churches, community parks, schools, convenience stores, businesses and other places within a one-mile radius of the offender's registered permanent or temporary address that children or other potential victims may frequent,

d. any nursing facility, specialized facility, residential care home, continuum-of-care facility, assisted living center, and adult day care facility, or similar facility within a one-mile radius of the offender's registered permanent or temporary address, and

e. any individual or organization who specifically requests that they be notified of such registration.

2. The posting on the website and any notification shall, at a minimum, include the following information:

a. the name of the sex offender,

- b. the physical address of each residence of the sex offender, the address of each place where the sex offender is an employee, and the address of any place where the sex offender is or will be a student,
 - c. a physical description of the sex offender, including, but not limited to, age, height, weight, eye color and hair color,
 - d. a current photograph of the sex offender,
 - e. the tier level of the person and whether or not the person is an absconder,
 - f. a description of the vehicle that the sex offender is known to drive including license plate number, and
 - g. a description of the offense for which the sex offender is registered and any other sex offenses for which the sex offender has been convicted.
3. The notification may also, but is not required to, include the following information:
- a. any conditions or restrictions upon the probation, parole or conditional release of the sex offender,
 - b. a description of the primary targets of the sex offender, and
 - c. the name and telephone number of the probation or parole officer of the sex offender, if any.
4. The Marshal Service shall make the notification provided for in this subsection regarding a sex offender available to any person upon request.
5. The Marshal Service shall not display on the website or otherwise provide to the public any arrest for which the offender did not receive a conviction, the offender's social security number, travel and immigration document numbers, or the identity of any victim(s).

History

Source. LA 22-08, eff. January 12, 2009.

Amended. LA 08-12, eff. March 23, 2012.

United States Code

Bureau of Indian Affairs, see 25 U.S.C. § 1 et seq.

§ 11. Verification of offender's address

A. The Marshal Service shall conduct verification of the registration information of each registered sex offender by requiring the registrant to verify their registration information in-person at the Marshal Service Office as follows:

- 1. on an annual basis, if the tier level of the person is I, or

2. every six (6) months, if the tier level of the person is II, or
3. every ninety (90) days, if the tier level of the person is III.

The Marshal Service may determine the appropriate times and days for reporting by the sex offender which shall be consistent with the reporting requirements of this subsection.

B. Each verification shall include the following:

1. Verification by the registrant of existing information for accuracy where the registrant shall inform the Marshal Service if any of the information required to be submitted pursuant to 57 CNCA § 8 has changed;
2. Taking a current photograph; and
3. Production of proof by the registrant of the identity of the person and current address.

C. The Marshal Service shall, within two (2) business days, electronically submit and update all information provided by the sex offender to those law enforcement departments listed in 57 CNCA § 10(B).

D. In addition to the in-person verification required by this section, the Marshal Service may develop a system by which Marshal Service personnel go to the sex offender's registered physical addresses in Cherokee Nation Indian Country and verify the residence of the sex offender at such temporary or permanent address.

E. In any case where the Marshal Service receives notice from any other jurisdiction that a registered offender is transferring his or her place of residence, employment, or school to a location within Cherokee Nation Indian Country and the offender fails to register with the Marshal Service within the required time, the Marshal Service shall provide notice of this failure to register to the other jurisdiction from which the Marshal Service received notice that the offender would be transferring a residence, employment, or school into Cherokee Nation Indian Country.

F. The Cherokee Nation Marshal Service shall notify the applicable offices of the Federal Bureau of Investigation and the United States Marshals Service and local law enforcement authority of the appropriate county or city, if the Marshal Service is unable to verify the address of a sex offender within thirty (30) days of an initial attempt to verify the registrant's address. The Marshal Service may notify the Office of the Attorney General whenever it comes to the attention of the Marshal Service that a sex offender is not in compliance with any provisions of this act. If the Marshal Service receives information that a sex offender may have absconded, the Marshal Service shall:

1. seek an arrest warrant for the offender's arrest if the legal requirements for doing so are satisfied; and
2. notify the United States Marshals Service and any relevant local law enforcement authority; and
3. update the registration database to reflect the offender's status as an absconder and seek to enter the sex offender into the National Crime Information Center Wanted Person File.

History

Source. LA 22-08, eff. January 12, 2009.

Amended. LA 08-12, eff. March 23, 2012.

§ 12. Notifying offenders of obligation to register

A. The Marshal Service, prior to release from incarceration of a person subject to the provisions of the Sex Offender Registration and Notification Act, and each Judge who suspends the sentence of a person subject to the provisions of the Sex Offender Registration and Notification Act or orders any probationary term, including a deferred sentence imposed in violation of 22 CNCA § 991c, for a person subject to the provisions of the Sex Offender Registration and Notification Act, shall prior to discharge or release of said person:

1. explain to the person the duty to register pursuant to the Sex Offender Registration and Notification Act;
2. require the person to sign a written statement that the duty to register has been explained and the person understands the duty to register; and
3. obtain the address at which the person is to reside upon discharge or release.

B. The Marshal Service shall coordinate with federal law enforcement, and surrounding states and Indian tribes to establish necessary procedures for notifying offenders that reside in other state or tribal jurisdictions but work or attend school within Cherokee Nation of the obligation to register pursuant to this act and the procedure for registration of those offenders.

History

Source. LA 22-08, eff. January 12, 2009.

Amended. LA 08-12, eff. March 23, 2012.

§ 13. False or misleading registration information

No person subject to the provisions of the Sex Offender Registration and Notification Act, shall furnish any false or misleading information in the registration required by this act.

History

Source. LA 22-08, eff. January 12, 2009.

Amended. LA 08-12, eff. March 23, 2012.

§ 14. Immunity

All public agencies and employees and officials of Cherokee Nation, and all individuals or entities acting at the request or upon the direction of any law enforcement agency, are immune from civil liability for damages for good faith compliance with the requirements of this act or for the release of information under this act, and shall be presumed to have acted in good faith in compiling, recording, reporting, or releasing the information. The presumption of good faith is not overcome if a technical or clerical error is made, including but not limited to errors made because information is incomplete or incorrect because a sex offender fails to report or falsely

reports his or her current place of permanent or temporary residence.

Nothing in this act shall be deemed to impose any liability upon or to give rise to a cause of action against any public official, public employee, or public agency for releasing information to the public or for failing to release information in accordance with the Sex Offender Registration and Notification Act. Nothing in this act shall be construed to prevent law enforcement officers from notifying members of the public of any persons that pose a danger under circumstances that are not enumerated in the Sex Offender Registration and Notification Act.

History

Source. LA 22-08, eff. January 12, 2009.

Amended. LA 08-12, eff. March 23, 2012.

§ 15. Penalties

A. Except as otherwise specifically provided, any person required to register pursuant to the provisions of the Sex Offender Registration and Notification Act who violates any provision of said act shall, upon conviction, be guilty of a crime. Any person convicted of a violation of this section shall be punished pursuant to 21 CNCA § 10. Any non-Indian shall be subject to civil exclusion from the Cherokee Nation. Any non-Indian individual found to be in violation of this section shall be subject to a civil action for exclusion from Cherokee Nation Indian Country. Such action shall be commenced by the Office of the Attorney General by filing a petition for exclusion in the District Court. The individual shall be excluded upon a written finding, by the District Court, after notice and an opportunity to be heard being provided to the defendant, by clear and convincing evidence, that: (1) the individual is non-Indian; (2) the individual is required to register pursuant to the Sex Offender Registration and Notification Act; and (3) the individual is residing on Cherokee Nation Indian Country in violation of this subsection. The individual shall remove himself or herself from Cherokee Nation Indian Country no less than thirty (30) days from the entry of the District Court's order that he or she is in violation of this subsection or be in contempt of court. Any individual found to be in contempt of court under this section may be removed from Cherokee Nation Indian Country by the Marshal Service. Any individual ordered to be excluded from Cherokee Nation Indian Country under this subsection shall be required to notify the Marshal Service of the other jurisdiction in which the individual intends to reside upon leaving Cherokee Nation Indian Country, and the Marshal Service shall notify such other jurisdiction of the intended relocation.

B. A sex offender who works, whether for compensation or as a volunteer, at any business, school, day care center, park, playground, or other place where children regularly congregate, commits a crime punishable pursuant to 21 CNCA § 10.

C. Any person who misuses public records information relating to a sex offender to secure a payment from such an offender, who knowingly distributes or publishes false information relating to such an offender which the person misrepresents as being public records information, or who materially alters public records information with the intent to misrepresent the information, including documents, summaries of public records information provided by law enforcement agencies, or public records information displayed by law enforcement agencies on websites or provided through other means of communication, commits a crime punishable by up to six (6) months of imprisonment or a One Thousand Dollars (\$1,000.00) fine or both.

D. An arrest on charges of failure to register, the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to

register when the sex offender has been provided and advised of his or her statutory obligation to register under 57 CNCA § 12. A sex offender's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sex offender charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sex offender who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register. Registration following such arrest, service, or arraignment is not a defense and does not relieve the sex offender of criminal liability for the failure to register.

E. Any person who has reason to believe that a sex offender is not complying, or has not complied, with the requirements of this section and who, with the intent to assist the sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, his or her noncompliance with the requirements of this section:

1. withholds information from, or does not notify, the law enforcement agency about the sex offender's noncompliance with the requirements of this section, and, if known, the whereabouts of the sex offender;
2. harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the sex offender;
3. conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the sex offender; or
4. provides information to the law enforcement agency regarding the sex offender which the person knows to be false information,

commits a crime punishable pursuant to 21 CNCA § 10. This subsection does not apply if the sex offender is incarcerated in or is in the custody of a state or tribal correctional facility, a private correctional facility, a local jail, or a federal correctional facility.

History

Source. LA 22-08, eff. January 12, 2009.

Amended. LA 08-12, eff. March 23, 2012.

§ 16. Registered offenders prohibited from certain employment; penalties; civil damages

A. It is unlawful for any person required to register pursuant to the Cherokee Nation Sex Offender Registration and Notification Act to work with or provide services to children or to work on school premises. Violation of this section shall be a crime punishable by imprisonment up to one (1) year or a fine not to exceed Five Thousand Dollars (\$5,000.00) or by both such fine and imprisonment.

B. It is unlawful for any person or business which contracts for work to be performed on school premises to knowingly and willfully allow any employee who is required to be registered pursuant to the Cherokee Nation Sex Offender Registration and Notification Act to work with children or to work on school premises. Upon conviction for any violation of the provisions of this subsection, the violator shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00). In addition, the violator may be liable for civil damages.

C. A person or business who offers or provides services shall ensure compliance with subsection (B) of this section,

D. It is unlawful for any law enforcement agency to employ any person as a peace officer or criminal investigator who has received a conviction for any offense requiring the individual to register as a sex offender pursuant to this act. The Marshal Service shall notify the Council on Law Enforcement Education and Training (CLEET) if any peace officer, private investigator, or security guard, is CLEET-certified and receives a conviction for a crime enumerated in 57 CNCA § 4 occurring within Cherokee Nation Indian Country. Any violator of this section shall be subject to a civil fine of no more than Five Thousand Dollars (\$5,000.00).

History

Source. LA 22-08, eff. January 12, 2009.

Amended. LA 08-12, eff. March 23, 2012.

§ 17. Residency restriction; penalty

A. It is unlawful for any person registered pursuant to the Sex Offender Registration and Notification Act to reside, either temporarily or permanently, within a two-thousand-foot (2,000') radius of any public or private school site, educational institution, a playground or park that is zoned by city, county, state, federal or tribal government, or a licensed child care center. Establishment of a day care center or park in the vicinity of the residence of a registered sex offender will not require the relocation of the sex offender or the sale of the property. On the effective date of this act, the distance indicated in this section shall be measured from the nearest property line of the residence of the person to the nearest property line of the public or private school site, educational institution, playground, park, or licensed child care facility; provided, any nonprofit organization established and housing sex offenders prior to the effective date of this provision shall be allowed to continue its operation.

B. Nothing in this provision shall require any person to sell or otherwise dispose of any real estate or home acquired or owned prior to the conviction of the person as a sex offender.

C. The provisions of this section shall not apply to any registered sex offender residing in a hospital or other facility certified or licensed to provide medical services.

D. It is prohibited for any non-Indian person required to register pursuant to the Sex Offender Registration and Notification Act to reside on Cherokee Nation Indian Country, either temporarily or permanently. Any non-Indian individual found to be in violation of this section shall be subject to a civil action for exclusion from Cherokee Nation Indian Country. Such action shall be commenced by the Office of the Attorney General by filing a petition for exclusion in District Court. The individual shall be excluded upon a written finding, by District Court, after notice and an opportunity to be heard being provided to the defendant, by clear and convincing evidence, that: (1) the individual is non-Indian; (2) the individual is required to register pursuant to the Sex Offender Registration and Notification Act; and (3) the individual is residing on Cherokee Nation Indian Country in violation of this subsection. The individual shall remove himself or herself from Cherokee Nation Indian Country no less than thirty (30) days from the entry of District Court's order that he or she is in violation of this subsection or be in contempt of court. Any individual found to be in contempt of court under this section may be removed from the Cherokee Nation Indian Country by the Marshal Service. Any individual

ordered to be excluded from the Cherokee Nation Indian Country under this subsection shall be required to notify the Marshal Service of the other jurisdiction in which the individual intends to reside upon leaving the Cherokee Nation Indian Country, and the Marshal Service shall notify such other jurisdiction of the intended relocation.

E. Any person willfully violating the provisions of this section by intentionally moving into any neighborhood or to any real estate or home within the prohibited distance shall, upon conviction, be guilty of a crime punishable pursuant to 21 CNCA § 10.

History

Source. LA 22-08, eff. January 12, 2009.

Amended. LA 08-12, eff. March 23, 2012.