



# Sex Offender Registration and Notification In the United States Current Case Law and Issues — March 2018

## Registration of Juvenile Offenders

State juvenile justice systems within the United States have handled juvenile sex offender registration in different ways. For example, at the time of SORNA's passage, 36 states required certain juveniles adjudicated delinquent of sex offenses to register as sex offenders, while the remainder did not require any such juveniles to register. SORNA's minimum standards require registration for certain juvenile offenders adjudicated delinquent of serious sex offenses.<sup>1</sup> However, SORNA does *not* require jurisdictions to disclose information about juveniles adjudicated delinquent on their public registry websites.<sup>2</sup>

On August 1, 2016, the Supplemental Guidelines for Juvenile Registration under the Sex Offender Registration and Notification Act were published in the Federal Register.<sup>3</sup> In the event that a jurisdiction does not exactly conform with SORNA's juvenile registration requirements, the Juvenile Supplemental Guidelines permit the SMART Office to expand its inquiry in the process of determining if a jurisdiction has substantially implemented SORNA's juvenile registration provisions. Specifically, the Juvenile Supplemental Guidelines allow the SMART Office to review the following:

- (i) Policies and practices to prosecute as adults juveniles who commit serious sex offenses;
- (ii) Policies and practices to register juveniles adjudicated delinquent for serious sex offenses; and
- (iii) Other policies and practices to identify, track, monitor or manage juveniles adjudicated delinquent for serious sex offenses who are in the community and to ensure that the records of their identities and sex offenses are available as needed for public safety purposes.<sup>4</sup>

## Juvenile Registration Requirements Vary Across Jurisdictions

Despite SORNA's requirement that juveniles adjudicated delinquent of certain offenses register as a sex offender, the implementation of this provision varies across jurisdictions.<sup>5</sup> Some jurisdictions do not register any juveniles at all; some limit the ages of the offenders who might be registered; some limit the offenses for which they might be registered; and others limit the duration, frequency or public availability of registration information.<sup>6</sup> Some jurisdictions have mandatory registration provisions for certain juveniles, some are discretionary, and some have a hybrid approach.<sup>7</sup> At least one jurisdiction required a person who committed an offense at age 12 — who would *not* have been required to register under SORNA had an adjudication occurred at

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the time of the offense — to register as an adult because the conviction for that offense did not occur until after the individual was 18.<sup>8</sup>

As with adult registration requirements, registration requirements for juveniles are generally triggered by the equivalent of a conviction for a sex offense in juvenile court, which is typically referred to as an “adjudication of delinquency.” Most jurisdictions mandate registration for juveniles transferred and convicted for sex offenses in adult court. In addition, one federal circuit court has held that a person previously adjudicated delinquent of a SORNA-registerable offense in state court can be ordered to register as a sex offender as a mandatory condition of probation for a subsequent, unrelated federal conviction.<sup>9</sup>

Because of the varying nature of juvenile justice systems across jurisdictions, problems often arise when a juvenile is adjudicated delinquent in one jurisdiction and then moves to another.<sup>10</sup> Many of those issues mimic the issues discussed above regarding adult offenders.

### Issues Unique to Juvenile Adjudications

There are some issues unique to juvenile court cases. When a jurisdiction requires that juveniles be subjected to registration requirements more onerous than those imposed on adults convicted of the same offense, equal protection issues exist.<sup>11</sup> In two states, courts ruled that the automatic lifetime registration requirement as applied to adjudicated juveniles unconstitutionally violated due process and, in one of those states, the prohibition against cruel and unusual punishment.<sup>12</sup> However, when a juvenile court judge refuses to order a juvenile to register, as required by statute, a writ of mandamus may be successfully pursued by the state.<sup>13</sup>

### Federal Juvenile Delinquency Act

There are particular issues which arise when a person is ordered to register by a federal court because of a federal adjudication of delinquency for a sex offense.<sup>14</sup> In particular, multiple courts have held that it is *not* a contravention of the Federal Juvenile Delinquency Act confidentiality provisions to require such individuals to register as a sex offender.<sup>15</sup>

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<sup>1</sup> SORNA’s minimum standards require that jurisdictions register juveniles who were at least 14 years old at the time of the offense and who have been adjudicated delinquent for committing (or attempting or conspiring to commit) a sexual act with another by force, by the threat of serious violence or by rendering unconscious or drugging the victim. “Sexual Act” is defined in 18 U.S.C. § 2246.

<sup>2</sup> The Supplemental Guidelines (2011) give jurisdictions full discretion over whether they will post information about juveniles adjudicated delinquent of sex offenses on their public registry website Supplemental Guidelines for Juvenile Registration under the Sex Offender Registration and Notification Act, 81 Fed. Reg. 50,552 (Aug. 1, 2016), available at [www.gpo.gov/fdsys/pkg/FR-2016-08-01/pdf/2016-18106.pdf](http://www.gpo.gov/fdsys/pkg/FR-2016-08-01/pdf/2016-18106.pdf).

<sup>3</sup> *Id.*

<sup>4</sup> SMARTWatch Dispatch, *Juvenile Registration and SORNA* (Sept. 2016), [www.smart.gov/pdfs/juvenile-dispatch-final-2016.pdf](http://www.smart.gov/pdfs/juvenile-dispatch-final-2016.pdf).

<sup>5</sup> A survey of the varying juvenile registration responsibilities imposed by each state can be found in *A Snapshot of Juvenile Registration and Notification Laws: A Survey of the United States* (2011), [www.njjn.org/uploads/digital-library/SNAPSHOT\\_web10-28.pdf](http://www.njjn.org/uploads/digital-library/SNAPSHOT_web10-28.pdf).

<sup>6</sup> See, e.g., *Clark v. State*, 957 A.2d 1 (Del. 2008) (lifetime registration requirement for juvenile was not contravened by requirement to consider the “best interests of the child” in fashioning a disposition). Some states go beyond SORNA’s requirements. See, e.g., *State v. I.C.S.*, 145 So.3d 350 (La. 2014) (defendants who committed sex offenses prior to age 14, were not transferrable to adult court at that age, and whose offenses

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did not require registration upon a juvenile adjudication of delinquency were prosecuted in adult court in their 20s for those offenses and required to register); *In re J.L.*, 800 N.W.2d 720 (S.D. 2011) (14-year-old boy adjudicated delinquent for nonforcible sex with his 12-year-old girlfriend was ordered to register for life).

<sup>7</sup> See *N.L. v. State*, 989 N.E.2d 773 (Ind. 2013) (adjudicated juvenile may only be required to register after an evidentiary hearing, using the “clear and convincing” standard). For a complete summary of the juvenile registration schemes across the United States, see Smart Summary: Prosecution, Transfer, and Registration of Serious Juvenile Sex Offenders (2015), [www.smart.gov/pdfs/SMARTSummary.pdf](http://www.smart.gov/pdfs/SMARTSummary.pdf).

<sup>8</sup> *State v. I.C.S.*, 145 So. 3d at 350.

<sup>9</sup> *United States v. Shannon*, 511 Fed. Appx. 487 (6th Cir. 2013) (Ohio adjudication for Gross Sexual Imposition triggered registration condition in subsequent sentencing for possession of a firearm by a felon).

<sup>10</sup> See, e.g., *In re Crockett*, 159 Cal. App. 4th 751 (Cal. Ct. App. 2008) (juvenile adjudicated delinquent of sex offense in Texas was not required to register when he moved to California); *Murphy v. Commonwealth*, 500 S.W.3d 827 (Ky. 2016) (juvenile adjudicated delinquent in Michigan required to register in Kentucky, even though Kentucky-adjudicated juveniles are not required to register).

<sup>11</sup> See *In re Z.B.*, 757 N.W.2d 595 (S.D. 2008) (treating juvenile sex offenders convicted of the same crimes as adult sex offenders differently and more harshly than the adult sex offenders served no rational purpose and violated the Equal Protection Clause of the 14th Amendment); cf. *In re C.P.T.*, 2008 Minn. App. Unpub. LEXIS 929 (Aug. 5, 2008) (lifetime registration requirement for juveniles does not violate due process).

<sup>12</sup> *In re C.P.*, 967 N.E.2d 729 (Ohio 2012) (due process and the prohibition against cruel and unusual punishment); *In re J.B.*, 107 A.3d 1 (Pa. 2014) (procedural due process). Other courts have held that registration requirements as applied to juveniles adjudicated delinquent of a sex offense does not violate the Eighth Amendment. *United States v. Under Seal*, 709 F.3d 257 (4th Cir. 2013); *People v. J.O.*, 2015 Colo. App. LEXIS 1319 (Aug. 27, 2015); see also *In re Justin B.*, 747 S.E.2d 774 (S.C. 2013) (lifetime GPS monitoring of a juvenile adjudicated delinquent of a sex offense does not violate the Eighth Amendment).

<sup>13</sup> *Illinois ex. rel. Birkett v. Konetski*, 909 N.E.2d 783 (Ill. 2009).

<sup>14</sup> In 2010, the U.S. Supreme Court granted certiorari in a case where the Ninth Circuit had held that the juvenile registration provisions of SORNA were unconstitutional when applied retroactively. *United States v. Juvenile Male*, 581 F.3d 977 (2009), *vacated and remanded*, 131 S. Ct. 2860 (2011), *appeal dismissed as moot*, 653 F.3d 1081 (9th Cir. 2011). In its decision, however, the Supreme Court did not in any way address the question of the constitutionality of the retroactive application of SORNA’s requirement that certain adjudicated juveniles register as sex offenders.

<sup>15</sup> *United States v. Under Seal*, 709 F.3d 257 (4th Cir. 2013); *United States v. Juvenile Male*, 670 F.3d 999 (9th Cir. 2012). The Federal Juvenile Delinquency Act is found at 18 U.S.C. §§ 5031-5042.