

ADAM WALSH CHILD PROTECTION & SAFETY ACT AND HIV CRIMINALIZATION

Sex offense registration and notification laws (SORNs) require people convicted of sex offenses to “provide valid contact information and other identifying data to law enforcement authorities”¹ when they are released into the community. These laws allow the public to view their registration, usually through an online database provided by law enforcement of the registered person's current state of residence.²

The Sex Offender Registration Act, or Title I, of the Adam Walsh Child Protection and Safety Act of 2006 (AWA), is a federal law that requires states to maintain minimum standards for registering people convicted of certain sex crimes and notifying the public of their registration status, in addition to any parole or probation requirements they may have.

AWA requires states to categorize registered people in one of three tiers based solely on the offense for which they were convicted. People are classified in states where they live, work, and attend school under either a Tier I, II, or III category based on the type of sex offense conviction. People in the Tier III category must update their registration every three months for life. In addition, states must create a website where the public can search for the location of people registered for sex crimes, and states are required to make failure to register a felony under state law.

Under AWA, states are free to enact even more stringent requirements. Many states have chosen both to impose more stringent requirements on registered people and to expand the list of crimes that qualify as registerable sex offenses beyond those mandated by federal law. Many of these offenses do not require involvement with a minor. For example, some states impose registration requirements on people convicted of public urination, indecent exposure, or lewd and lascivious behavior. Many of these state restrictions include restrictions on where a registrant can live, publicly lists of where registered people work, requirements that juveniles must register for non-AWA offenses, indefinite civil commitment of people with sex offense convictions, and retroactive application of registration requirements on people convicted before the state passed its registration law.

AWA and similar state laws have failed to protect the community from sexual harm or to prevent child sexual abuse or violence.³ To the contrary, these laws have made communities less safe due to the significant amount of money that law enforcement officials must invest to enforce SORNs. Federal law⁴ penalizes states that fail to substantially comply with a 10% loss of their Byrne Justice Fund⁵ from the federal government.⁶ The cost of implementing SORNs based on the federal standards is so high that some states have chosen to not comply.⁷ The investment in SORNs could be better spent on preventive measures and providing supportive services for survivors. Additionally, contrary to public belief, those convicted of sex offenses have lower recidivism rates than those convicted of other crimes.⁸ Regarding re-arrests for sex crimes, the rates of sexual recidivism are particularly low for older people.⁹

Registering for a sex crime presents a number of significant challenges for those registered and their families that greatly reduces their ability to work and participate in society in constructive ways. Many registered people must strictly follow a tangle of rules regarding what must be registered and how often. In many states, registered people must verify their residence and employment addresses every 90 days for life. Consequently, many registered people report difficulty maintaining steady employment and stable housing, and a number of them indicate being harassed by community members.¹⁰

1. J.J. Prescott, “Do Sex Offender Registries make us Less Safe?” Regulation 2, (2012), 48.

2. Id.

3. The Adam Walsh act: A False Sense of Security or an Effective Public Policy Initiative?, 21 Criminal Justice Policy Review 31-49 (2010),

<http://www.nij.gov/uploads/digital-library/The-Adam-Walsh-Act-A-False-Sense-of-Security-or-an-Effective-Public-Policy-Initiative-N.J.Freeman-J.C.Sandler-Criminal-Justice-Policy-Review-2009.pdf>.

4. The Justice Policy Institute estimated that the first-year costs of complying with AWA would exceed the amount of money lost in Byrne grants in all fifty states. Justice Policy Institute, “What Will it Cost States to Comply with the Sex Offender Registration and Notification Act?,” http://www.justicepolicy.org/images/upload/08-08_FAC_AWACosts_JJ.pdf. 32 states, plus D.C. and Puerto Rico, are not in substantial compliance. SMART, AWA Implementation Status, <https://www.smart.gov/AWA-map.htm>.

5. The Edward Byrne Memorial Justice Assistance Grant Program is administered by the Bureau of Justice Assistance and is the leading source of federal justice funding to state and local jurisdictions. Bureau of Justice Assistance, Edward Byrne Memorial Justice Assistance Grant Program, <https://www.bja.gov/jag/>.

6. The Justice Policy Institute estimated that the first-year costs of complying with AWA would exceed the amount of money lost in Byrne grants in all fifty states. Justice Policy Institute, “What Will it Cost States to Comply with the Sex Offender Registration and Notification Act?,” http://www.justicepolicy.org/images/upload/08-08_FAC_AWACosts_JJ.pdf. 32 states, plus D.C. and Puerto Rico, are not in substantial compliance. SMART, AWA Implementation Status, <https://www.smart.gov/AWA-map.htm>.

7. The estimated first-year costs of AWA compliance exceeded the amount of money that would be lost in Byrne funding for all fifty states. Justice Policy Institute, “What Will it Cost States to Comply with the Sex Offender Registration and Notification Act?,” http://www.justicepolicy.org/images/upload/08-08_FAC_AWACosts_JJ.pdf.

8. Roger Przybylski, Adult Sex Offender Recidivism, Office of Justice Programs, https://www.smart.gov/SOMAPI/sec1/ch5_recidivism.html.

9. See, e.g., R. Karl Hanson et. al., High-Risk Sex Offenders May Not Be High Risk Forever, 29 J. INTERPERSONAL VIOLENCE 2792-2813 (2014).

10. See, e.g., Jason Rydberg, Employment and Housing Challenges Experienced by Sex Offenders during Reentry on Parole,

<https://www.tandfonline.com/doi/abs/10.1080/23774657.2017.1369373?journalCode=ucor20>;

https://www.huffpost.com/entry/sex-offender-laws-dont-make-children-safer-politicians-keep-passing-them-anyway_n_5d2c8571e4b02a5a5d5e96d1

HIV CRIMINALIZATION

A number of states imposed HIV exposure laws during the early years of the AIDS/HIV epidemic. Today, despite advances in medical technology and information that have definitively established that these laws are counterproductive and serve no legitimate purpose, 34 states still impose criminal liability on people living with HIV/AIDS for non-disclosure of their HIV status to sexual partners and exposure to third parties. Many of these laws impose criminal liability for behaviors with no risk of transmission, such as spitting and biting. Some laws impose additional penalties, such as sex offense registration, for certain behaviors. Regardless of their exact provisions, these HIV-specific laws fail to protect public health and conflict with contemporary medical practice and knowledge. They ignore modern prevention methods, such as ART, PrEP, and condoms, and modern medical treatment, which has greatly increased the life expectancy of people living with HIV/AIDS.

Federal law does not require those convicted of HIV-specific crimes to register. However, states are free to make HIV-specific crimes registerable sex offenses. Currently, 4 states (Louisiana, Ohio, South Dakota, and Tennessee) expressly require those convicted of HIV-specific crimes to register. In Arkansas, a sentencing court can order registration under the HIV-specific criminal exposure statute, though it is not required. In Washington, an HIV-specific provision within the crime of assault can require registration if there is “sexual motivation.” In Tennessee, a person convicted of solicitation of prostitution, which requires no physical contact, while HIV positive, before July 1, 2010, is required to register. Additionally, some states require a person to register if the person had to register for a sex offense in another state even if not a registerable sex offense in the current state.

In addition to forcing public disclosure of a person’s HIV status, SORNs can place severe additional burdens on people living with HIV which make it difficult or impossible for them to participate constructively in society. As is the case with registrants in general, SORNs can deny people living with HIV stable housing and employment, because discrimination against registrants is commonplace and widely accepted.

Furthermore, registration requirements often severely limit a person’s ability to parent. Because SORNs typically make it illegal for registrants to be near areas where children frequent, these laws may prevent a registrant from attending parent-teacher meetings or other events on school property, or from accompanying their child to public parks, libraries, and swimming pools. Even registered parents whose crimes had nothing to do with children may be forced to miss their children’s sports games and dance recitals, severely hindering their ability to be actively involved in their child’s life.

Registration requirements related to HIV also undermine public health. When a state requires public notification of those convicted of an HIV criminal statute, it allows for the public to know a person’s HIV status. This exposes people living with HIV to discrimination and social isolation. Additionally, some states mandate public health offices to share HIV records with law enforcement – making public health officials agents of criminalization. This harms public health efforts because individuals may be deterred from getting tested for HIV out of fear that their medical records would be used against them for criminal prosecution purposes.

11. HIV Criminalization in the United States, Center for HIV Law & Policy (2019), <http://www.hivlawandpolicy.org/sites/default/files/CHLP%20HIV%20Crim%20Map%20030119.pdf>.

12. AWA does provide a catchall category for any offense that is not explicitly listed as a registerable offense but involves a sexual act element. However, AWA also makes it clear that a sexual offense does not include any conduct involving consenting adults, unless any adult is in custody of the state.

13. Sex Offender Registration, The Center for HIV Law & Policy, <https://www.hivlawandpolicy.org/issues/sex-offender-registration>.

14. Id.

15. Id.

16. Tenn. Code Ann. § 40-39-202; Sienna Baskin et al., Criminal Laws on Sex Work and HIV Transmission: Mapping the Laws, Considering the Consequences, 93 DENVER LAW REVIEW 355, <https://www.hivlawandpolicy.org/sites/default/files/20160408-criminal-laws-on-sex-work-and-hiv.pdf>

17. Public notification websites often list the registerable offense that the registrant was found guilty of.

18. The Marshall Project, Shawna: A Life on the Sex Offender Registry, YouTube (Sep. 17, 2017), <https://www.youtube.com/watch?v=eWPtAJS1kro&feature=youtu.be>.

19. Sero Project, About Us, <http://www.seroproject.com/about-us/>.

20. Joseph Darius Jaafari, Being HIV Positive Might Land You in Jail. But That Is Changing, Nation Swell (Dec. 22, 2018), <http://nationswell.com/hiv-positive-jail-changing/>.

