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Adam Walsh Child Protection and Safety Act: A Sketch

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April 17, 2007

Abstract. The Adam Walsh Child Protection and Safety Act, P.L. 109-248 (H.R. 4472), serves four purposes. It reformulates the federal standards for sex offender registration in state, territorial and tribal sexual offender registries, and does so in a manner designed to make the system more uniform, more inclusive, more informative and more readily available to the public online. It amends federal criminal law and procedure, featuring a federal procedure for the civil commitment of sex offenders, random search authority over sex offenders on probation or supervised release, a number of new federal crimes, and sentencing enhancements for existing federal offenses. It creates, amends, or revives several grant programs designed to reinforce private, state, local, tribal and territorial prevention; law enforcement; and treatment efforts in the case of crimes committed against children. It calls for a variety of administrative or regulatory initiatives in the interest of child safety, such as the creation of the National Child Abuse Registry.

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Summary

The Adam Walsh Child Protection and Safety Act, P.L. 109-248 (H.R. 4472), serves four purposes. It reformulates the federal standards for sex offender registration in state, territorial and tribal sexual offender registries, and does so in a manner designed to make the system more uniform, more inclusive, more informative and more readily available to the public online. It amends federal criminal law and procedure, featuring a federal procedure for the civil commitment of sex offenders, random search authority over sex offenders on probation or supervised release, a number of new federal crimes, and sentencing enhancements for existing federal offenses. It creates, amends, or revives several grant programs designed to reinforce private, state, local, tribal and territorial prevention; law enforcement; and treatment efforts in the case of crimes committed against children. It calls for a variety of administrative or regulatory initiatives in the interest of child safety, such as the creation of the National Child Abuse Registry.

This is an abridged version of CRS Report RL33967, *Adam Walsh Child Protection and Safety Act: A Legal Analysis*, by Charles Doyle, without the footnotes and citations to authority found in the longer report.

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Sex Offender Registration

Earlier federal law, the Jacob Wetterling Act, encouraged the states to establish and maintain a registration system. Each of them has done so. The Walsh Act preserves the basis structure of the earlier law, expands upon it, and makes more specific matters that were previously left to individual choice. For purposes of compliance by the states and other jurisdictions the prior law remains in effect until the later of three years after enactment or one year after the necessary software for the new uniform, online system has become available. For registrants, however, the new requirements became effective upon enactment.

Who must register

The class of offenders required to register has been expanded under the act. The group includes anyone found in the United States and previously convicted of a federal, state, local, tribal, military, or foreign qualifying offense, although strictly speaking violations of the laws of the District of Columbia or U.S. territories are not specifically mentioned as qualifying offenses. Offenders must register in each state or territory in which they live, work, or attend school. There are five classes of qualifying offenses: crimes identified as one of the specific offenses against a minor; crimes in which some sexual act or sexual conduct is an element; designated federal sex offenses; specified military offenses; and attempts or conspiracy to commit any offense in the other four classes of qualifying offenses. The inventory of qualifying offenses is subject to exception. Conviction for an otherwise qualifying foreign offense does not necessitate registration if it was not secured in a manner which satisfies minimal due process requirements under guidelines or regulations promulgated by the Attorney General. Nor does conviction of a consensual sex offense require registration if the victim is an adult not in the custody of the offender, or if the victim is 13 years of age or older and the offender no more than four years older. Finally, juvenile delinquency adjudications do not constitute qualifying convictions unless the offender is 14 years of age or older at the time of the misconduct and the misconduct adjudicated is comparable to, or more severe than, aggravated sexual assault or attempt or conspiracy to commit such an offense. There are no specific limitations on registration based on convictions that have been overturned, sealed or expunged under state or foreign law or on convictions for which the offender has been pardoned. There are no specific limitations on requirements that flow from past convictions regardless of their vintage. Instead, the Attorney General is authorized to promulgate rules of applicability.

Registration Retirements

Those required to register must provide their name, social security number, the name and address of their employers, the name and address of places where they attend school, and the license plate numbers and descriptions of vehicles they own or operate. The jurisdiction of registration must also include a physical description and current photograph of the registrant and a copy of his driver's license or government issued identification card; a set of fingerprints, palm prints, and a DNA sample; the text of the law under which he was convicted; a criminal record that includes the dates of any arrests and convictions, any outstanding warrants, as well as parole, probation, supervisory release, and registration status; and any other information required by the Attorney General. The regularity with which registrants must appear for new photographs and to verify their registration information depends upon their status. It is at least every three months for Tier III offenders. Tier II offenders must reappear no less frequently than every six months. Tier I

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offenders must reappear for new photographs and verification at least once a year. Tier I offenders must maintain their registration for 15 years, which can be reduced to 10 years. Tier II offenders must maintain their registration for 25 years. Tier III offenders must maintain their registration for life, which can be reduced to 25 years.

Failure to Comply

Jurisdictions that fail to comply after the act becomes fully effective run the risk of having their Byrne program funds reduced by 10%. The act makes failure to register a federal crime for offenders convicted of a federal qualifying offense, or who travel in interstate commerce, or who travel in Indian country, or who live in Indian country. Violations are punishable by imprisonment for not more than 10 years and by an addition penalty to be served consecutively of not less than five nor more than 30 years if the offender commits a crime of violence. Moreover, violation exposes an offenders to term of supervised release for any term of years not less than five years or for life. If the offender is a foreign national (“an alien”), he becomes deportable upon conviction.

Adjustments in Federal Criminal Law

The Adam Walsh Child Protection and Safety Act is focused, as its name implies, upon child protection and safety. Its efforts involve the creation of new federal crimes, the enhancement of the penalties for preexisting federal crimes, and the amendment of federal criminal procedure, among other things. Many of these efforts are child-specific; some are more general. The new federal crimes include the following.

- Murder in the course of a wider range of federal sex offenses.
- Internet date rape drug trafficking.
- Kidnaping that involves the use of interstate facilities.
- Child abuse in Indian country.
- Production of obscene material.
- Obscenity or pornography in Internet source codes.
- Child exploitation enterprises.

The amendments to federal criminal procedure are a bit more numerous and somewhat more likely to implicate crimes in addition to those committed against children. Among their number are:

- Random searches of sex offender registrants as a condition of probation or supervised release.
- Expanded DNA collection from those facing federal charges or convicted of any federal offense.
- Elimination of the statute of limitations for various sexual crimes or crimes committed against a child.
- Participation of state crime victims in federal habeas proceedings.
- Study of the elimination of marital privileges in abuse cases.

- Preventive detention in cases involving a minor victim or a firearm.
- Compensation for guardians ad litem.
- Government control of evidence in pornography cases.
- Forfeiture procedures in obscenity, exploitation and pornography cases.
- Murder during course of various sex offenses as a felony murder predicate.
- Civil commitment procedure for federal sex offenders.

The act's penalty enhancements are the most extensive of its amendments to federal criminal law and procedure. It establishes new sentencing ranges for the federal crimes of murder, kidnaping, maiming, or aggravated assault when the victim is a child. In the case of murder, the penalty is imprisonment for any term of years not less than 30 years, imprisonment for life, or death; in the case of kidnaping or maiming, imprisonment for life or any term of years not less than 25 years; and in the case of aggravated assault, imprisonment for life or any term of years not less than 10 years. While the new minimums terms of imprisonment must yield to any otherwise applicable higher mandatory minimum, the new maximum penalties trump any otherwise applicable maximum. The provision has the effect of making capital offenses out of several federal murder statutes that heretofore were punishable only by a term of imprisonment when the victim is a child and when the misconduct involves the intentional killing of the victim or a reckless, fatal act of violence. The act increases penalties for several other child offenses including:

Crime	Imprisonment: Prior	Imprisonment: New
Use of mail/interstate commerce facilities to coerce or entice a child to engage in sexual activities, 18 U.S.C.2422(b)	Not less than five years/not more than 30 years	Not less than 10 years/not more than life, §203
Transporting a child in interstate commerce for sexual activity, 18 U.S.C. 2423(a)	Not less than five years/not more than 30 years	Not less than 10 years/not more than life, §204
Sexual abuse in a federal prison or enclave, 18 U.S.C. 2242(a)	Not more than 20 years	Any term of years or for life, §205
Aggravated sexual abuse of a child, 18 U.S.C. 2241 (c)	Any term of years or for life	Not less than 30 years or for life, §206(a)(1)
Abusive sexual contact with a child, 18 U.S.C. 2244(a)(1)	Not more than 10 years	Any term of years or for life (18 U.S.C. 2244(a)(5)), §206(2)
Sexual exploitation of a child by an offender with a prior federal conviction for sex trafficking or a state conviction for sexual abuse, sexual contact of a ward, or child pornography, 18 U.S.C. 2251(e)	Not less than 15 years/not more than 30 years	Not less than 30 years or for life, §206(b)(1)(A), (B)
Sexual exploitation of a child resulting in death, 18 U.S.C. 2251(e)	Death or imprisonment for any term of years or for life	Death or imprisonment for not less than 30 years or for life, §206(b)(1)(C)
Traffic in child sexually exploitive material by an offender with a prior state or federal conviction for sex trafficking in children, 18 U.S.C. 2252(b)	Not less than five years/not more than 20 years	Not less than 15 years/not more than 40 years, §206 (b)(2)

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Crime	Imprisonment: Prior	Imprisonment: New
Traffic in child pornography by an offender with a prior state or federal conviction for sex trafficking in children, 18 U.S.C. 2252A(b)	Not less than five years/not more than 20 years	Not less than 15 years/not more than 40 years, §206 (b)(3)
Use of a misleading Internet domain name to induce a child to view harmful material, 18 U.S.C. 2252B	Not more than four years	Not more than 10 years, §206 (b)(4)
Overseas production of child sexually exploitive material for export to the U.S., 18 U.S.C. 2260 (a),(c)	Not more than 10 years; not more than 20 years for recidivists	Not less than 15 years/ not more than 30 years; not less than 25 years/ not more than 50 years for 2d offenders; not less than 35 years nor more than life for offenders with 2 or more prior convictions; death or not less than 30 years or for life if death results, §206 (b)(5)
Overseas production of child pornography material for export to the U.S., 18 U.S.C. 2260(b), (c)	Not more than 10 years/ not more than 20 years for recidivists	Not less than five years/ not more than 20 years; not less than 15 years/ not more than 40 years for recidivists, §206 (b)(5)
A. Sex trafficking in children by a recidivist, 18 U.S.C. 1591 B. Commission of certain federal sex crimes by an offender with a prior federal sex crime conviction (18 U.S.C. 1591 not a predicate), 18 U.S.C. 3559(e)	A. Not more than 40 years (if the victim is 14 to 18 years old); any term of years or life (if the victim is under 14) B. life imprisonment	A/B. life imprisonment (18 U.S.C. 1591 becomes a predicate for section 3559(e) purposes), §206 (c)
Sexual abuse of a ward in a federal prison or enclave, 18 U.S.C. 2243 (b)	Not more than five years	Not more than 15 years, §207
Sex trafficking in children by a recidivist, 18 U.S.C. 1591	Not more than 40 years (if the victim is 14 to 18 years old); any term of years or life (if the victim is under 14)	Not less that 10 years or for life (if the victim is 14 to 18); any term of years not less than 15 years or life (if the victim is under 14), §208
False statements relating to an offense under 18 U.S.C. 1591, 2250, chs.109A , 110, or 117, 18 U.S.C. 1001	Not more than five years	Not more than eight years, §141(c)

Grant Programs

The act establishes, reinforces, and revives several grant programs devoted to child and community safety, including the following.

- Big Brothers Big Sisters of America (authorizing appropriations totaling \$58.5 million through FY2011).
- National Police Athletic League (authorizing appropriations totaling \$64 million through FY2010).
- State, local and tribal governments in order to outfit sex offenders with electronic monitoring devices (authorizing appropriations totaling \$15 million through FY2009).

- Public and private entities that assist in treatment of juvenile sex offenders or that assist the states in their enforcement of sex offender registration requirements (authorizing appropriations totaling \$30 million through FY2009).
- Facilitating the prosecution of cases cleared as a consequence of the DNA backlog elimination (authorizing necessary appropriations through FY2011).
- Law enforcement agencies to combat sexual abuse of children (authorizing necessary appropriations through FY2009).
- A private nonprofit entity for a program of crime prevention media campaign (authorizing appropriations totaling \$34 million through FY2010).
- State, local and tribal government programs for the voluntary fingerprinting of children (authorizing appropriations totaling \$20 million through FY2011).
- The Rape, Abuse & Incest National Network (RAINN) to operate a sexual assault hotline, conduct media campaigns, and provide technical assistance for law enforcement (authorizing appropriations totaling \$12 million through FY2010).
- To enable state, local and tribal entities to verify the addresses of registered sex offenders (authorizing necessary appropriations through FY2009).

Other Child Safety Initiatives

The act includes a wide assortment of other provisions designed to prevent, prosecute or punish the victimization of children. Among them are sections that broaden access to federal criminal records information systems, create a national child abuse registry, expand recordkeeping requirements for those in the business of producing sexually explicit material, immunize officials from civil liability for activities involving sexual offender registration, and authorize and direct the Department of Justice to establish and maintain a number of child protective activities.

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