

IN THE MISSOURI COURT OF APPEALS  
EASTERN DISTRICT  
NO. ED 93827

**FILED**  
JAN 19 2010

JOSEPH WILLIAMS  
PLAINTIFF/APPELLANT

LAURA ROY  
CLERK, MISSOURI COURT OF APPEALS  
EASTERN DISTRICT

v.

90988

COL. JERRY LEE  
AND  
COL. JAMES KEATHLEY  
DEFENDANTS/RESPONDENTS

**FILED**

SEP 9 2010

Appeal from the Associate Circuit Court of St. Louis County Thomas F. Simon  
Honorable Dale Hood, Associate Circuit Court Judge CLERK, SUPREME COURT

**APPELLANT'S BRIEF**

Respectfully Submitted,

FRANK, JUENGEL & RADEFELD,  
ATTORNEYS AT LAW, P.C.  
MATTHEW A. RADEFELD, #52288  
JULIE L. BROTHERS, #58230  
7777 Bonhomme, Suite 1601  
Clayton, Missouri 63105  
Telephone (314) 725-7777  
Facsimile (314) 721-4377  
jbrothers@fjrdefense.com  
ATTORNEYS FOR APPELLANT

**SCANNED**

## Table of Contents

Table of Authorities.....	2
Jurisdictional Statement.....	4
Statement of Facts.....	5
Points Relied On.....	7

### Argument

Point I.....	9
--------------	---

THE TRIAL COURT ERRED IN GRANTING THE DEFENDANTS’  
MOTION TO DISMISS HOLDING THAT APPELLANT MUST  
REGISTER AS A SEX OFFENDER UNDER FEDERAL STATUTE  
BECAUSE THE FEDERAL LAW DOES NOT REQUIRE  
REGISTRATION FOR APPELLANT’S CRIME IN THAT THE  
FEDERAL DEFINITION OF “SEX OFFENSE” SPECIFICALLY  
EXCLUDES APPELLANT’S CRIMINAL ACTIVITY.

Point II.....	16
---------------	----

THE TRIAL COURT ERRED IN NOT ORDERING THE  
EXPUNGEMENT OF MR. WILLIAMS’S RECORDS FROM ALL SEX  
OFFENDER REGISTRIES AND TO DELETE ANY PERSONAL  
INFORMATION PERTAINING TO HIM BECAUSE THE  
INFORMATION WAS GAINED IN VIOLATION OF THE MISSOURI  
CONSTITUTION AND FEDERAL LAW, AND DISSEMINATION OF  
THAT INFORMATION IS A VIOLATION OF HIS RIGHTS TO  
PRIVACY.

Conclusion.....	22
Certificates.....	23
Appendix.....	24

## Table of Authorities

### Cases

<i>Bosch v. St. Louis Healthcare Network</i> , 41 S.W.3d 462 (Mo. 2001).....	9,11
<i>Doe v. Keathley</i> , 290 S.W.3d 719 (Mo. Banc 2009).....	11
<i>Doe v. Merritt</i> , 261 S.W.3d 672 (Mo. App. S.D. 2008).....	17
<i>Doe v. Phillips</i> , 194 S.W.3d 833 (Mo. Banc 2006).....	16,19
<i>Doe v. Worsham, et al.</i> , 290 S.W.3d 809 (Mo. App. S.D. 2009).....	9,10,14,15,16
<i>Lawrence v. Texas</i> , 539 U.S. 558 (2003).....	20
<i>Lynch v Lynch</i> , 260 S.W.3d 834 (Mo. banc 2008).....	9,16
<i>Mapp v. Ohio</i> , 367 U.S. 643 (1961).....	18
<i>State v. Beine</i> , 162 S.W.3d 483 (Mo. banc 2005).....	20
<i>Valley Park Fire Protection Dist. Of St. Louis County</i> , 265 S.W.3d 910 (Mo. App. E.D. 2008).....	10
<i>Wong Sun v. United States</i> , 371 U.S. 471 (1963).....	18

### Statutes

42 U.S.C. §16913.....	12
42 U.S.C. § 16911.....	12,14
28 C.F.R. § 571.72.....	12
§ 477.050 RSMo.....	4
Art. 120 UCMJ.....	14

### Constitutional Provisions

MO.CONST. Article V, § 3.....	4
MO.CONST. Article I, § 13.....	18,19

## Jurisdictional Statement

In Division 34 of the Associate Circuit Court of St. Louis County, the Hon. Dale Hood granted the Appellant's Motion to Dismiss and denied the Appellant's Petition for Declaratory Relief And Expungement of Records. The Petition requested the Court order that he did not have to register as a sex offender and any records of his previous registration destroyed. The Defendants filed an Answer to the Petition and a Motion to Dismiss. Both parties submitted briefs in support of their respective petition/motion and on September 21, 2009, the associate circuit court sustained the Defendants' Motion to Dismiss, holding that the federal law applies and that Mr. Williams has to register under federal sex offender registration laws. Petitioner filed his Notice of Appeal on October 21, 2009.

This appeal does not involve any issues reserved for the exclusive jurisdiction of the Supreme Court of Missouri; therefore, jurisdiction lies in the Missouri Court of Appeals, Eastern District. MO.CONST. Article V, § 3; § 477.050 RSMo.

## Statement of Facts

On February 5, 2000, Appellant Joseph Williams pled guilty in military court and was convicted of one specification of carnal knowledge under Article 120, Uniform Code of Military Justice (UCMJ) and one specification of sodomy with a child under the age of sixteen years under Article 125, UCMJ, all to have occurred in St. Louis County, Missouri while Plaintiff was on leave from military duty. The encounter was between Mr. Williams, who was nineteen years old at the time of the offense, and his girlfriend, who was fifteen years old at the time of the offense. It was a non-violent, consensual sexual act.

At the time of his plea, the Sexual Offenders Registration Act (SORA)<sup>1</sup> required registration as a sex offender only for felony sex offenses. The details of the offenses Mr. Williams pled guilty to under the UCMJ are not felony equivalents under Missouri law. Thus, at the time of Plaintiff's plea, he was not required to register because he had not pled guilty to a felony offense under chapter 566, RSMo. He was likewise not required to register by the federal or military courts.

On or about May 24, 2002, Mr. Williams was notified by the St. Louis County Police Department that he was required to register as a sex offender pursuant to §589.400, RSMo, based upon his convictions under the UCMJ. He then registered as a sex offender.

---

<sup>1</sup> RSMo § 589.400.1.1

In January 2009, Joseph Williams filed a Petition for Declaratory Relief and Expungement of Records in the Associate Circuit Court of St. Louis County. This was based on the holding in *Doe v. Blunt, et al.*, 225 S.W.3d 421 (Mo. Banc 2007).

Six months after the filing of the Petition, the Missouri Supreme Court held in *Doe v. Keathley*, 290 S.W.3d 719 (Mo. Banc 2009) that even though there is a constitutional prohibition on enforcement of SORA to sex offenders that were convicted prior to SORA's enactment, there is no prohibition of enforcement of the federal sex offender registration laws.

Defendant Keathley filed a Motion to Dismiss because the federal Sex Offender Registration and Notification Act (SORNA) applied to Williams and therefore he must register. (LF 31, 41)

Mr. Williams argued in his Brief in Support of Declaratory Judgment (LF 35) that he does not have to register under SORNA because SORNA specifically exempts his crime from the list of "sex offenses."

The Defendants then filed a Brief in Support of their Motion to Dismiss, yet did not address the issue of the statutory exemption. (LF 41)

The trial court then issued its Order and Judgment, wherein it specifically found that federal law applies in this case and that Mr. Williams was required to register in Missouri. The Order denied the Petition and granted the Motion to Dismiss.

Petitioner Williams now appeals that decision.

## Points Relied On

- I. **THE TRIAL COURT ERRED IN GRANTING THE DEFENDANTS' MOTION TO DISMISS HOLDING THAT APPELLANT MUST REGISTER AS A SEX OFFENDER UNDER FEDERAL STATUTE BECAUSE THE FEDERAL LAW DOES NOT REQUIRE REGISTRATION FOR APPELLANT'S CRIME IN THAT THE FEDERAL DEFINITION OF "SEX OFFENSE" SPECIFICALLY EXCLUDES APPELLANT'S CRIMINAL ACTIVITY.**

*Doe v. Worsham, et al.*, 290 S.W.3d 809, 811 (Mo. App. S.D. 2009)

*Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462 (Mo. 2001)

*Doe v. Keathley*, 290 S.W.3d 719 (Mo. Banc 2009)

42 U.S.C. §16913



**II. THE TRIAL COURT ERRED IN NOT ORDERING THE  
EXPUNGEMENT OF MR. WILLIAMS'S RECORDS FROM ALL  
SEX OFFENDER REGISTRIES AND TO DELETE ANY  
PERSONAL INFORMATION PERTAINING TO HIM BECAUSE  
THE INFORMATION WAS GAINED IN VIOLATION OF THE  
MISSOURI CONSTITUTION AND FEDERAL LAW, AND  
DISSEMINATION OF THAT INFORMATION IS A VIOLATION  
OF HIS RIGHTS TO PRIVACY.**

*Doe v. Phillips*, 194 S.W.3d 833, 852 (Mo. Banc 2006)

*Doe v. Merritt*, 261 S.W.3d 672 (Mo. App. S.D. 2008)

*Mapp v. Ohio*, 367 U.S. 643 (1961)

*Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963).

## Argument

### **I. THE TRIAL COURT ERRED IN GRANTING THE DEFENDANTS' MOTION TO DISMISS HOLDING THAT APPELLANT MUST REGISTER AS A SEX OFFENDER UNDER FEDERAL STATUTE BECAUSE THE FEDERAL LAW DOES NOT REQUIRE REGISTRATION FOR APPELLANT'S CRIME IN THAT THE FEDERAL DEFINITION OF "SEX OFFENSE" SPECIFICALLY EXCLUDES APPELLANT'S CRIMINAL ACTIVITY.**

#### Standard of Review:

The standard of review of the trial court's judgment of dismissal is *de novo*. *Doe v. Worsham, et al.*, 290 S.W.3d 809, 811 (Mo. App. S.D. 2009) citing *Lynch v Lynch*, 260 S.W.3d 834, 836 (Mo. banc 2008).

#### Argument:

##### **Motion to Dismiss: A Justiciable Controversy Existed**

"A motion to dismiss attacks the plaintiff's pleadings." *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462 (Mo. 2001). "In determining whether Doe's petition for declaratory judgment was sufficient to survive a motion to dismiss, we deem the facts as pleaded to be true, construe his averments liberally, and draw all reasonable and fair inferences from the facts in his favor." *Worsham* at 811.

- A trial court may grant declaratory relief if it is presented with
- (1) a justiciable controversy that presents a real, substantial, presently-existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation;
  - (2) a plaintiff with a legally protectable interest at stake, consisting of a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief;
  - (3) a controversy ripe for judicial determination; and
  - (4) an inadequate remedy at law.

*Worsham* at 812 citing *Valley Park Fire Protection Dist. Of St. Louis County*, 265 S.W.3d 910, 913 (Mo. App. E.D. 2008).

In this case, a justiciable controversy existed: Defendants were ordering Mr. Williams to register as a sex offender when he was not legally obligated to do so. Mr. Williams had a legally protectable interest at stake, which was his right to privacy and to not be subjected to a law that imposed personal strife and embarrassment, and restricted his movement and residency. The controversy was ripe for judicial determination because it was presently-existing and ongoing. Finally, there was an inadequate remedy at law because the only remedy would be for Mr. Williams to stop registering on his own, which would subject him to criminal charges for failure to register.<sup>2</sup> Each of these were

---

<sup>2</sup> R.S.Mo. § 589.425. 1.

pled in the Petition, thus the facts alleged, presumed true, “meet the elements of a recognized cause of action.” *Bosch* at 464.

### **SORNA Application: Mr. Williams Does Not Have To Register**

The associate circuit court held as the basis for its dismissal that the federal law applies, and under the federal law, Mr. Williams must register as a sex offender. This holding is only a partially correct statement of the law. According to the Missouri Supreme Court’s holding in *Doe v. Keathley*, 290 S.W.3d 719 (Mo. Banc 2009), SORNA should be considered in the determination of sex offender registration status. But in the application of SORNA, Mr. Williams does not have to register as a sex offender. SORNA specifically states that someone in Mr. Williams’s position is exempted from the definition of a sex offender. Since he is not a sex offender according to SORNA, he does not have to register according to SORNA.

The trial court misinterprets the *Keathley* decision when it presumes that everyone that had been exempted from SORA’s registry requirements under the *Doe v. Phillips* and *Doe v. Blunt* decisions was automatically back on the list under SORNA’s registry requirements. But SORA and SORNA are not identical pieces of legislation. The *Keathley* decision stated very specifically that SORNA imposes an *independent* obligation on registrants. *Keathley* at 720. Thus, the requirement to register is based solely within the text of SORNA, which means that to determine registration requirements, an analysis must be done of a particular offender’s crime as it is characterized by SORNA.

## **SORNA Analysis**

The first step in determining SORNA's application to Mr. Williams is to see to whom SORNA applies. 42 U.S.C. §16913 states that a "sex offender" must register. A "sex offender" is defined as "an individual who was convicted of a sex offense." 42 U.S.C. § 16911(1). But §16911(5)(C) states that "[a]n offense involving consensual sexual conduct is *not* an offense for the purposes of this title...if the victim was at least 13 years old and the offender was not more than 4 years older than the victim." (emphasis added). So, according to the federal definition, a nineteen-year-old that engages in a consensual sexual conduct with a fifteen-year-old does not meet the definition of a "sex offender."

Part of the trial court's holding was that 28 C.F.R. § 571.72 applied to defendant. This section of the code of federal regulations, which gives a list of offenses that are considered "sexual offenses for the purposes of 18 U.S.C. § 4042(c)." 28 C.F.R. § 571.72. Section 4042(c) of the criminal code is the provision dealing with sex offender registration.<sup>3</sup> 28 C.F.R. § 571.72 (b)(2) lists carnal knowledge among those included as sex offenses.

---

<sup>3</sup> **(c) Notice of Sex Offender Release.—**

(1) In the case of a person described in paragraph (3), or any other person in a category specified by the Attorney General, who is released from prison or sentenced to probation, notice shall be provided to—

(A) the chief law enforcement officer of the State and of the local jurisdiction in which the person will reside; and

---

**(B)** a State or local agency responsible for the receipt or maintenance of sex offender registration information in the State or local jurisdiction in which the person will reside. The notice requirements under this subsection do not apply in relation to a person being protected under chapter 224.

**(2)** Notice provided under paragraph (1) shall include the information described in subsection (b)(2), the place where the person will reside, and the information that the person shall register as required by the Sex Offender Registration and Notification Act. For a person who is released from the custody of the Bureau of Prisons whose expected place of residence following release is known to the Bureau of Prisons, notice shall be provided at least 5 days prior to release by the Director of the Bureau of Prisons. For a person who is sentenced to probation, notice shall be provided promptly by the probation officer responsible for the supervision of the person, or in a manner specified by the Director of the Administrative Office of the United States Courts. Notice concerning a subsequent change of residence by a person described in paragraph (3) during any period of probation, supervised release, or parole shall also be provided to the agencies and officers specified in paragraph (1) by the probation officer responsible for the supervision of the person, or in a manner specified by the Director of the Administrative Office of the United States Courts.

**(3)** The Director of the Bureau of Prisons shall inform a person who is released from prison and required to register under the Sex Offender Registration and Notification Act of the requirements of that Act as they apply to that person and the same information

Article 120, UCMJ defines carnal knowledge as “sexual intercourse with a...person...under 16 years of age.”<sup>4</sup> So, a thirty-year-old could have sexual intercourse with a ten-year-old and be guilty of carnal knowledge. This would then be a registerable offense that does not fall under any of SORNA’s exceptions. But also, a nineteen-year-old could have sexual intercourse with a fifteen-year-old, still be guilty of carnal knowledge, but not be required to register because it falls squarely and specifically within an exception to SORNA’s registry requirement. Simply put, the trial court’s holding that Mr. Williams must register because of 28 C.F.R. § 571.72 is incorrect as it is based on an incomplete assessment of the law.

Both the court and the defendants ignored the exception in 42 U.S.C. § 16911(5)(c) when Mr. Williams argued it, which is why this case is distinguishable from *Doe v. Worsham, et al.*, 290 S.W. 3d 809 (Mo. App. S.D. 2009). In that case, the defendants filed a motion to dismiss arguing that the petitioner must register under SORNA. “Doe never

---

shall be provided to a person sentenced to probation by the probation officer responsible for supervision of that person.

**[(4) Repealed. Pub. L. 109–248, title I, § 141(h), July 27, 2006, 120 Stat. 604.]**

**(5) The United States and its agencies, officers, and employees shall be immune from liability based on good faith conduct in carrying out this subsection and subsection (b).**

<sup>4</sup> (2) Carnal knowledge. (a) That the accused committed an act of sexual intercourse with a certain person; (b) That the person was not the accused’s spouse; and (c) That at the time of the sexual intercourse the person was under 16 years of age.”

responded in the trial court to this contention.” *Id.* at 812. In this case, the opposite is true. The Respondents never responded to the contention that SORNA provides a specific exception for Mr. Williams’s situation. And the trial court did not address that provision of SORNA or Mr. Williams’s argument.

Thus, under the facts alleged in the Petition, Mr. Williams does not have to register as a sex offender under Missouri or Federal law. As such, the petition does state a justiciable controversy for resolution by way to declaratory judgment and should not have been dismissed by the trial court.



**II. THE TRIAL COURT ERRED IN NOT ORDERING THE  
EXPUNGEMENT OF MR. WILLIAMS'S RECORDS FROM ALL  
SEX OFFENDER REGISTRIES AND TO DELETE ANY  
PERSONAL INFORMATION PERTAINING TO HIM BECAUSE  
THE INFORMATION WAS GAINED IN VIOLATION OF THE  
MISSOURI CONSTITUTION AND FEDERAL LAW, AND  
DISSEMINATION OF THAT INFORMATION IS A VIOLATION  
OF HIS RIGHTS TO PRIVACY.**

Standard of Review:

The standard of review of the trial court's judgment of dismissal is *de novo*. *Doe v. Worsham, et al.*, 290 S.W.3d 809, 811 (Mo. App. S.D. 2009) citing *Lynch v Lynch*, 260 S.W.3d 834, 836 (Mo. banc 2008).

Argument:

**Expungement is the Proper Remedy for Unconstitutional Activity**

In *Doe v. Phillips*, 194 S.W.3d 833, 852 (Mo. Banc 2006), the Missouri Supreme Court stated: "This court rejects the claim that publication of true information about the Does affects a past transaction to their detriment by imposing a new obligation, adding a new duty or attaching a new disability in respect to transactions or considerations already past."

Because the acquisition of the information about Mr. Williams, including his DNA, was made in violation of Missouri's constitution and federal law, the Respondents must remove his name from any and every registry and destroy the records of his past, illegal registration. This remedy is one of equity. *Doe v. Merritt*, 261 S.W.3d 672 (Mo. App. S.D. 2008). Equity must intervene to prevent gross injustice, and equity is reluctant to allow a wrong to be suffered without a remedy. *Merritt*.

At the trial level, Respondents argued that the trial court could not "expunge Plaintiff's criminal record as he has a conviction and this Court does not have jurisdiction to expunge a UCMJ arrest or conviction," and that "Plaintiff is not entitled to an expungement under § 610.122 RSMo." LF 32. But at no point in the Petition did Mr. Williams ever request an expungement of his arrest record or conviction in any form, including § 610.122 RSMo. In fact, the Petition states specifically that "Plaintiff does not seek to expunge his arrest records generally pursuant to § 610.122 RSMo." LF 13. Instead, Count II, which was entitled "Expungement" seeks the destruction of records and data resulting from his registration. The holding in *Doe v. Phillips* was not limited merely to the removal of the obligation placed on registrants themselves. It extended to the State and its unconstitutional behavior, because of which, it should not be allowed to use the information collected in violation of the constitution. If this were not the case, the holding in *Phillips* would be of little value.

A comparable analogy is the exclusionary rule as it relates to the Fourth Amendment of the U.S. Constitution. The Supreme Court has held that when law enforcement has acted in violation of a person's constitutionally protected rights in

gathering evidence, that evidence cannot be used against the person. *See Mapp v. Ohio*, 367 U.S. 643 (1961). Any evidence obtained during or after the illegal search should be suppressed as being derived from an illegal search or seizure under the “fruit of the poisonous tree” doctrine. *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963). The concept is that law enforcement cannot break the rules and then be rewarded for its unlawful behavior.<sup>5</sup>

Here, law enforcement has acted in violation of Missouri’s Constitution article 1, § 13 when it forced Mr. Williams to give over personal information about himself, and when it published that information to the world. To permit law enforcement to unlawfully gather

---

<sup>5</sup> “Seventy-five years ago, in *Boyd v. United States*, 116 U.S. 616, 630 (1886), considering the Fourth and Fifth Amendments as running ‘almost into each other’ on the facts before it, this Court held that the doctrines of those Amendments ‘apply to all invasions on the part of the government and its employees of the sanctity of a man’s home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his indefeasible right of personal security, personal liberty and private property. ... Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man’s own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods, is within the condemnation . . . [of those Amendments].’” *Mapp v. Ohio*, 367 U.S. 643, 646-647 (U.S. 1961).

information about people, who have been told that they must give over that information or be charged criminally, and then use that information is an end-run around Missouri's Constitution.

An argument to the contrary would call for too strict an interpretation of *Phillips* arguing that it held that publication of true information about sex offenders was not a violation of article 1, § 13. Actually, the holding in *Phillips* on this issue of publication was that

...this Court rejects the claim that publication of true information about the Does affects a past transaction to their substantial detriment by imposing a new obligation, adding a new duty or attaching a new disability in respect to transactions or considerations already past. *See Bliss*, 702 S.W.2d at 82. The *publication* of this information merely looks back at antecedent actions, as did the regulations in *Corvera*. *Phillips* at 852.

The holding then, was that *publication* alone was not a violation of article 1, § 13 as it did not impose a duty on the Does. That duty rests with law enforcement. Obviously, law enforcement may not publish whatever information it wishes about people, even if that information is true.

While it is true that continued publication of that information is not imposing a duty on Mr. Williams, it does cause a substantial detriment to him in that it is subjecting him to public scrutiny and publication of private information about himself. The whole point of the sex offender registration law is to inform the public of sex offenders. Public awareness is apparently deemed important in these cases because this information is not simply made available to law enforcement, but to anyone who wants the information. The legislature understood the power of public opinion. So, to subject someone to being a part of this list, whether or not they have an obligation to keep the information up to

date, is a collateral consequence of his plea and of the unlawful activity of law enforcement in collecting that information.

In this case, law enforcement should never have had that information in the first place. In *State v. Beine*, 162 S.W.3d 483 (Mo. banc 2005), RSMo § 566.083.1(1), the statute under which Mr. Beine was convicted, was deemed unconstitutional. Thus, all of the people convicted under this statute had their convictions overturned and their names removed from the registration list. While their behavior and the facts of what they did had not changed, the Court ruled that the law was unconstitutional and thus punishments and collateral effects of that conviction were likewise without authority. In this case, the Court has held that the law is unconstitutional, thus the effects of that law are without authority.

To agree with any other interpretation of *Phillips* would leave those wronged by the unlawful activity of law enforcement with no remedy and would rob *Phillips* of its full effect. Just like evidence gathered in violation of the Fourth Amendment must be suppressed, information about Mr. Williams gathered in violation of article 1, § 13 must be destroyed.

### **Continued Publication is a Violation of Mr. Williams's Privacy Rights**

The Supreme Court has held that privacy is a fundamental right. *See Lawrence v. Texas*, 539 U.S. 558 (2003). The information gained about individuals and posted for the public to see—both in Missouri and the world on the internet—is private information. A person's name address, photograph, date of birth, work, school, vehicle description, and


information about their offense is published for everyone to see. *See generally* <http://www.mshp.dps.mo.gov/CJ38/Search>. Because the information was gained in violation of Missouri's constitution and is a violation of Mr. Williams's rights to privacy, the trial court erred in not ordering his sex offender records expunged and destroyed.

## Conclusion

Wherefore, because the federal law, when applied to Mr. Williams's situation does not require registration and the state law is unconstitutional as applied to Mr. Williams, Appellant requests this Honorable Court reverse the holding in the Associate Circuit Court and order that Mr. Williams does not have to register as a sex offender and that the Respondents destroy any records of his registration or for such further relief as this court deems just and proper.

Respectfully Submitted,

FRANK, JUENGEL & RADEFELD,  
ATTORNEYS AT LAW, P.C.

By:   
MATTHEW A. RADEFELD, #52288  
JULIE L. BROTHERS, #58230  
ATTORNEYS FOR APPELLANT  
7777 BONHOMME SUITE 1601  
CLAYTON, MO 63105  
(314) 725-7777 Phone  
(314) 721-4377 Facsimile  
djuengel@fjrdefense.com

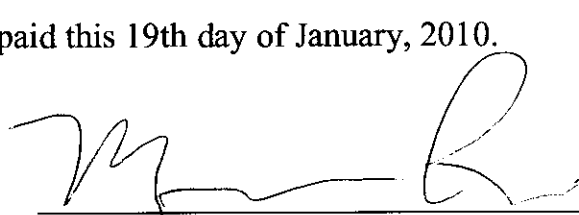
## **CERTIFICATE OF COMPLIANCE**

I, Matthew A. Radefeld, do hereby certify compliance with Rule 84.06(c) in that the above includes the information required by Rule 55.03, the brief contains 3,813 words. I also certify that the foregoing complies with the limitations contained in Rule 84.06(b) and Local Rule 360 and the CD-ROM has been scanned and contains no viruses.

  
MATTHEW A. RADEFELD, #52288

## **CERTIFICATE OF SERVICE**

I, MATTHEW A. RADEFELD, do hereby certify that two typewritten copies of the above Appellant's Brief and one copy on CD-ROM were mailed to the Respondent's Attorney, Chris Koster, P.O. BOX 899, Jefferson City, MO 65102 and Robert E. Fox, Jr., Associate County Counselor, 41 South Central Avenue, 9<sup>th</sup> Floor, Clayton, MO 63105 by United States Mail, postage pre-paid this 19th day of January, 2010.

  
MATTHEW A. RADEFELD, #52288  
FRANK, JUENGEL & RADEFELD  
ATTORNEYS AT LAW, P.C.  
7777 BONHOMME SUITE 1601  
CLAYTON, MO 63105  
(314) 725-7777 Phone  
(314) 721-4377 Facsimile  
jbrothers@fjrdefense.com



## Appendix

42 U.S.C. § 16901-45 (SORNA).....	A1
28 C.F.R. § 571.72.....	A13
Article 120 UCMJ.....	A15
Judgment of the Associate Circuit Court.....	A18

#### **42 USC § 16901. Declaration of purpose**

In order to protect the public from sex offenders and offenders against children, and in response to the vicious attacks by violent predators against the victims listed below, Congress in this Act establishes a comprehensive national system for the registration of those offenders:

(1) Jacob Wetterling, who was 11 years old, was abducted in 1989 in Minnesota, and remains missing.

(2) Megan Nicole Kanka, who was 7 years old, was abducted, sexually assaulted, and murdered in 1994, in New Jersey.

(3) Pam Lychner, who was 31 years old, was attacked by a career offender in Houston, Texas.

(4) Jetseta Gage, who was 10 years old, was kidnapped, sexually assaulted, and murdered in 2005, in Cedar Rapids, Iowa.

(5) Dru Sjodin, who was 22 years old, was sexually assaulted and murdered in 2003, in North Dakota.

(6) Jessica Lunsford, who was 9 years old, was abducted, sexually assaulted, buried alive, and murdered in 2005, in Homosassa, Florida.

(7) Sarah Lunde, who was 13 years old, was strangled and murdered in 2005, in Ruskin, Florida.

(8) Amie Zyla, who was 8 years old, was sexually assaulted in 1996 by a juvenile offender in Waukesha, Wisconsin, and has become an advocate for child victims and protection of children from juvenile sex offenders.

(9) Christy Ann Fomoff, who was 13 years old, was abducted, sexually assaulted, and murdered in 1984, in Tempe, Arizona.

(10) Alexandra Nicole Zapp, who was 30 years old, was brutally attacked and murdered in a public restroom by a repeat sex offender in 2002, in Bridgewater, Massachusetts.

(11) Polly Klaas, who was 12 years old, was abducted, sexually assaulted, and murdered in 1993 by a career offender in California.

(12) Jimmy Ryce, who was 9 years old, was kidnapped and murdered in Florida on September 11, 1995.

(13) Carlie Brucia, who was 11 years old, was abducted and murdered in Florida in February, 2004.

(14) Amanda Brown, who was 7 years old, was abducted and murdered in Florida in 1998.

(15) Elizabeth Smart, who was 14 years old, was abducted in Salt Lake City, Utah in June 2002.

(16) Molly Bish, who was 16 years old, was abducted in 2000 while working as a lifeguard in Warren, Massachusetts, where her remains were found 3 years later.

(17) Samantha Runnion, who was 5 years old, was abducted, sexually assaulted, and murdered in California on July 15, 2002.

#### **42 USC § 16902. Establishment of program**

This Act establishes the Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Program.

**42 USC § 16911. Relevant definitions, including Amie Zyla expansion of sex offender definition and expanded inclusion of child predators**

In this title the following definitions apply:

(1) Sex offender. The term "sex offender" means an individual who was convicted of a sex offense.

(2) Tier I sex offender. The term "tier I sex offender" means a sex offender other than a tier II or tier III sex offender.

(3) Tier II sex offender. The term "tier II sex offender" means a sex offender other than a tier III sex offender whose offense is punishable by imprisonment for more than 1 year and--

(A) is comparable to or more severe than the following offenses, when committed against a minor, or an attempt or conspiracy to commit such an offense against a minor:

(i) sex trafficking (as described in section 1591 of title 18, United States Code);

(ii) coercion and enticement (as described in section 2422(b) of title 18, United States Code);

(iii) transportation with intent to engage in criminal sexual activity (as described in section 2423(a) of title 18, United States Code);

(iv) abusive sexual contact (as described in section 2244 of title 18, United States Code);

(B) involves--

(i) use of a minor in a sexual performance;

(ii) solicitation of a minor to practice prostitution; or

(iii) production or distribution of child pornography; or

(C) occurs after the offender becomes a tier I sex offender.

(4) Tier III sex offender. The term "tier III sex offender" means a sex offender whose offense is punishable by imprisonment for more than 1 year and--

(A) is comparable to or more severe than the following offenses, or an attempt or conspiracy to commit such an offense:

(i) aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18, United States Code); or

(ii) abusive sexual contact (as described in section 2244 of title 18, United States Code) against a minor who has not attained the age of 13 years;

(B) involves kidnapping of a minor (unless committed by a parent or guardian); or

(C) occurs after the offender becomes a tier II sex offender.

(5) Amie Zyla expansion of sex offense definition.

(A) Generally. Except as limited by subparagraph (B) or (C), the term "sex offense" means--

(i) a criminal offense that has an element involving a sexual act or sexual contact with another;

(ii) a criminal offense that is a specified offense against a minor;

(iii) a Federal offense (including an offense prosecuted under section 1152 or 1153 of title 18, United States Code) under section 1591, or chapter 109A, 110 (other than section 2257, 2257A, or 2258), or 117, of title 18, United States Code;

(iv) a military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note); or

(v) an attempt or conspiracy to commit an offense described in clauses (i) through (iv).

(B) Foreign convictions. A foreign conviction is not a sex offense for the purposes of this title if it was not obtained with sufficient safeguards for fundamental fairness and due process for

the accused under guidelines or regulations established under section 112.

(C) Offenses involving consensual sexual conduct. An offense involving consensual sexual conduct is not a sex offense for the purposes of this title if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.

(6) Criminal offense. The term "criminal offense" means a State, local, tribal, foreign, or military offense (to the extent specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note)) or other criminal offense.

(7) Expansion of definition of "specified offense against a minor" to include all offenses by child predators. The term "specified offense against a minor" means an offense against a minor that involves any of the following:

- (A) An offense (unless committed by a parent or guardian) involving kidnapping.
- (B) An offense (unless committed by a parent or guardian) involving false imprisonment.
- (C) Solicitation to engage in sexual conduct.
- (D) Use in a sexual performance.
- (E) Solicitation to practice prostitution.
- (F) Video voyeurism as described in section 1801 of title 18, United States Code.
- (G) Possession, production, or distribution of child pornography.
- (H) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.

(I) Any conduct that by its nature is a sex offense against a minor.

(8) Convicted as including certain juvenile adjudications. The term "convicted" or a variant thereof, used with respect to a sex offense, includes adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of title 18, United States Code), or was an attempt or conspiracy to commit such an offense.

(9) Sex offender registry. The term "sex offender registry" means a registry of sex offenders, and a notification program, maintained by a jurisdiction.

(10) Jurisdiction. The term "jurisdiction" means any of the following:

- (A) A State.
- (B) The District of Columbia.
- (C) The Commonwealth of Puerto Rico.
- (D) Guam.
- (E) American Samoa.
- (F) The Northern Mariana Islands.
- (G) The United States Virgin Islands.
- (H) To the extent provided and subject to the requirements of section 127, a federally recognized Indian tribe.

(11) Student. The term "student" means an individual who enrolls in or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institution of higher education.

(12) Employee. The term "employee" includes an individual who is self-employed or works for any other entity, whether compensated or not.

(13) Resides. The term "resides" means, with respect to an individual, the location of the

individual's home or other place where the individual habitually lives.

(14) Minor. The term "minor" means an individual who has not attained the age of 18 years.

#### **42 USC § 16912. Registry requirements for jurisdictions**

(a) Jurisdiction to maintain a registry. Each jurisdiction shall maintain a jurisdiction-wide sex offender registry conforming to the requirements of this title.

(b) Guidelines and regulations. The Attorney General shall issue guidelines and regulations to interpret and implement this title.

#### **42 USC § 16913. Registry requirements for sex offenders**

(a) In general. A sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student. For initial registration purposes only, a sex offender shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence.

(b) Initial registration. The sex offender shall initially register--

(1) before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or

(2) not later than 3 business days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment.

(c) Keeping the registration current. A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to subsection (a) and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry. That jurisdiction shall immediately provide that information to all other jurisdictions in which the offender is required to register.

(d) Initial registration of sex offenders unable to comply with subsection (b). The Attorney General shall have the authority to specify the applicability of the requirements of this title to sex offenders convicted before the enactment of this Act [enacted July 27, 2006] or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with subsection (b).

(e) State penalty for failure to comply. Each jurisdiction, other than a Federally recognized Indian tribe, shall provide a criminal penalty that includes a maximum term of imprisonment that is greater than 1 year for the failure of a sex offender to comply with the requirements of this title.

#### **42 USC § 16914. Information required in registration**

(a) Provided by the offender. The sex offender shall provide the following information to the appropriate official for inclusion in the sex offender registry:

- (1) The name of the sex offender (including any alias used by the individual).
- (2) The Social Security number of the sex offender.
- (3) The address of each residence at which the sex offender resides or will reside.
- (4) The name and address of any place where the sex offender is an employee or will be an employee.
- (5) The name and address of any place where the sex offender is a student or will be a student.
- (6) The license plate number and a description of any vehicle owned or operated by the sex offender.
- (7) Any other information required by the Attorney General.

(b) Provided by the jurisdiction. The jurisdiction in which the sex offender registers shall ensure that the following information is included in the registry for that sex offender:

- (1) A physical description of the sex offender.
- (2) The text of the provision of law defining the criminal offense for which the sex offender is registered.
- (3) The criminal history of the sex offender, including the date of all arrests and convictions; the status of parole, probation, or supervised release; registration status; and the existence of any outstanding arrest warrants for the sex offender.
- (4) A current photograph of the sex offender.
- (5) A set of fingerprints and palm prints of the sex offender.
- (6) A DNA sample of the sex offender.
- (7) A photocopy of a valid driver's license or identification card issued to the sex offender by a jurisdiction.
- (8) Any other information required by the Attorney General.

#### **42 USC § 16915. Duration of registration requirement**

(a) Full registration period. A sex offender shall keep the registration current for the full registration period (excluding any time the sex offender is in custody or civilly committed) unless the offender is allowed a reduction under subsection (b). The full registration period is--

- (1) 15 years, if the offender is a tier I sex offender;
- (2) 25 years, if the offender is a tier II sex offender; and
- (3) the life of the offender, if the offender is a tier III sex offender.

(b) Reduced period for clean record.

(1) Clean record. The full registration period shall be reduced as described in paragraph (3) for a sex offender who maintains a clean record for the period described in paragraph (2) by--

- (A) not being convicted of any offense for which imprisonment for more than 1 year may be imposed;
- (B) not being convicted of any sex offense;
- (C) successfully completing any periods of supervised release, probation, and parole; and
- (D) successfully completing of an appropriate sex offender treatment program certified by a

jurisdiction or by the Attorney General.

(2) Period. In the case of--

(A) a tier I sex offender, the period during which the clean record shall be maintained is 10 years; and

(B) a tier III sex offender adjudicated delinquent for the offense which required registration in a sex registry under this title, the period during which the clean record shall be maintained is 25 years.

(3) Reduction. In the case of--

(A) a tier I sex offender, the reduction is 5 years;

(B) a tier III sex offender adjudicated delinquent, the reduction is from life to that period for which the clean record under paragraph (2) is maintained.

#### **42 USC § 16916. Periodic in person verification**

A sex offender shall appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which that offender is required to be registered not less frequently than--

(1) each year, if the offender is a tier I sex offender;

(2) every 6 months, if the offender is a tier II sex offender; and

(3) every 3 months, if the offender is a tier III sex offender.

#### **42 USC § 16917. Duty to notify sex offenders of registration requirements and to register**

(a) In general. An appropriate official shall, shortly before release of the sex offender from custody, or, if the sex offender is not in custody, immediately after the sentencing of the sex offender, for the offense giving rise to the duty to register--

(1) inform the sex offender of the duties of a sex offender under this title and explain those duties;

(2) require the sex offender to read and sign a form stating that the duty to register has been explained and that the sex offender understands the registration requirement; and

(3) ensure that the sex offender is registered.

(b) Notification of sex offenders who cannot comply with subsection (a). The Attorney General shall prescribe rules for the notification of sex offenders who cannot be registered in accordance with subsection (a).

#### **42 USC § 16918. Public access to sex offender information through the Internet**

(a) In general. Except as provided in this section, each jurisdiction shall make available on the Internet, in a manner that is readily accessible to all jurisdictions and to the public, all information about each sex offender in the registry. The jurisdiction shall maintain the Internet site in a manner that will permit the public to obtain relevant information for each sex offender by a single query for any given zip code or geographic radius set by the user. The jurisdiction shall also include in the design of its Internet site all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General.

(b) Mandatory exemptions. A jurisdiction shall exempt from disclosure--

- (1) the identity of any victim of a sex offense;
- (2) the Social Security number of the sex offender;
- (3) any reference to arrests of the sex offender that did not result in conviction; and
- (4) any other information exempted from disclosure by the Attorney General.

(c) Optional exemptions. A jurisdiction may exempt from disclosure--

- (1) any information about a tier I sex offender convicted of an offense other than a specified offense against a minor;
- (2) the name of an employer of the sex offender;
- (3) the name of an educational institution where the sex offender is a student; and
- (4) any other information exempted from disclosure by the Attorney General.

(d) Links. The site shall include, to the extent practicable, links to sex offender safety and education resources.

(e) Correction of errors. The site shall include instructions on how to seek correction of information that an individual contends is erroneous.

(f) Warning. The site 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. The warning shall note that any such action could result in civil or criminal penalties.

#### **42 USC § 16919. National Sex Offender Registry**

(a) Internet. The Attorney General shall maintain a national database at the Federal Bureau of Investigation for each sex offender and any other person required to register in a jurisdiction's sex offender registry. The database shall be known as the National Sex Offender Registry.

(b) Electronic forwarding. The Attorney General shall ensure (through the National Sex Offender Registry or otherwise) that updated information about a sex offender is immediately transmitted by electronic forwarding to all relevant jurisdictions.

#### **42 USC § 16920. Dru Sjodin National Sex Offender Public Website**

(a) Establishment. There is established the Dru Sjodin National Sex Offender Public Website (hereinafter in this section referred to as the "Website"), which the Attorney General shall maintain.

(b) Information to be provided. The Website shall include relevant information for each sex offender and other person listed on a jurisdiction's Internet site. The Website shall allow the public to obtain relevant information for each sex offender by a single query for any given zip code or geographical radius set by the user in a form and with such limitations as may be



established by the Attorney General and shall have such other field search capabilities as the Attorney General may provide.

**42 USC § 16921. Megan Nicole Kanka and Alexandra Nicole Zapp Community Notification Program**

(a) Establishment of Program. There is established the Megan Nicole Kanka and Alexandra Nicole Zapp Community Notification Program (hereinafter in this section referred to as the "Program").

(b) Program notification. Except as provided in subsection (c), immediately after a sex offender registers or updates a registration, an appropriate official in the jurisdiction shall provide the information in the registry (other than information exempted from disclosure by the Attorney General) about that offender to the following:

(1) The Attorney General, who shall include that information in the National Sex Offender Registry or other appropriate databases.

(2) Appropriate law enforcement agencies (including probation agencies, if appropriate), and each school and public housing agency, in each area in which the individual resides, is an employee or is a student.

(3) Each jurisdiction where the sex offender resides, is an employee, or is a student, and each jurisdiction from or to which a change of residence, employment, or student status occurs.

(4) Any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a).

(5) Social service entities responsible for protecting minors in the child welfare system.

(6) Volunteer organizations in which contact with minors or other vulnerable individuals might occur.

(7) Any organization, company, or individual who requests such notification pursuant to procedures established by the jurisdiction.

(c) Frequency. Notwithstanding subsection (b), an organization or individual described in subsection (b)(6) or (b)(7) may opt to receive the notification described in that subsection no less frequently than once every five business days.

**42 USC § 16922. Actions to be taken when sex offender fails to comply**

An appropriate official shall notify the Attorney General and appropriate law enforcement agencies of any failure by a sex offender to comply with the requirements of a registry and revise the jurisdiction's registry to reflect the nature of that failure. The appropriate official, the Attorney General, and each such law enforcement agency shall take any appropriate action to ensure compliance.

**42 USC § 16923. Development and availability of registry management and website software**

(a) Duty to develop and support. The Attorney General shall, in consultation with the jurisdictions, develop and support software to enable jurisdictions to establish and operate uniform sex offender registries and Internet sites.

(b) Criteria. The software should facilitate--

- (1) immediate exchange of information among jurisdictions;
- (2) public access over the Internet to appropriate information, including the number of registered sex offenders in each jurisdiction on a current basis;
- (3) full compliance with the requirements of this title; and
- (4) communication of information to community notification program participants as required under section 121.

(c) Deadline. The Attorney General shall make the first complete edition of this software available to jurisdictions within 2 years of the date of the enactment of this Act [enacted July 27, 2006].

**42 USC § 16924. Period for implementation by jurisdictions**

(a) Deadline. Each jurisdiction shall implement this title before the later of--

- (1) 3 years after the date of the enactment of this Act [enacted July 27, 2006]; and
- (2) 1 year after the date on which the software described in section 123 is available.

(b) Extensions. The Attorney General may authorize up to two 1-year extensions of the deadline.

**42 USC § 16925. Failure of jurisdiction to comply**

(a) In general. For any fiscal year after the end of the period for implementation, a jurisdiction that fails, as determined by the Attorney General, to substantially implement this title shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.).

(b) State constitutionality.

(1) In general. When evaluating whether a jurisdiction has substantially implemented this title, the Attorney General shall consider whether the jurisdiction is unable to substantially implement this title because of a demonstrated inability to implement certain provisions that would place the jurisdiction in violation of its constitution, as determined by a ruling of the jurisdiction's highest court.

(2) Efforts. If the circumstances arise under paragraph (1), then the Attorney General and the jurisdiction shall make good faith efforts to accomplish substantial implementation of this title and to reconcile any conflicts between this title and the jurisdiction's constitution. In considering whether compliance with the requirements of this title would likely violate the jurisdiction's constitution or an interpretation thereof by the jurisdiction's highest court, the Attorney General

shall consult with the chief executive and chief legal officer of the jurisdiction concerning the jurisdiction's interpretation of the jurisdiction's constitution and rulings thereon by the jurisdiction's highest court.

(3) Alternative procedures. If the jurisdiction is unable to substantially implement this title because of a limitation imposed by the jurisdiction's constitution, the Attorney General may determine that the jurisdiction is in compliance with this Act if the jurisdiction has made, or is in the process of implementing reasonable alternative procedures or accommodations, which are consistent with the purposes of this Act.

(4) Funding reduction. If a jurisdiction does not comply with paragraph (3), then the jurisdiction shall be subject to a funding reduction as specified in subsection (a).

(c) Reallocation. Amounts not allocated under a program referred to in this section to a jurisdiction for failure to substantially implement this title shall be reallocated under that program to jurisdictions that have not failed to substantially implement this title or may be reallocated to a jurisdiction from which they were withheld to be used solely for the purpose of implementing this title.

(d) Rule of construction. The provisions of this title that are cast as directions to jurisdictions or their officials constitute, in relation to States, only conditions required to avoid the reduction of Federal funding under this section.

#### **42 USC § 16926. Sex Offender Management Assistance (SOMA) program**

(a) In general. The Attorney General shall establish and implement a Sex Offender Management Assistance program (in this title referred to as the "SOMA program"), under which the Attorney General may award a grant to a jurisdiction to offset the costs of implementing this title.

(b) Application. The chief executive of a jurisdiction desiring a grant under this section shall, on an annual basis, submit to the Attorney General an application in such form and containing such information as the Attorney General may require.

(c) Bonus payments for prompt compliance. A jurisdiction that, as determined by the Attorney General, has substantially implemented this title not later than 2 years after the date of the enactment of this Act [enacted July 27, 2006] is eligible for a bonus payment. The Attorney General may make such a payment under the SOMA program for the first fiscal year beginning after that determination. The amount of the payment shall be--

(1) 10 percent of the total received by the jurisdiction under the SOMA program for the preceding fiscal year, if that implementation is not later than 1 year after the date of enactment of this Act [enacted July 27, 2006]; and

(2) 5 percent of such total, if not later than 2 years after that date.

(d) Authorization of appropriations. In addition to any amounts otherwise authorized to be appropriated, there are authorized to be appropriated such sums as may be necessary to the Attorney General, to be available only for the SOMA program, for fiscal years 2007 through 2009.

#### **42 USC § 16927. Election by Indian tribes**

(a) Election.

(1) In general. A federally recognized Indian tribe may, by resolution or other enactment of the tribal council or comparable governmental body--

(A) elect to carry out this subtitle as a jurisdiction subject to its provisions; or

(B) elect to delegate its functions under this subtitle to another jurisdiction or jurisdictions within which the territory of the tribe is located and to provide access to its territory and such other cooperation and assistance as may be needed to enable such other jurisdiction or jurisdictions to carry out and enforce the requirements of this subtitle.

(2) Imputed election in certain cases. A tribe shall be treated as if it had made the election described in paragraph (1)(B) if--

(A) it is a tribe subject to the law enforcement jurisdiction of a State under section 1162 of title 18, United States Code;

(B) the tribe does not make an election under paragraph (1) within 1 year of the enactment of this Act [enacted July 27, 2006] or rescinds an election under paragraph (1)(A); or

(C) the Attorney General determines that the tribe has not substantially implemented the requirements of this subtitle and is not likely to become capable of doing so within a reasonable amount of time.

(b) Cooperation between tribal authorities and other jurisdictions.

(1) Nonduplication. A tribe subject to this subtitle is not required to duplicate functions under this subtitle which are fully carried out by another jurisdiction or jurisdictions within which the territory of the tribe is located.

(2) Cooperative agreements. A tribe may, through cooperative agreements with such a jurisdiction or jurisdictions--

(A) arrange for the tribe to carry out any function of such a jurisdiction under this subtitle with respect to sex offenders subject to the tribe's jurisdiction; and

(B) arrange for such a jurisdiction to carry out any function of the tribe under this subtitle with respect to sex offenders subject to the tribe's jurisdiction.

#### **42 USC § 16928. Registration of sex offenders entering the United States**

The Attorney General, in consultation with the Secretary of State and the Secretary of Homeland Security, shall establish and maintain a system for informing the relevant jurisdictions about persons entering the United States who are required to register under this title. The Secretary of State and the Secretary of Homeland Security shall provide such information and carry out such functions as the Attorney General may direct in the operation of the system.

#### **42 USC § 16929. Immunity for good faith conduct**

The Federal Government, jurisdictions, political subdivisions of jurisdictions, and their agencies, officers, employees, and agents shall be immune from liability for good faith conduct under this title.

**42 USC § 16941. Federal assistance with respect to violations of registration requirements**

(a) In general. The Attorney General shall use the resources of Federal law enforcement, including the United States Marshals Service, to assist jurisdictions in locating and apprehending sex offenders who violate sex offender registration requirements. For the purposes of section 566(e)(1)(B) of title 28, United States Code, a sex offender who violates a sex offender registration requirement shall be deemed a fugitive.

(b) Authorization of appropriations. There are authorized to be appropriated such sums as may be necessary for fiscal years 2007 through 2009 to implement this section.

**42 USC § 16943. Federal assistance in identification and location of sex offenders relocated as a result of a major disaster**

The Attorney General shall provide assistance to jurisdictions in the identification and location of a sex offender relocated as a result of a major disaster.

**42 USC § 16945. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking**

(a) Establishment. There is established within the Department of Justice, under the general authority of the Attorney General, an Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (hereinafter in this section referred to as the "SMART Office").

(b) Director. The SMART Office shall be headed by a Director who shall be appointed by the President. The Director shall report to the Attorney General through the Assistant Attorney General for the Office of Justice Programs and shall have final authority for all grants, cooperative agreements, and contracts awarded by the SMART Office. The Director shall not engage in any employment other than that of serving as the Director, nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Office makes any contract or other arrangement.

(c) Duties and functions. The SMART Office is authorized to--

(1) administer the standards for the sex offender registration and notification program set forth in this Act;

(2) administer grant programs relating to sex offender registration and notification authorized by this Act and other grant programs authorized by this Act as directed by the Attorney General;

(3) cooperate with and provide technical assistance to States, units of local government, tribal governments, and other public and private entities involved in activities related to sex offender registration or notification or to other measures for the protection of children or other members of the public from sexual abuse or exploitation; and

(4) perform such other functions as the Attorney General may delegate.

[Supreme Court Center](#) | [US Laws](#) | [Blawgs.FM](#) | [BlawgSearch.com](#) | [Justia](#)[Justia](#) > [Law](#) > [United States](#) > [Code of Federal Regulations](#) >[Title 28 - Judicial Administration](#) > [CHAPTER V - BUREAU OF](#)[PRISONS, DEPARTMENT OF JUSTICE](#) > [PART 571-](#)[RELEASE FROM CUSTODY](#) > § 571.72 Additional designated offenses. 

## 28 C.F.R. § 571.72 Additional designated offenses.

Title 28 - Judicial Administration

### Title 28: Judicial Administration

#### PART 571—RELEASE FROM CUSTODY

##### Subpart H—Designation of Offenses for Purposes of 18 U.S.C. 4042(c)

[Browse Previous](#)

#### § 571.72 Additional designated offenses.

The following offenses are designated as additional sexual offenses for purposes of 18 U.S.C. 4042(c):

(a) Any offense under the law of any jurisdiction that involved:

(1) Engaging in sexual contact with another person without obtaining permission to do so (forcible rape, sexual assault, or sexual battery);

(2) Possession, distribution, mailing, production, or receipt of child pornography or related paraphernalia;

(3) Any sexual contact with a minor or other person physically or mentally incapable of granting consent (indecent liberties with a minor, statutory rape, sexual abuse of the mentally ill, rape by administering a drug or substance);

(4) Any sexual act or contact not identified in paragraphs (a)(1) through (3) of this section that is aggressive or abusive in nature (rape by instrument, encouraging use of a minor for prostitution purposes, incest);

(5) An attempt to commit any of the actions described in paragraphs (a)(1) through (4) of this section.

(b) The following Defense Incident Based Reporting System (DIBRS) Code offenses under the Uniform Code of Military Justice:

(1) 120A (Rape);

(2) 120B1/2 (Carnal knowledge);

(3) 125A (Forcible sodomy);

(4) 125B1/2 (Sodomy of a minor);

(5) 133D (Conduct unbecoming an Officer [involving any sexually violent offense or a criminal offense of a sexual nature against a minor or kidnaping of a minor]);

(6) 134—B6 (Prostitution involving a minor);

(7) 134—C1 (Indecent assault);

(8) 134—C4 (Assault with intent to commit rape);

(9) 134—C6 (Assault with intent to commit sodomy);

(10) 134—R1 (Indecent act with a minor);

(11) 134—R3 (Indecent language to a minor);

(12) 134—S1 (Kidnaping of a minor (by a person not a parent));

(13) 134—Z (Pornography involving a minor);

A13

(14) 134–Z (Conduct prejudicial to good order and discipline (involving any sexually violent offense or a criminal offense of a sexual nature against a minor or kidnaping of a minor));

(15) 134–Y2 (Assimilative crime conviction (of a sexually violent offense or a criminal offense of a sexual nature against a minor or kidnaping of a minor)).

(16) 080–A (Attempt (to commit any offense listed in paragraphs (b)(1)–(15) of this section));

(17) 081–A (Conspiracy (to commit any offense listed in paragraphs (b)(1)–(15) of this section));

(18) 082–A (Solicitation (to commit any offense listed in paragraphs (b)(1)–(15) of this section)).

(c) The following District of Columbia Code offenses:

(1) §22–501 (Assault) if it includes assault with the intent to commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse;

(2) §22–2012 (Sexual performances using minors—prohibited acts);

(3) §22–2013 (Sexual performances using minors—penalties);

(4) §22–2101 (Kidnaping) where the victim is a minor;

(5) §22–2401 (Murder in the first degree) if it includes murder while committing or attempting to commit first degree sexual abuse;

(6) §22–2704 (Abducting or enticing child from his or her home for purposes of prostitution; harboring such child);

(7) §22–4102 (First degree sexual abuse);

(8) §22–4103 (Second degree sexual abuse);

(9) §22–4104 (Third degree sexual abuse);

(10) §22–4105 (Fourth degree sexual abuse);

(11) §22–4106 (Misdemeanor sexual abuse);

(12) §22–4108 (First degree child sexual abuse);

(13) §22–4109 (Second degree child sexual abuse);

(14) §22–4110 (Enticing a child);

(15) §22–4113 (First degree sexual abuse of a ward);

(16) §22–4114 (Second degree sexual abuse of a ward);

(17) §22–4115 (First degree sexual abuse of a patient or client);

(18) §22–4116 (Second degree sexual abuse of a patient or client);

(19) §22–4118 (Attempts to commit sexual offenses);

(20) §22–4120 (Aggravating circumstances).

(21) §22–103 (Attempts to commit crime) if it includes an attempt to commit any offense listed in paragraphs (c)(1)–(20) of this section.

[Browse Previous](#)

## About.com US Military

Step up. Stand out.

Sign up and receive **25% off**  
a premium membership!

**GET 25% OFF**

The **Ladders**

### Punitive Articles of the UCMJ

Article 120—Rape and carnal knowledge

By Rod Powers, About.com Guide

**Free US Military Newsletter!**

Enter email address

[Email](#)

[Print](#)

[Discuss](#) in my Forum

#### Text.

"(a) Any person subject to this chapter who commits an act of sexual intercourse by force and without consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct."

(b) Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a person—

(1) who is not his or her spouse; and

(2) who has not attained the age of sixteen years, is guilty of carnal knowledge and shall be punished as a court-martial may direct.

(c) Penetration, however slight, is sufficient to complete either of these offenses.

(d)

(1) In a prosecution under subsection (b), it is an affirmative defense that—

(A) the person with whom the accused committed the act of sexual intercourse had at the time of the alleged offense attained the age of twelve years; and

(B) the accused reasonably believed that the person had at the time of the alleged offense attained the age of 16 years.

(2) The accused has the burden of proving a defense under subparagraph (d)(1) by a preponderance of the evidence.

#### Elements.

(1) *Rape.*

(a) That the accused committed an act of sexual intercourse; and

(b) That the act of sexual intercourse was done by force and without consent.

(2) *Carnal knowledge.*

(a) That the accused committed an act of sexual intercourse with a certain person;

(b) That the person was not the accused's spouse; and

(c) That at the time of the sexual intercourse the person was under 16 years of age.

A15



**Explanation.****(1) Rape.**

(a) *Nature of offense.* Rape is sexual intercourse by a person, executed by force and without consent of the victim. It may be committed on a victim of any age. Any penetration, however slight, is sufficient to complete the offense.

(b) *Force and lack of consent.* Force and lack of consent are necessary to the offense. Thus, if the victim consents to the act, it is not rape. The lack of consent required, however, is more than mere lack of acquiescence. If a victim in possession of his or her mental faculties fails to make lack of consent reasonably manifest by taking such measures of resistance as are called for by the circumstances, the inference may be drawn that the victim did consent. Consent, however, may not be inferred if resistance would have been futile, where resistance is over-come by threats of death or great bodily harm, or where the victim is unable to resist because of the lack of mental or physical faculties. In such a case there is no consent and the force involved in penetration will suffice. All the surrounding circumstances are to be considered in determining whether a victim gave consent, or whether he or she failed or ceased to resist only because of a reasonable fear of death or grievous bodily harm. If there is actual consent, although obtained by fraud, the act is not rape, but if to the accused's knowledge the victim is of unsound mind or unconscious to an extent rendering him or her incapable of giving consent, the act is rape. Likewise, the acquiescence of a child of such tender years that he or she is incapable of understanding the nature of the act is not consent.

(c) *Character of victim.* See Mil. R. Evid. 412, concerning rules of evidence relating to an alleged rape victim's character.

(2) *Carnal knowledge.* "Carnal knowledge" is sexual intercourse under circumstances not amounting to rape, with a person who is not the accused's spouse and who has not attained the age of 16 years. Any penetration, however slight, is sufficient to complete the offense. It is a defense, however, which the accused must prove by a preponderance of the evidence, that at the time of the act of sexual intercourse, the person with whom the accused committed the act of sexual intercourse was at least 12 years of age, and that the accused reasonably believed that this same person was at least 16 years of age.

**Lesser included offenses.****(1) Rape.**

(a) Article 128—assault; assault consummated by a battery

(b) Article 134—assault with intent to commit rape

(c) Article 134—indecent assault

(d) Article 80—attempts

(e) Article 120(b)—carnal knowledge

**(2) Carnal knowledge.**

(a) Article 134—indecent acts or liberties with a person under 16

(b) Article 80—attempts

**Maximum punishment.**

(1) *Rape.* Death or such other punishment as a court-martial may direct.

(2) *Carnal knowledge with a child who, at the time of the offense, has attained the age of 12 years.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

A16

(3) Carnal knowledge with a child under the age of 12 years at the time of the offense. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole.

**Next Article>** [Article 121](#)-Larceny and wrongful appropriation >

**Above Information from Manual for Court Martial, 2002, Chapter 4, Paragraph 45**

## Explore US Military

### Free US Military Newsletter!

Enter email address

#### By Category

- The Services
- Joining the Military
- The Orderly Room
- Pay and Benefits
- Publications & Regulations
- Military Humor
- Justice, Law & Legislation
- Family & Domestic
- Off Duty
- Pictures and Graphics
- Music, Sounds, & Software
- Life After the Military
- Military Shopping & Surplus
- Deployments & Conflicts
- Weapons

#### Must Reads

- Military Pay Charts
- What the Recruiter Never Told You
- U.S. Military 101
- Surviving Military Basic Training
- Rank & Insignia Charts

#### Most Popular

2010 Pay  
Air Force Enlisted Jobs  
Marine Enlisted Jobs  
Menu  
Army Jobs  
APFT

A17

FILED

SEP 21 2009

JOAN M. GILMER  
CIRCUIT CLERK, ST. LOUIS COUNTY

STATE OF MISSOURI )  
COUNTY OF ST. LOUIS )

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS,  
STATE OF MISSOURI

JOSEPH T. WILLIAMS,	)	
	)	
Plaintiff	)	Cause No. 09SL-CC00011
	)	
vs.	)	Division No. 34
	)	
JERRY LEE, et al.,	)	
	)	
Defendants	)	

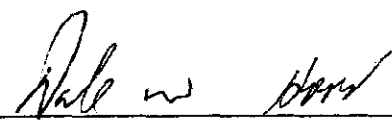
**ORDER AND JUDGMENT**

Cause called for hearing on July 10, 2009, on Plaintiff's Petition for Declaratory Judgment and for Expungement of Records, and Defendant's Motion to Dismiss. Parties appeared by counsel and petitions argued and submitted.

The Court finds that federal law 28 C.F.R. Sec. 571.72(b), 42 U.S.C. 16913, and Section 589.400 R.S.Mo. applies in the present case. Thus, Plaintiff is required under federal law to register in Missouri, the jurisdiction in which he currently resides.

Plaintiff's Petition for a Declaratory Judgment removing his name from registry as a sex offender and an Order of Expungement is therefore denied. Defendant's Motion to Dismiss is granted.

SO ORDERED:

  
\_\_\_\_\_  
Dale W. Hood  
Judge, Division No. 34

Entered this 21<sup>st</sup> day of September, 2009.

cc: Attorneys of Record

A18