



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

## Failure to Register

Nearly all jurisdictions that require sex offender registration also have a criminal penalty for *failure to register as a sex offender*. Such penalties may facilitate compliance with the sex offender registration process. The following are a sample of some of the prominent issues that arise in state-level failure to register prosecutions.

### Failure to Register as a ‘Continuing Offense’

Many jurisdictions hold that a *failure to register* is a “continuing offense,” much like larceny or escape, such that a person cannot be prosecuted for multiple *failures to register* within a given time frame.<sup>1</sup>

### Failure to Register as a ‘Strict Liability’ Offense

Many jurisdictions require a *mens rea* (i.e., *criminal intent*) of some sort be proven before a person can be convicted of *failure to register*,<sup>2</sup> while others hold that it is a strict liability offense.<sup>3</sup>

### ‘Incarceration’ as It Affects Registration Responsibilities

Although offenders are not generally required to maintain their sex offender registration while incarcerated, offenders who are part of a state department of corrections residential work release program may have a duty to maintain their registration information while there.<sup>4</sup>

### Notice

All jurisdictions require notice of registration requirements be given to sex offenders prior to them being held criminally liable for *failure to register*. That notice can be “imperfect,”<sup>5</sup> or even constructive, and still be found sufficient and valid.<sup>6</sup> However, there are situations where notice will be found insufficient.<sup>7</sup>

### Prosecution Based on Failure to Update Information

Most jurisdictions require sex offenders to update their registration information when that registration information changes. In one state, the failure to provide an online identifier supported a conviction for failure to update a registration.<sup>8</sup> In another, however, a change of residence outside of the U.S. did not require the offender to update the state registry, and a failure to do so could not be prosecuted under state law.<sup>9</sup>

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## Venue

Generally speaking, the proper venue for a *failure to register* case is the jurisdiction in which the person has failed to comply with his registration requirements.<sup>10</sup> In addition, at least one state has held that there is no need to prove where an offender was during the time that he failed to register.<sup>11</sup>

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<sup>1</sup> See *United States v. Ogburn*, 590 Fed. Appx. 683 (9th Cir. 2015); *State v. Cook*, 187 P.3d 1283 (Kan. 2008); *Longoria v. State*, 749 N.W.2d 104 (Minn. Ct. App. 2008).

<sup>2</sup> *In re C.P.W.*, 213 P.3d 413 (Kan. 2009); *People v. Haddock*, 48 A.D.3d 969 (N.Y. App. Div. 2008); *State v. Vick*, 2010 Wash. App. LEXIS 2462 (Nov. 2, 2010).

<sup>3</sup> *Christie v. State*, 2008 Ark. App. LEXIS 10 (Jan. 9, 2008); *State v. T.R.D.*, 942 A.2d 1000 (Conn. 2008). When a crime is a *strict liability* offense, its elements do not include a need to prove *mens rea* or criminal intent.

<sup>4</sup> *State v. Wiles*, 873 N.W.2d 301 (Iowa Ct. App. 2015).

<sup>5</sup> *Petway v. State*, 661 S.E.2d 667 (Ga. App. 2008) (prerelease notice of registration requirements is not a prerequisite to the obligation to register); *Barrientos v. State*, 2013 Tex. App. LEXIS 7712 (June 24, 2013) (primarily Spanish-speaking defendant properly convicted even when all notices were in English and he claimed he did not understand his responsibilities).

<sup>6</sup> See *United States v. Leach*, 2009 U.S. Dist. LEXIS 104703 (D. Ind. Nov. 6, 2009); *United States v. Benevento*, 633 F. Supp. 2d 1170 (D. Nev. 2009); *State v. Bryant*, 614 S.E.2d 479, 488 (N.C. 2005) (“the pervasiveness of sex offender registration programs [combined with additional factors in this case] certainly constitute circumstances which would lead the reasonable individual to inquire of a duty to register in *any* state upon relocation”). North Carolina subsequently included a *mens rea* requirement into its failure to register statute. 2006 N.C. Session Laws, ch. 247, *codified at* N.C. Gen. Stat. § 14-208.11.

<sup>7</sup> *State v. Binnarr*, 733 S.E.2d 890 (S.C. 2012) (notice of changed registration responsibilities sought to be proven by way of an unreturned letter, without more, does not prove actual notice sufficient to prosecute for failure to register).

<sup>8</sup> *State v. White*, 58 A.3d 643 (N.H. 2012) (defendant failed to report the creation of a MySpace account).

<sup>9</sup> *State v. Lee*, 286 P.3d 537 (Idaho 2012). While this was a state court prosecution, the provisions of International Megan’s Law amended the federal failure to register statute in order to prosecute individuals who fail to provide advance notice of international travel. See 18 U.S.C. § 2250(b).

<sup>10</sup> However, in *United States v. Haslage*, 853 F.3d 331 (7th Cir. 2017), the court held that venue for a violation of 18 U.S.C. § 2250 was only proper in the state where the offender traveled, then failed to register — not the state where the offender had originally registered.

<sup>11</sup> *State v. Peterson*, 186 P.3d 1179 (Wash. Ct. App. 2008).