

Sex Offender Registration and Notification in the United States (2015)

United States v. King, 2009 U.S. Dist. LEXIS 94582 (W.D. Okla. Oct. 9, 2009) (Oklahoma's residency restrictions did not present an obstacle to complying with federal sex offender registration requirements).

¹³⁸ See Commonwealth v. Baker, 295 S.W.3d 437 (Ky. 2009) (Kentucky's residency restrictions exceeded the nonpunitive purpose of public safety and thus violated the Ex Post Facto clause); see also Duarte v. City of Lewisville, 759 F.3d 514 (5th Cir. 2014) (standing granted in challenge to residence restrictions suit). But see McAteer v. Riley, 2008 U.S. Dist. LEXIS 26209 (M.D. Ala. March 31, 2008) ("The court expresses no opinion today on whether McAteer could present evidence and arguments to establish by the clearest proof that the residency and employment restrictions violate the Ex Post Facto clause and leaves that question for another day").

¹³⁹ State v. Stark, 802 N.W.2d 165 (S.D. 2011) (discussing state-level loitering and safety zone provisions).

¹⁴⁰ http://www.smart.gov/pdfs/MTSOR_Code.pdf.

¹⁴¹ For example, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) was one of the first tribes to implement SORNA, and met all of SORNA's requirements in doing so, see the SMART Office's Substantial Implementation Report at <http://www.smart.gov/pdfs/sorna/ConfTribes-UmatillaIndianReservation.pdf>. CTUIR is located entirely within the State of Oregon, which falls short of many of SORNA's provisions. Maxine Bernstein, *Sex Offenders in Oregon: State Fails to Track Hundreds*, THE OREGONIAN (Oct. 2, 2013), available at <http://www.oregonlive.com/sexoffenders/special-presentation/> (Oregon only posts 2.5% of its registered sex offenders on its public sex offender registry website).

¹⁴² See United States v. Nichols, 2014 U.S. Dist. LEXIS 118129 (D. S.D., Aug. 20, 2014) (tribes have the inherent power to exclude outsiders from their territory).

¹⁴³ Kirkaldie v. United States, 2014 U.S. Dist. LEXIS 72041 (D. Mont. May 22, 2014) (domestic violence prosecution); United States v. First, 731 F.3d 998 (9th Cir. 2013) (admissible so long as the uncounseled conviction would not violate the U.S. Constitution) (possession of a firearm prosecution); United States v. Shavanaux, 647 F.3d 993 (11th Cir. 2011) (tribal court convictions that meet the due process requirements of the Indian Civil Rights Act (ICRA) may be admitted in subsequent federal prosecutions) (domestic violence prosecution); United States v. Cavanaugh, 643 F.3d 592 (8th Cir. 2011) (domestic violence prosecution). But see United States v. Bryant, 769 F.3d 671 (9th Cir. 2014) (tribal court convictions for domestic violence, obtained without any right to counsel, may not be used in recidivist prosecution). There are also cases that have interpreted the above decisions, see, e.g., United States v. Bundy, 966 F.Supp. 2d 1175 (D. N.M. 2013) (tribal conviction did not meet the *Shavanaux* test) (DUI prosecution).

¹⁴⁴ State v. Atcitty, 215 P.3d 90 (N.M. 2009).

¹⁴⁵ United States v. Begay, 622 F.3d 1187 (9th Cir. 2010), *abrogated on other grounds*, United States v. DeJarnette, 741 F.3d 971 (9th Cir. 2013).

¹⁴⁶ State v. John, 308 P.3d 1208 (Ct. App. Ariz. 2013).

¹⁴⁷ Supplemental Guidelines, *supra* note 7 at 1637-38.

¹⁴⁸ United States v. Nichols, 775 F.3d 1225 (10th Cir. 2014); United States v. Forster, 549 Fed. Appx. 757 (10th Cir. 2013); United States v. Murphy, 664 F.3d 798 (10th Cir. 2011); Carr v. United States, 2014 U.S. Dist. LEXIS 21262 (M.D. Tenn., Feb. 20, 2014); United States v. Nichols, 2013 U.S. Dist. LEXIS 160804 (D. Kan. Nov. 12, 2013).

¹⁴⁹ U.S. v. Lunsford, 725 F.3d 859 (8th Cir. 2013); Ward v. U.S., 2014 U.S. Dist. LEXIS 160392 (N.D. Fla., Nov. 14, 2014).

¹⁵⁰ The Canadian Province of Alberta maintains a website listing high-risk sex offenders: www.solgps.alberta.ca/SAFE_COMMUNITIES/COMMUNITY_AWARENESS/SERIOUS_VIOLENT_OFFENDERS/Pages/default.aspx, and Saskatchewan maintains a listing of certain high-risk offenders which includes information about certain sex offenders: <http://www.justice.gov.sk.ca/PN-List>. South Korea, <http://www.sexoffender.go.kr>, and the Province of Western Australia, <https://www.communityprotection.wa.gov.au>, also have public websites where information about sex offenders is posted.

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¹⁵¹ There is a disclosure scheme in place in the United Kingdom authorizing law enforcement to provide details of certain sex offenders, <http://www.homeoffice.gov.uk/crime/child-sex-offender-disclosure>.

¹⁵² Available at <http://www.smart.gov/pdfs/GlobalOverview.pdf>. In 2013, GAO did a full review of the Registered Sex Offender International Tracking System which is in development by a working group spearheaded by the SMART Office. GAO-13-200, REGISTERED SEX OFFENDERS: SHARING MORE INFORMATION WILL ENABLE FEDERAL AGENCIES TO IMPROVE NOTIFICATIONS OF SEX OFFENDERS' INTERNATIONAL TRAVEL (2013), available at <http://www.gao.gov/assets/660/652194.pdf>.

¹⁵³ The fact that a person has been convicted of a sex offense involving children can result in the revocation of a person's Ham radio license. FCC Reverses ALJ's Decision, Revokes Convicted Sex Offender's Ham License, ARRL.ORG, <http://www.arrl.org/news/fcc-reverses-alj-s-decision-revokes-convicted-sex-offender-s-amateur-radio-license> (Nov. 13, 2014). In at least one state, there is a statutory presumption against any registered sex offender being granted unsupervised visitation, custody, or residential placement of a child. 13 DEL. CODE ANN. §724A.

¹⁵⁴ See BLACK'S LAW DICTIONARY (Abr. 6th ed., 1991) at p. 288.

¹⁵⁵ Balentine v. Tremblay, 554 Fed. Appx. 58 (2d Cir. 2014).

¹⁵⁶ Bushra v. Holder, 529 Fed. Appx. 659 (6th Cir. 2013) (conviction for failure to register is a crime involving moral turpitude). *Contra* Mohamed v. Holder, 769 F.3d 885 (4th Cir. 2014); Efange v. Holder, 642 F.3d 918 (10th Cir. 2011); Plascencia-Ayala v. Mukasey, 516 F.3d 738 (9th Cir. 2008), *overruled on other grounds by* Marmolejo-Campos v. Holder, 558 F.3d 903 (9th Cir. 2009).

¹⁵⁷ Meyer v. Nat'l Tenant Network, Inc., 2014 U.S. Dist. LEXIS 6797 (N.D. Cal., Jan. 17, 2014).

¹⁵⁸ Santos v. State, 668 S.E.2d 676 (Ga. 2008) (registration requirements unconstitutionally vague); Rodriguez v. Maryland, 108 A.3d 438 (Md. Ct. App. 2015) (weekly registration requirement for homeless offenders not unconstitutional); State v. Crofton, 2008 Wash. App. LEXIS 1283 (June 2, 2008) (weekly registration requirement for homeless offenders permissible).

¹⁵⁹ See Saiger v. City of Chicago, 2014 U.S. Dist. LEXIS 83206 (N.D. Ill., June 19, 2014) (permitting plaintiff's Due Process claim to proceed); Derfus v. City of Chicago, 2014 U.S. Dist. LEXIS 68844 (N.D. Ill. May 20, 2014); Beley v. City of Chicago, 2013 U.S. Dist. LEXIS 90070 (N.D. Ill., June 27, 2013); People v. Wlecke, 6 N.E.3d 745 (Ill. Ct. App. 2014) (offender who lacked identification and was turned away from registering could not be convicted for failure to register).

¹⁶⁰ See People v. Deluca, 176 Cal. Rptr. 3d 419 (Cal. App. 2d Dist. 2014) (even though shelter had limited hours, it counted as a 'residence' for the purposes of registration); State v. Allman, 321 P.3d 557 (Co. Ct. App. 2012) (offender used his car as a residence when working away from 'home' during the week, was a 'residence' for purposes of the statute); Branch v. State, 917 N.E.2d 1283 (Ind. Ct. App. 2009) (homeless defendant was successfully prosecuted for failure to register when he failed to inform authorities that he had left a shelter); Milliner v. State, 890 N.E.2d 789 (Ind. Ct. App. 2008) (offender kicked out of house by wife and staying with friends had to update his registration every time he moved); Tobar v. State, 284 S.W.3d 133 (Ky. 2009) (when offender did not notify authorities of leaving homeless shelter, conviction for failure to register was proper); State v. Samples, 198 P.3d 803 (Mont. 2008) (when offender failed to notify authorities of leaving shelter, conviction was proper); Commonwealth v. Wilgus, 40 A.3d 1201 (Pa. Super. 2009) (where defendant was unable to rent a room at his intended residence he had a duty to inform registry officials of a change of address); Breeden v. State, 2008 Tex. App. LEXIS 2150 (March 26, 2008) (offender who moved out of hotel into car in parking lot of hotel properly convicted and sentenced to 55 years). *But see* Commonwealth v. Bolling, 893 N.E.2d 371 (Mass. App. 2008) (offender did not need to update his address when he found a friend willing to take him in for a few days); State v. Dinkins, 339 Wis.2d 78 (2012) (offender was charged with failure to register, prior to release from incarceration, for failure to provide a residence address, and this was not permissible).

¹⁶¹ Lamberty v. Delaware, 108 A.3d 1225 (Del. 2015).

¹⁶² United States v. Pendleton, 2009 U.S. Dist. LEXIS 85347 (D. Del. Sept. 18, 2009).

¹⁶³ State v. Edwards, 87 A.3d 1144 (Conn. Ct. App. 2014).

¹⁶⁴ Nikolaev v. State, 2014 Tex. App. LEXIS 2246 (Tex. Ct. App., Feb. 27, 2014).

¹⁶⁵ 42 U.S.C. § 13663; *see also* Denial of Admission and Termination of Assistance for Criminals and Alcohol Abusers, 24 C.F.R. 982.553(a)(2) (2015); When Must I Prohibit Admission of Sex Offenders?, 24

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C.F.R. §5.856 (2001); To What Criminal Records and Searches Does this Subpart Apply?, 24 C.F.R. §5.901 (2001); What Special Authority is there to Obtain Access to Sex Offender Registration Information?, 24 C.F.R. §5.905 (2001), 24 C.F.R. 960.204(a)(4); Denial of Admission for Criminal Activity or Drug Abuse by Household Members (2001). HUD issued guidance in 2012 describing the duties of owners, agents, and public housing authorities with regards to admitting registered sex offenders. State Registered Lifetime Sex Offenders in Federally Assisted Housing, <http://portal.hud.gov/hudportal/documents/huddoc?id=12-28pihn12-11hsgn.pdf>. This guidance was drafted in part as a response to an Inspector General's report which had been issued in 2009. HUD SUBSIDIZED AN ESTIMATED 2,094 TO 3,046 HOUSEHOLDS THAT INCLUDED

LIFETIME REGISTERED SEX OFFENDERS, AUDIT REP'T NO. 2009-KC-0001 (Aug. 14, 2009), <https://www.hudoig.gov/sites/default/files/pdf/Internal/2009/ig0970001.pdf>.

¹⁶⁶ 'Section 8' is the common shorthand reference to the housing assistance provisions contained in the United States Housing Act of 1937, ch. 896, Title I, § 8 (Sept. 1, 1937), as amended.

¹⁶⁷ *Miller v. McCormick*, 605 F.Supp.2d 296 (D. Me. 2009).

¹⁶⁸ *Johnson v. California*, 2011 U.S. Dist. LEXIS 101623 (C.D. Cal. July 25, 2011).

¹⁶⁹ *Henley v. Housing Auth. of New Orleans*, 2013 U.S. Dist. LEXIS 62255 (E.D. La. May 1, 2013).

¹⁷⁰ *Tristan v. State*, 393 S.W. 3d 806 (Ct. App. Tex. 2012). *Contra* *Dingman v. Cart Shield USA, LLC*, 2013 U.S. Dist. LEXIS 93551 (S.D. Fla., July 3, 2013) (failure to register not proven to involve a dishonest act or false statement).

¹⁷¹ Statute addressed in *U.S. v. Walizer*, 600 Fed. Appx. 546 (9th Cir. 2015). In *Alleyne v. United States*, 133 S.Ct. 2151 (2013), the Supreme Court concluded that "any fact that increases the mandatory minimum is an 'element' that must be submitted to the jury." *Id.*

¹⁷² *U.S. v. Hardeman*, 704 F.3d 1266 (9th Cir. 2013).