

Colorado Statutes

Title 16. CRIMINAL PROCEEDINGS

OFFENDERS - REGISTRATION

Article 22. Colorado Sex Offender Registration Act

Current through Chapter 307 of the 2020 Legislative Session

§ 16-22-101. Short title

This article shall be known and may be cited as the "Colorado Sex Offender Registration Act".

Cite as C.R.S. § 16-22-101

History. L. 2002: Entire article added, p. 1157, § 1, effective July 1.

Case Notes:

ANNOTATION

Law reviews. For article, "Constitutional Challenges to Sex Offender Registration and Community Notification Laws", see 30 Colo. Law. 51 (Feb. 2001).

§ 16-22-102. Definitions

As used in this article 22, unless the context otherwise requires:

- (1) "Birthday" means a person's birthday as reflected on the notice provided to the person pursuant to section 16-22-106 or 16-22-107 or the person's actual date of birth if the notice does not reflect the person's birthday.
- (2) "CBI" means the Colorado bureau of investigation established pursuant to part 4 of article 33.5 of title 24, C.R.S.
- (3) "Convicted" or "conviction" means having received a verdict of guilty by a judge or jury, having pleaded guilty or nolo contendere, having received a disposition as a juvenile, having been adjudicated a juvenile delinquent, or having received a deferred judgment and sentence or a deferred adjudication.

- (3.5) "Employed at an institution of postsecondary education" means a person:
- (a) Is employed by or is an independent contractor with an institution of postsecondary education or is employed by or is an independent contractor with an entity that contracts with an institution of postsecondary education; and
 - (b) Spends any period of time in furtherance of the employment or independent contractor relationship on the campus of the postsecondary institution or at a site that is owned or leased by the postsecondary institution.
- (4) "Immediate family" means a person's spouse, parent, grandparent, sibling, or child.
- (4.3)
- (a) "Lacks a fixed residence" means that a person does not have a living situation that meets the definition of "residence" pursuant to subsection (5.7) of this section. "Lacks a fixed residence" may include, but need not be limited to, outdoor sleeping locations or any public or private locations not designed as traditional living accommodations. "Lacks a fixed residence" may also include temporary public or private housing or temporary shelter facilities, residential treatment facilities, or any other residential program or facility if the person remains at the location for less than fourteen days.
 - (b) "Lacks a fixed residence" also includes a person who is registered in any jurisdiction if the person:
 - (I) Ceases to reside at an address in that jurisdiction; and
 - (II) Fails to register:
 - (A) A change of address in the same jurisdiction; or
 - (B) In a new jurisdiction pursuant to section 16-22-108(4) ;
or
 - (C) Pursuant to section 16-22-108(3).
- (4.5) "Local law enforcement agency" means the law enforcement agency, including but not limited to a campus police agency, that has jurisdiction over a certain geographic area.

- (5) "Register" and "registration" include initial registration pursuant to section 16-22-104, and registration, confirmation of registration, and reregistration, as required in section 16-22-108.
- (5.5) "Registrant" means a person who is required to register in accordance with this article.
- (5.7) "Residence" means a place or dwelling that is used, intended to be used, or usually used for habitation by a person who is required to register pursuant to section 16-22-103. "Residence" may include, but need not be limited to, a temporary shelter or institution, if the person resides at the temporary shelter or institution for fourteen consecutive days or longer, if the owner of the shelter or institution consents to the person utilizing the shelter or institution as his or her registered address as required by section 16-22-106(4) or 16-22-107(4)(a), and if the residence of the person at the shelter or institution can be verified as required by section 16-22-109 (3.5). A person may establish multiple residences by residing in more than one place or dwelling.
- (5.8) "Resides" includes residence and lacks a fixed residence.
- (6) "Sex offender registry" means the Colorado sex offender registry created and maintained by the CBI pursuant to section 16-22-110.
- (7) "Sexually violent predator" means a person who is found to be a sexually violent predator pursuant to section 18-3-414.5, C.R.S.
- (8) "Temporary resident" means a person who is a resident of another state but in Colorado temporarily because the person is:
- (a) Employed in this state on a full-time or part-time basis, with or without compensation, for more than fourteen consecutive business days or for an aggregate period of more than thirty days in any calendar year; or
 - (b) Enrolled in any type of educational institution in this state on a full-time or part-time basis; or
 - (c) Present in Colorado for more than fourteen consecutive business days or for an aggregate period of more than thirty days in a calendar year for any purpose, including but not limited to vacation, travel, or retirement.
- (9) "Unlawful sexual behavior" means any of the following offenses or criminal attempt, conspiracy, or solicitation to commit any of the following offenses:
- (a) (I) Sexual assault, in violation of section 18-3-402, C.R.S.; or

- (II) Sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000;
- (b) Sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000;
- (c) (I) Unlawful sexual contact, in violation of section 18-3-404, C.R.S.; or
(II) Sexual assault in the third degree, in violation of section 18-3-404, C.R.S., as it existed prior to July 1, 2000;
- (d) Sexual assault on a child, in violation of section 18-3-405, C.R.S.;
- (e) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.;
- (f) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.;
- (g) Enticement of a child, in violation of section 18-3-305, C.R.S.;
- (h) Incest, in violation of section 18-6-301, C.R.S.;
- (i) Aggravated incest, in violation of section 18-6-302, C.R.S.;
- (j) Human trafficking of a minor for sexual servitude, as described in section 18-3-504(2), C.R.S.;
- (j.5) Human trafficking for sexual servitude, as described in section 18-3-504(1) ;
- (k) Sexual exploitation of children, in violation of section 18-6-403, C.R.S.;
- (l) Procurement of a child for sexual exploitation, in violation of section 18-6-404, C.R.S.;
- (m) Indecent exposure, in violation of section 18-7-302, C.R.S.;
- (n) Soliciting for child prostitution, in violation of section 18-7-402, C.R.S.;
- (o) Pandering of a child, in violation of section 18-7-403, C.R.S.;
- (p) Procurement of a child, in violation of section 18-7-403.5, C.R.S.;

- (q) Keeping a place of child prostitution, in violation of section 18-7-404, C.R.S.;
- (r) Pimping of a child, in violation of section 18-7-405, C.R.S.;
- (s) Inducement of child prostitution, in violation of section 18-7-405.5, C.R.S.;
- (t) Patronizing a prostituted child, in violation of section 18-7-406, C.R.S.;
- (u) Engaging in sexual conduct in a correctional institution, in violation of section 18-7-701, C.R.S.;
- (v) Wholesale promotion of obscenity to a minor, in violation of section 18-7-102 (1.5), C.R.S.;
- (w) Promotion of obscenity to a minor, in violation of section 18-7-102 (2.5), C.R.S.;
- (x) Class 4 felony internet luring of a child, in violation of section 18-3-306(3), C.R.S.;
- (y) Internet sexual exploitation of a child, in violation of section 18-3-405.4, C.R.S.;
- (z) Public indecency, committed in violation of section 18-7-301(2)(b), C.R.S., if a second offense is committed within five years of the previous offense or a third or subsequent offense is committed;
- (aa) Invasion of privacy for sexual gratification, in violation of section 18-3-405.6 ;
- (bb) Second degree kidnapping, if committed in violation of section 18-3-302(3)(a) ;
- (cc) Unlawful electronic sexual communication, in violation of section 18-3-418 ; or
- (dd) Unlawful sexual conduct by a peace officer, in violation of section 18-3-405.7.

Cite as C.R.S. § 16-22-102

History. Amended by 2019 Ch. 287, §3, eff. 7/1/2019.

Amended by 2019 Ch. 145, §3, eff. 7/1/2019.

Amended by 2017 Ch. 250, §3, eff. 9/1/2017.

Amended by 2014 Ch. 282, §13, eff. 7/1/2014.

L. 2002: Entire article added, p. 1157, § 1, effective July 1. L. 2004: (9)(v) and (9)(w) added, p. 800, § 1, effective May 21; (3.5), (4.5), (5.5), and (5.7) added and (8) amended, p. 1107, § 1, effective May 27. L. 2006: (5.7) amended, p. 1006, § 3, effective July 1; (9)(x) and (9)(y) added, p. 2054, § 2, effective July 1. L. 2010: (9)(j) amended, (SB 10-140), ch. 156, p. 537, §6, effective April 21; (9)(u) amended, (HB 10-1277), ch. 262, p. 1190, §2, effective July 1; (9)(x) and (9)(y) amended and (9)(z) added, (HB 10-1334), ch. 359, p. 1708, §3, effective August 11; (9)(x) and (9)(y) amended and (9)(aa) added, (SB 10-128), ch. 415, p. 2047, §8, effective July 1, 2012. L. 2011: (9)(bb) added, (HB 11-1278), ch. 224, p. 960, §3, effective May 27. L. 2012: (4.3) and (5.8) added and (5.7) amended, (HB 12-1346), ch. 220, p. 940, § 1, effective July 1. L. 2014: (9)(j) amended, (HB 14-1273), ch. 282, p. 1153, § 13, effective July 1. L. 2017: IP amended and (9)(j.5) added, (HB 17-1072), ch. 250, p. 1050, § 3, effective September 1.

Editor's Note:

(1) Section 3 of chapter 145 (HB 19-1030), Session Laws of Colorado 2019, provides that the act changing this section applies to offenses committed on or after July 1, 2019.

(2) Section 3 of chapter 287 (HB 19-1250), Session Laws of Colorado 2019, provides that the act changing this section applies to offenses committed on or after July 1, 2019.

Case Notes:

ANNOTATION

Annotator's note. Since §16-22-102 is similar to § 18-3-412.5 as it existed prior to its 2002 repeal and reenactment, a relevant case construing that provision has been included in the annotations to this section.

The sex offender registration act taken as a whole gives fair notice that "residence" applies to more than a traditional house or apartment, so it is not unconstitutionally vague as applied to defendant. Defendant had fair notice that staying in his car may have triggered his registration duties. *People v. Allman*, 2012 COA 212, 321 P.3d 557.

In reference to the term "convicted" in subsection (3), the phrase "having received a deferred judgment and sentence" does not mean the same as "completing the terms of

a deferred sentencing agreement". Defendant must register as a sex offender pursuant to § 16-22-103(1)(a) despite completion of a deferred sentencing agreement. *Dubois v. Abrahamson*, 214 P.3d 586 (Colo. App. 2009).

A motor vehicle if used, intended to be used, or usually used for habitation may be a "residence", even if it is not parked in a fixed location. *People v. Allman*, 2012 COA 212, 321 P.3d 557.

The term "residence" does not require an address. *People v. Allman*, 2012 COA 212, 321 P.3d 557.

The trial court properly ordered the defendant to register as a sex offender pursuant to this section even though defendant plead guilty to an offense not specifically listed in the definition of "unlawful sexual behavior" in subsection (1)(b). Although defendant plead guilty to contributing to the delinquency of a minor, she had engaged in soliciting for child prostitution, pandering of a child, procurement of a child for sexual exploitation, and inducement of child prostitution. Thus, the factual basis for the plea involved unlawful sexual behavior, and defendant was appropriately required to register as a sex offender. *People v. Meidinger*, 987 P.2d 937 (Colo. App. 1999).

To establish a residence under subsection (5.7) requires a physical presence or occupancy at a location. An offender under the Colorado Sex Offender Registration Act is required to give notice of where he or she intends to reside upon release from custody, but is not required to register at an address solely based upon that intent. *People v. Griffin*, 397 P.3d 1086 (Colo. App. 2011), cert. dismissed, 2014 CO 48, 328 P.3d 91.

§ 16-22-103. Sex offender registration - required - applicability - exception

- (1) Effective July 1, 1998, the following persons shall be required to register pursuant to the provisions of section 16-22-108 and shall be subject to the requirements and other provisions specified in this article:
 - (a) Any person who was convicted on or after July 1, 1991, in the state of Colorado, of an unlawful sexual offense, as defined in section 18-3-411(1), C.R.S., enticement of a child, as described in section 18-3-305, C.R.S., or internet luring of a child, as described in section 18-3-306, C.R.S.;
 - (b) Any person who was convicted on or after July 1, 1991, in another state or jurisdiction, including but not limited to a military, tribal, territorial, or federal jurisdiction, of an offense that, if committed in Colorado, would

constitute an unlawful sexual offense, as defined in section 18-3-411(1), C.R.S., enticement of a child, as described in section 18-3-305, C.R.S., or internet luring of a child, as described in section 18-3-306, C.R.S.; and

- (c) Any person who was released on or after July 1, 1991, from the custody of the department of corrections of this state or any other state, having served a sentence for an unlawful sexual offense, as defined in section 18-3-411(1), C.R.S., enticement of a child, as described in section 18-3-305, C.R.S., or internet luring of a child, as described in section 18-3-306, C.R.S.
- (2)
- (a) On and after July 1, 1994, any person who is convicted in the state of Colorado of unlawful sexual behavior or of another offense, the underlying factual basis of which involves unlawful sexual behavior, or any person who is released from the custody of the department of corrections having completed serving a sentence for unlawful sexual behavior or for another offense, the underlying factual basis of which involved unlawful sexual behavior, shall be required to register in the manner prescribed in section 16-22-104, section 16-22-106 or 16-22-107, whichever is applicable, and section 16-22-108.
 - (b) A person shall be deemed to have been convicted of unlawful sexual behavior if he or she is convicted of one or more of the offenses specified in section 16-22-102(9), or of attempt, solicitation, or conspiracy to commit one or more of the offenses specified in said section.
 - (c) (I) For convictions entered on or after July 1, 2002, a person shall be deemed to be convicted of an offense, the underlying factual basis of which involves unlawful sexual behavior, if:
 - (A) The person is convicted of an offense that requires proof of unlawful sexual behavior as an element of the offense; or
 - (B) The person is convicted of an offense and is eligible for and receives an enhanced sentence based on a circumstance that requires proof of unlawful sexual behavior; or
 - (C) The person was originally charged with unlawful sexual behavior or with an offense that meets the description in sub-subparagraph (A) or (B) of this subparagraph (I), the person pleads guilty to an offense that does not constitute unlawful sexual behavior, and, as part of the plea

agreement, the person admits, after advisement as provided in subparagraph (III) of this paragraph (c), that the underlying factual basis of the offense to which he or she is pleading guilty involves unlawful sexual behavior; or

(D) The person was charged with and convicted of an offense that does not constitute unlawful sexual behavior and the person admits on the record, after advisement as provided in subparagraph (III) of this paragraph (c), that the underlying factual basis of the offense involved unlawful sexual behavior.

(II) If a person is originally charged with unlawful sexual behavior or with an offense that meets the description in sub-subparagraph (A) or (B) of subparagraph (I) of this paragraph (c), the court may accept a plea agreement to an offense that does not constitute unlawful sexual behavior only if:

(A) The district attorney stipulates that the underlying factual basis of the offense to which the person is pleading guilty does not involve unlawful sexual behavior; or

(B) The person admits, after advisement as provided in subparagraph (III) of this paragraph (c), that the underlying factual basis of the offense to which he or she is pleading guilty involves unlawful sexual behavior.

(III) The advisement provided for purposes of this paragraph (c), in addition to meeting the requirements of the Colorado rules of criminal procedure, shall advise the person that admitting that the underlying factual basis of the offense to which the person is pleading or of which the person is convicted involves unlawful sexual behavior will have the collateral result of making the person subject to the requirements of this article. Notwithstanding any provision of this paragraph (c) to the contrary, failure to advise a person pursuant to the provisions of this subparagraph (III) shall not constitute a defense to the offense of failure to register as a sex offender if there is evidence that the defendant had actual notice of the duty to register.

(IV) In any case in which a person is deemed to have been convicted of an offense, the underlying factual basis of which involves

unlawful sexual behavior, as provided in this paragraph (c), the judgment of conviction shall specify that the person is convicted of such an offense and specify the particular crime of unlawful sexual behavior involved.

- (V) The provisions of this paragraph (c) shall apply to juveniles for purposes of determining whether a juvenile is convicted of an offense, the underlying factual basis of which involves unlawful sexual behavior.
- (d)
- (I) Notwithstanding any other provision of this section, any stipulation by a district attorney and any finding by the court with regard to whether the offense of which the person is convicted includes an underlying factual basis involving unlawful sexual behavior, as defined in section 16-22-102, shall be binding on the department of corrections for purposes of classification. On or after July 1, 2008, if the department of corrections receives a mittimus that does not indicate the necessary findings as required by subsection (2)(c)(II) of this section, the department shall notify the court and request that the court enter the necessary findings pursuant to subsection (2)(c)(II) of this section.
 - (II) The department of corrections shall have the authority to make a determination that a person is a sex offender, as defined in section 16-11.7-102(2)(a), for the purposes of classification and treatment if:
 - (A) The person has one or more prior convictions for a sex offense as defined in section 16-11.7-102(3) ;
 - (B) The person has a prior offense for which a determination has been made by the court that the underlying factual basis involved a sex offense as defined in section 16-11.7-102(3) ; or
 - (C) The person has been classified as a sex offender in accordance with procedures established by the department of corrections.
 - (III) The procedures established by the department of corrections to classify a person as a sex offender shall require that:

- (A) The classification proceeding be conducted by a licensed attorney who shall serve as an administrative hearing officer;
- (B) The offender's attorney be permitted to attend, represent, and assist the offender at the classification proceeding; and
- (C) The offender be entitled to written notice of the reason for the proceeding, disclosure of the evidence to be presented against him or her, an opportunity to be heard in person and to present witnesses and documentary evidence, the right to confront and cross-examine adverse witnesses, unless the administrative hearing officer finds good cause for not allowing confrontation, and written findings and conclusions indicating the evidence and reasons relied upon for the classification as a sex offender.

(IV) Notwithstanding any statutory provisions to the contrary, the department of corrections shall ensure that all procedures and policies comply with the federal "Prison Rape Elimination Act of 2003", Pub.L. 108-79, as amended.

- (3) In addition to the persons specified in subsections (1) and (2) of this section, any person convicted of an offense in any other state or jurisdiction, including but not limited to a military or federal jurisdiction, for which the person, as a result of the conviction, is required to register if he or she resided in the state or jurisdiction of conviction, or for which such person would be required to register if convicted in Colorado, shall be required to register in the manner specified in section 16-22-108, so long as such person is a temporary or permanent resident of Colorado. Such person may petition the court for an order that discontinues the requirement for registration in this state at the times specified in section 16-22-113 for offense classifications that are comparable to the classification of the offense for which the person was convicted in the other state or jurisdiction. Such person may petition the court for an order that discontinues the requirement for registration in this state for offense classifications that such person would not be required to register for if convicted in Colorado.
- (4) The provisions of this article 22 apply to any person who receives a disposition or is adjudicated a juvenile delinquent based on the commission of any act that may constitute unlawful sexual behavior or who receives a deferred adjudication based on commission of any act that may constitute unlawful sexual behavior;

except that, with respect to section 16-22-113(1)(a) to (1)(e), a person may petition the court for an order to discontinue the duty to register as provided in those paragraphs, but only if the person has not subsequently received a disposition for, been adjudicated a juvenile delinquent for, or been otherwise convicted of any offense involving unlawful sexual behavior. In addition, the duty to provide notice to a person of the duty to register, as set forth in sections 16-22-105 to 16-22-107, applies to juvenile parole and probation officers and appropriate personnel of the division of youth services in the department of human services.

- (5) (a) Notwithstanding any provision of this article 22 to the contrary, if, pursuant to a motion filed by a person described in this subsection (5) or on its own motion, a court determines that the registration requirement specified in this section would be unfairly punitive and that exempting the person from the registration requirement would not pose a significant risk to the community, the court, upon consideration of the totality of the circumstances, may exempt the person from the registration requirements imposed pursuant to this section if:
- (I) The person was younger than eighteen years of age at the time of the commission of the offense; and
 - (II) The person has not been previously charged with unlawful sexual behavior; and
 - (III) The offense, as charged in the first petition filed with the court, is a first offense of misdemeanor unlawful sexual contact, as described in section 18-3-404 ; indecent exposure, as described in section 18-7-302 ; or sexual exploitation of a child, as described in section 18-6-403, and the person's conduct is limited to the elements in posting private images by a juvenile, as described in section 18-7-109(1), or possessing private images by a juvenile, as described in section 18-7-109(2) ; and
 - (IV) The person has received a sex offender evaluation that conforms with the standards developed pursuant to section 16-11.7-103(4)(i), from an evaluator who meets the standards established by the sex offender management board, and the evaluator recommends exempting the person from the registration requirements based upon the best interests of that person and the community; and
 - (V) The court makes written findings of fact specifying the grounds for granting such exemption.

- (b) Any defendant who files a motion pursuant to this subsection (5) or the court, if considering its own motion, shall provide notice of the motion to the prosecuting district attorney. In addition, the court shall provide notice of the motion to the victim of the offense. Prior to deciding the motion, the court shall conduct a hearing on the motion at which both the district attorney and the victim shall have opportunity to be heard.
- (6) Any person who is required to register pursuant to this section and fails to do so or otherwise fails to comply with the provisions of this article may be subject to prosecution for the offense of failure to register as a sex offender, as described in section 18-3-412.5, C.R.S. Failure of any governmental entity or any employee of any governmental entity to comply with any requirement of this article shall not constitute a defense to the offense of failure to register as a sex offender if there is evidence that the defendant had actual notice of the duty to register.

Cite as C.R.S. § 16-22-103

History. Amended by 2018 Ch. 143, §1, eff. 8/8/2018.

Amended by 2017 Ch. 390, §2, eff. 1/1/2018.

Amended by 2017 Ch. 381, §17, eff. 6/6/2017.

L. 2002: Entire article added, p. 1159, § 1, effective July 1. L. 2004: (1)(b), (1)(c), (3), and (5)(a) amended, p. 1108, § 2, effective May 27. L. 2007: (1) amended, p. 1687, § 3, effective July 1. L. 2008: (3) amended, p. 849, § 1, effective May 14; (2)(d) amended, p. 1754, § 1, effective July 1. L. 2011: (1)(b) amended, (HB 11-1278), ch. 224, p. 960, §4, effective May 27; (5)(a)(IV) amended, (HB 11-1138), ch. 236, p. 1027, §9, effective May 27. L. 2017: (4) amended, (HB 17-1329), ch. 381, p. 1969, § 17, effective June 6; IP(5)(a) and (5)(a)(III) amended, (HB 17-1302), ch. 390, p. 2013, § 2, effective January 1, 2018. L. 2018: (3) amended, (SB 18-026), ch. 143, p. 921, § 1, effective August 8.

Case Notes:

ANNOTATION

Annotator's note. Since §16-22-103 is similar to § 18-3-412.5 as it existed prior to its 2002 repeal and reenactment, relevant cases construing that provision have been included in the annotations to this section.

Prior to the 2004 amendment, subsection (1)(c) referred to the department of corrections in Colorado not that of any other state. *Fendley v. People*, 107 P.3d 1122 (Colo. App. 2004).

Use of present tense in subsection (3) refers to any person currently required to register in the state of conviction of the sexual offense and not to a person who "was" or "has been" required to register. *Fendley v. People*, 107 P.3d 1122 (Colo. App. 2004).

Although application of subsection (1) relates back to convicted sexual offenders released on or after July 1, 1991, it does not violate the prohibition against ex post facto laws, because the statute does not disadvantage the offender. The registration requirement is intended to assist law enforcement officials in investigating future sex crimes and to protect the public safety. As such, it is remedial, not punitive, and does not unconstitutionally enhance the offender's punishment. *Jamison v. People*, 988 P.2d 177 (Colo. App. 1999); *People v. Sowell*, 327 P.3d 273 (Colo. App. 2011).

The 2008 amendments to subsection (2)(d)(I) were substantive and cannot be applied retroactively. A retroactive application would modify vested rights and liabilities. *Vondra v. Colo. Dept. of Corr.*, 226 P.3d 1165 (Colo. App. 2009).

Procedural due process does not entitle a sex offender to a hearing on the sex offender's dangerousness before requiring the sex offender to register. Due process does not guarantee the right to a hearing to establish a fact that is not material under the statute. Dangerousness is not material under the registration statute, the duty to register is triggered by a conviction of a sex offense. The statute even states the crime for which the registrant was convicted may not reflect the current level of dangerousness. *People ex rel. C.B.B.*, 75 P.3d 1148 (Colo. App. 2003).

Procedural due process does not entitle a juvenile sex offender to present evidence or to be heard regarding his or her potential for rehabilitation. Defendant's potential for rehabilitation is irrelevant to the sex offender registration requirement; defendant was required to register as a sex offender based on his adjudication for the current offense coupled with having a prior adjudication for a sex offense. *People in Interest of C.M.D.*, 2018 COA 172, ___ P.3d ___.

The sex offender registration act does not deprive juveniles of their liberty or privacy interests. Defendant's substantive due process claim that registration deprives juveniles of their liberty interests in living, associating with families and friends, and circulating in society does not implicate a fundamental right and the act's stated purpose of protecting the public is rational. Juvenile defendant's privacy rights are not violated because juveniles do not necessarily have greater privacy rights than adults and internet posting required by the act is limited to certain adults. *People in Interest of C.M.D.*, 2018 COA 172, ___ P.3d ___.

This section does not violate the offender's right to equal protection even though this section does not apply to persons who may have been convicted the same date as the offender, but were eligible for release prior to 1991. The offender is not similarly situated to persons released prior to 1991 because the offender was not eligible for release as of said date. *Jamison v. People*, 988 P.2d 177 (Colo. App. 1999).

Because sex offender registration is not punishment, requiring a juvenile to register does not violate cruel and unusual punishment even though juveniles are constitutionally different from adults when it comes to sentencing. *People in Interest of J.O.*, 2015 COA 119, 383 P.3d 69; *People in Interest of C.M.D.*, 2018 COA 172, ___ P.3d ___.

The sex offender registration act taken as a whole gives fair notice that "residence" applies to more than a traditional house or apartment, so it is not unconstitutionally vague as applied to defendant. Defendant had fair notice that staying in his car may have triggered his registration duties. *People v. Allman*, 2012 COA 212, 321 P.3d 557.

The duty to register as a sex offender is not a direct consequence of the entry of a guilty plea and therefore need not be included in the advisement. The statutory duty to register as a sex offender in Colorado is only a collateral consequence of a defendant's guilty plea. Failure to advise defendant of the duty to register as a sex offender does not invalidate his guilty plea. *People v. Montaine*, 7 P.3d 1065 (Colo. App. 1999).

The requirement that a juvenile register as a sex offender pursuant to this section does not give rise to a constitutional right to a jury trial in a juvenile adjudication because the statutory duty to register as a sex offender is not a criminal punishment. *People ex rel. J.T.*, 13 P.3d 321 (Colo. App. 2000).

A person convicted of violating 18 U.S.C. § 2252 (a)(2) has engaged in conduct that, if committed in Colorado, would constitute sexual exploitation of a child in violation of § 18-6-403(3) (b.5) and is, therefore, subject to the registration requirement of subsection (1)(b) of this section. *Fabiano v. Armstrong*, 141 P.3d 907 (Colo. App. 2006).

Based upon defendant's civil commitment in another state for a sex offense, defendant is required to register as a sex offender in this state. Defendant is a person "required to register in the state of conviction" and a person who would be "required to register if convicted in this state". The civil commitment proceedings in the other state were equivalent to a deferred judgment and sentencing in this state, thus satisfying the "convicted" requirement of the statute. The other state's commitment procedures included sufficient due process protections. The crime that was the subject of the civil commitment would essentially have been sexual assault on a child in this state. *Mayo v. People*, 181 P.3d 1207 (Colo. App. 2008).

A person with an out-of-state conviction for an offense comparable to sexual assault on a child in this state is not eligible to discontinue registration with this state's sex offender registry because a person who is convicted in this state of the same offense is not eligible to discontinue registration. *Curtiss v. People*, 2014 COA 107, 410 P.3d 539.

Defendant must register as a sex offender pursuant to subsection (1)(a) despite completion of a deferred sentencing agreement based on the plain language of the definition of "convicted", as defined in § 16-22-102(3) and as used in subsection (1)(a) of this section. *Dubois v. Abrahamson*, 214 P.3d 586 (Colo. App. 2009).

The phrase "as charged in the first petition filed with the court" in subsection (5)(a)(III) means the original petition as it appeared when it was filed and not any amendments or subsequent petitions. *People in Interest of I.S.*, 2017 COA 155, 415 P.3d 869.

The first offense criterion in subsection (5)(a)(III) for exemption from sex offender registration does not apply when a juvenile is simultaneously adjudicated for unlawful sexual contact and indecent exposure. *People in Interest of J.O.*, 2015 COA 119, 383 P.3d 69.

Defendant not required to register as a sex offender for offense committed in another state if all of the Colorado elements of the crime are not met. Because statute included one element that the other state's statute did not, the prosecution did not satisfy all of the elements of the crime of indecent exposure, thus defendant was not required to register as a sex offender for a conviction of indecent exposure in another state. *People v. Brooks*, 2012 COA 52, 296 P.3d 216.

Sufficient competent evidence for department of corrections' hearing panel to determine defendant to be a sex offender. The panel relied on police reports and the victim's statements to determine that defendant had subjected a victim to unwanted sexual contact through threats, intimidation, and physical force. *Vondra v. Colo. Dept. of Corr.*, 226 P.3d 1165 (Colo. App. 2009).

Evidence sufficient to establish jury's finding that defendant knowingly failed to register. Defendant admitted that he knew he had to register when he established a new address, and the evidence showed that defendant had established that residence. *People v. Allman*, 2012 COA 212, 327 P.3d 273 (Colo. App. 2011).

Ongoing registration obligations under this act do not satisfy the custody requirement for a habeas corpus petition filed under 28 U.S.C. § 2254. The requirement to register under a state sex offender registration statute does not satisfy § 2254's condition that a petitioner be "in custody" at the time petitioner files a habeas petition. Registration requirements are collateral consequences of conviction that do not impose a severe restriction on an individual's freedom. *Calhoun v. Colo. Attorney Gen.*, 745 F.3d 1070 (10th Cir.), cert. denied, ___ U.S. ___, 135 S. Ct. 376, 190 L. Ed. 2d 254 (2014).

Cross References:

For the legislative declaration in HB 17-1302, see section 1 of chapter 390, Session Laws of Colorado 2017.

§ 16-22-104. Initial registration - effective date

- (1) (a) (I) Beginning January 1, 2005, for any person required to register pursuant to section 16-22-103, the court, within the later of twenty-four hours or the next business day after sentencing the person, shall electronically file with the CBI the initial registration of the person, providing the information required by the CBI.
- (II) Beginning May 27, 2004, the court shall specify on the judgment of conviction the person's duty to register as required in section 16-22-108, including but not limited to the duty to confirm registration if the person is sentenced on or after January 1, 2005, and the person's duty to reregister.
- (b) Any person who is sentenced prior to January 1, 2005, and who is required to register pursuant to section 16-22-103 shall initially register in the manner provided and within the times specified in section 16-22-108(1)(a) for registration.
- (c) The state court administrator is hereby authorized to receive and expend any public or private gifts, grants, or donations that may be available to offset the costs incurred in implementing the provisions of this subsection (1).
- (2) Repealed.

Cite as C.R.S. § 16-22-104

History. L. 2002: Entire article added, p. 1163, § 1, effective July 1. L. 2003: (1)(a) amended, p. 759, § 1, effective March 25. L. 2004: Entire section amended, p. 1109, § 3, effective May 27.

Editor's Note:

Subsection (2)(c) provided for the repeal of subsection (2), effective July 1, 2005. (See L. 2004, p. 1109.)

§ 16-22-105. Notice - requirements - residence - presumption

- (1) Any person who is required to register pursuant to section 16-22-103 shall receive notice of the duty to register as provided in section 16-22-106 or 16-22-107, whichever is applicable. Such notice shall inform the person of the duty to register, in the manner provided in section 16-22-108, with the local law enforcement agency of each jurisdiction in which the person resides. The notice shall inform the person that he or she has a duty to register with local law enforcement agencies in any state or other jurisdiction to which the person may move and that the CBI shall notify the agency responsible for registration in the new state as provided in section 16-22-108(4). The notice shall also inform the person that, at the time the person registers, he or she must provide his or her date of birth, a current photograph, and a complete set of fingerprints.
- (2) Failure of any person to sign the notice of duty to register, as required in sections 16-22-106 and 16-22-107, shall not constitute a defense to the offense of failure to register as a sex offender if there is evidence that the person had actual notice of the duty to register.
- (3) For purposes of this article, any person who is required to register pursuant to section 16-22-103 shall register in all jurisdictions in which he or she establishes a residence. A person establishes a residence through an intent to make any place or dwelling his or her residence. The prosecution may prove intent to establish residence by reference to hotel or motel receipts or a lease of real property, ownership of real property, proof the person accepted responsibility for utility bills, proof the person established a mailing address, or any other action demonstrating such intent. Notwithstanding the existence of any other evidence of intent, occupying or inhabiting any dwelling for more than fourteen days in any thirty-day period shall constitute the establishment of residence.

Cite as C.R.S. § 16-22-105

History. L. 2002: Entire article added, p. 1163, § 1, effective July 1. L. 2004: (3) amended, p. 1110, § 4, effective May 27.

Case Notes:

ANNOTATION

Annotator's note. Since §16-22-105 is similar to § 18-3-412.5 as it existed prior to its 2002 repeal and reenactment, a relevant case construing that provision has been included in the annotations to this section.

The duty to register as a sex offender is not a direct consequence of the entry of a guilty plea and therefore need not be included in the advisement. The statutory duty to register as a sex offender in Colorado is only a collateral consequence of a defendant's guilty plea. Failure to advise defendant of the duty to register as a sex offender does not invalidate his guilty plea. *People v. Montaine*, 7 P.3d 1065 (Colo. App. 1999).

To establish a residence under subsection (3) requires a physical presence or occupancy at a location. An offender under the Colorado Sex Offender Registration Act is required to give notice of where he or she intends to reside upon release from custody, but is not required to register at an address solely based upon that intent. *People v. Griffin*, 397 P.3d 1086 (Colo. App. 2011), cert. dismissed, 2014 CO 48, 328 P.3d 91.

There was sufficient evidence to support a finding that defendant intended to establish a new residence and was present at the residence. Defendant told his parole officer his new address was his new residence, and the parole officer observed defendant's belongings at the residence. *People v. Foster*, 2013 COA 85, 364 P.3d 1149.

§ 16-22-106. Duties - probation department - community corrections administrator - court personnel - jail personnel - notice

- (1) (a) If a person who is required to register pursuant to section 16-22-103 is sentenced to probation, the probation department, as soon as possible following sentencing, shall provide notice, as described in section 16-22-105, to the person of his or her duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides, and the notice shall include the requirements for a person who registers as "lacks a fixed residence". The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address or addresses at which the person resides or a statement that the person lacks a fixed residence. Beginning on May 27, 2004, the court shall specify on the judgment of conviction the duty to register as required in section 16-22-108, including but not limited to the duty to confirm registration if sentenced on or after January 1, 2005, and to reregister.

- (b) The probation department shall electronically notify the CBI of the date on which the person's probation is terminated, and the probation department shall notify the CBI if the person absconds or dies prior to the probation termination date. The CBI shall electronically notify the local law enforcement agency of each jurisdiction in which the person resides of the occurrence of any of the events specified in this paragraph (b).

- (2)
 - (a) If a person who is required to register pursuant to section 16-22-103 receives a direct sentence to community corrections, the administrator for the community corrections program, or his or her designee, as soon as possible following sentencing, shall provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides. The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address or addresses at which the person resides. The court shall specify on the judgment of conviction the duty to register as required in section 16-22-108, including but not limited to the duty to confirm registration, if sentenced on or after January 1, 2005, and to reregister.

 - (b) The administrator of the community corrections program, or his or her designee, shall electronically notify the CBI of the date on which the sentence to community corrections is terminated, and the administrator of the community corrections program shall notify the CBI if the person escapes or dies prior to the sentence termination date. The CBI shall electronically notify the local law enforcement agency of each jurisdiction in which the person resides of the occurrence of any of the events specified in this paragraph (b).

- (3)
 - (a)
 - (I) If a person who is required to register pursuant to section 16-22-103 is held for more than five business days in a county jail pending court disposition for any offense, the sheriff of the county in which the county jail is located, or his or her designee, shall transmit to the local law enforcement agency of the jurisdiction in which the person was last registered and to the CBI confirmation of the person's registration. The confirmation shall be transmitted on a standardized form provided by the CBI and shall include the address or addresses at which the person will reside while in custody of the county jail, the person's date of birth, a current photograph of the person, and the person's fingerprints.

- (II) If a person who is required to register pursuant to section 16-22-103 is sentenced to a county jail for any offense, the sheriff of the county in which the county jail is located, or his or her designee, as soon as possible following sentencing, shall transmit to the local law enforcement agency of the jurisdiction in which the person was last registered and to the CBI confirmation of the person's registration. The confirmation shall be transmitted on a standardized form provided by the CBI and shall include the address or addresses at which the person will reside while in custody of the county jail, the person's date of birth, a current photograph of the person, and the person's fingerprints.
 - (III) The provisions of this paragraph (a) shall apply to persons sentenced on or after January 1, 2005.
- (b) At least five days prior to the discharge of the person from custody, the sheriff, or his or her designee, shall provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides. The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address at which the person intends to reside upon discharge.
 - (c) Within five days, but not fewer than two days, prior to the discharge of the person from custody, the sheriff, or his or her designee, shall notify the CBI and the local law enforcement agency of the jurisdiction in which the person intends to reside of the date of the person's discharge. Such notice, at a minimum, shall include the address at which the person plans to reside upon discharge, provided by the person pursuant to paragraph (b) of this subsection (3), and the person's date of birth, fingerprints, and current photograph.
- (3.5) With regard to a person who is required to register within a state, military, or federal jurisdiction other than Colorado, the chief local law enforcement officer, or his or her designee, of the Colorado jurisdiction in which the person resides shall provide notice, as described in section 16-22-105, to the person as soon as possible after discovering the person's presence in the jurisdiction, of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each Colorado jurisdiction in which the person resides. The person shall be required to sign the notice as confirmation of

receipt and to provide the person's date of birth and the address or addresses at which the person resides.

- (4) For any person who is required to register pursuant to section 16-22-103, who is not committed to the department of human services, and who is not sentenced to probation, community corrections, county jail, or the department of corrections, the judge or magistrate who has jurisdiction over the person shall, at sentencing, provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides, and the notice shall include the requirements for a person who registers as "lacks a fixed residence". The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address or addresses at which the person resides or a statement that the person lacks a fixed residence.

Cite as C.R.S. § 16-22-106

History. L. 2002: Entire article added, p. 1164, § 1, effective July 1. L. 2003: (3)(a)(II) amended, p. 759, § 2, effective March 25. L. 2004: (1), (2), and (3)(a)(II) amended and (3.5) added, pp. 1110, 1111, §§ 5, 6, effective May 27. L. 2008: (3)(c) amended, p. 1885, § 25, effective August 5. L. 2011: (3)(a) amended, (HB 11-1278), ch. 224, p. 960, §5, effective May 27. L. 2012: (1)(a) and (4) amended, (HB 12-1346), ch. 220, p. 941, § 2, effective July 1.

§ 16-22-107. Duties - department of corrections - department of human services - confirmation of registration - notice - address verification

- (1) (a) If a person who is required to register pursuant to section 16-22-103 is sentenced to the department of corrections, the department of corrections shall transmit to the CBI confirmation of the person's registration on a standardized form provided by the CBI, including the person's date of birth and the person's fingerprints. The department of corrections shall also transmit a photograph of the person if requested by the CBI.
- (b) The provisions of this subsection (1) shall apply to persons sentenced on or after January 1, 2005.

- (2) At least ten business days prior to the release or discharge of any person who has been sentenced to the department of corrections and is required to register pursuant to section 16-22-103, the department of corrections shall provide notice, as described in section 16-22-105, to the person of the duty to register in accordance with the provisions of this article with the local law enforcement agency of each jurisdiction in which the person resides, and the notice shall include the requirements for a person who registers as "lacks a fixed residence". The person shall be required to sign the notice as confirmation of receipt and to provide the person's date of birth and the address at which the person intends to reside upon release or discharge or a statement that the person lacks a fixed residence.
- (3) Within five days, but not fewer than two days, prior to the release or discharge of any person who has been sentenced to the department of corrections and is required to register pursuant to section 16-22-103, the department shall notify the CBI and the local law enforcement agency of the jurisdiction in which the person intends to reside of the date of the person's release or discharge. Such notice shall include the address at which the person intends to reside upon release or discharge, provided by the person pursuant to subsection (2) of this section, and the person's date of birth and the person's current photograph if requested by the CBI. In addition, such notice may include additional information concerning the person, including but not limited to any information obtained in conducting the assessment to determine whether the person may be subject to community notification pursuant to section 16-13-903.
- (4)
 - (a) Prior to the release or discharge of any person who has been sentenced to the department of corrections and is required to register pursuant to section 16-22-103, department of corrections personnel, if the person is being released on parole, or the local law enforcement agency of the jurisdiction in which the person intends to reside, if the person is being discharged, shall verify that:
 - (I) The address provided by the person pursuant to subsection (2) of this section is a residence;
 - (II) The occupants or owners of the residence know of the person's history of unlawful sexual behavior;
 - (III) The occupants or owners of the residence have agreed to allow the person to reside at the address; and
 - (IV) If the person is being released on parole, the address complies with any conditions imposed by the parole board.

- (b) If, in attempting to verify the address provided by the person, department of corrections personnel or local law enforcement officers determine that any of the information specified in paragraph (a) of this subsection (4) is not true, the person shall be deemed to have provided false information to department personnel concerning the address at which the person intends to reside upon release.
- (4.5) With regard to a person who has been sentenced to the department of corrections, is released on parole, and is required to register pursuant to section 16-22-103, the department shall electronically notify the CBI of the date on which the person's parole is terminated, and the department shall notify the CBI if the person absconds or dies prior to the parole termination date. The CBI shall electronically notify the local law enforcement agency of each jurisdiction in which the person resides of the occurrence of any of the events specified in this subsection (4.5).
- (5) In the case of a juvenile who is required to register pursuant to section 16-22-103 and is committed to the department of human services, said department shall have and carry out the duties specified in this section for the department of corrections with regard to said juvenile.

Cite as C.R.S. § 16-22-107

History. L. 2002: Entire article added, p. 1165, § 1, effective July 1. L. 2003: (1)(b) amended, p. 759, § 3, effective March 25. L. 2004: (1), (2), and (3) amended and (4.5) added, p. 1111, § 7, effective May 27. L. 2012: (2) amended, (HB 12-1346), ch. 220, p. 942, § 3, effective July 1.

§ 16-22-108. Registration - procedure - frequency - place - change of address - fee

- (1) (a) (I) Each person who is required to register pursuant to section 16-22-103 shall register with the local law enforcement agency in each jurisdiction in which the person resides. A local law enforcement agency shall accept the registration of a person who lacks a fixed residence; except that the law enforcement agency is not required to accept the person's registration if it includes a residence or location that would violate state law or local ordinance. If the

residence or location with which the person attempts to register constitutes such a violation, the law enforcement agency shall so advise the person and give the person an opportunity to secure an alternate location within five days.

- (II) Each person who is required to register pursuant to section 16-22-103 shall initially register or, if sentenced on or after January 1, 2005, confirm his or her initial registration within five business days after release from incarceration for commission of the offense requiring registration or within five business days after receiving notice of the duty to register, if the person was not incarcerated. The person shall register with the local law enforcement agency during business hours by completing a standardized registration form provided to the person by the local law enforcement agency and paying the registration fee imposed by the local law enforcement agency as provided in subsection (7) of this section. After the initial registration, the local law enforcement agency may waive the requirement that the person reregister in person if the registrant suffers from a chronic physical or intellectual disability that substantially limits the person's ability to function independently and participate in major life activities to the extent that it is a severe hardship to reregister in person and there is a medical record of such disability. If the law enforcement agency waives the requirement to reregister in person, the law enforcement agency shall reregister the person after verifying the person's current address with the person and at least one other reliable source which may include: His or her caregiver, his or her family, the facility where the person resides, or another source of verification satisfactory to the law enforcement agency. The law enforcement agency shall provide verification of the waiver, by the submission of a form developed by the CBI, to the CBI and any other law enforcement agency with which the registrant is required to register. If the law enforcement agency issues such a waiver, every three years the agency must determine whether the registrant still meets the waiver requirements and reauthorize the waiver. If the law enforcement agency issues a waiver or reauthorizes the waiver, the law enforcement agency shall also notify the victim of the offense for which the petitioner is required to register, if the victim of the offense has requested notice and provided contact information. The CBI shall provide standardized registration forms to the local law enforcement agencies pursuant to section 16-22-109.

- (b) Except as otherwise provided in paragraph (d) of this subsection (1), each person who is required to register pursuant to section 16-22-103 shall reregister within five business days before or after the person's first birthday following initial registration and annually within five business days before or after the person's birthday thereafter. Such person shall reregister pursuant to this paragraph (b) with the local law enforcement agency of each jurisdiction in which the person resides within five business days before or after his or her birthday, in the manner provided in paragraph (a) of this subsection (1).
- (c) Each person who is required to register pursuant to section 16-22-103 and who establishes an additional residence shall, within five business days after establishing an additional residence in any city, town, county, or city and county within Colorado, register with the local law enforcement agency of the jurisdiction in which he or she establishes the additional residence. The person shall register in said jurisdiction in the manner provided in paragraph (a) of this subsection (1) and shall reregister as provided in paragraph (b) of this subsection (1) or paragraph (d) of this subsection (1), whichever is applicable, in said jurisdiction so long as the person resides in said jurisdiction. For purposes of this paragraph (c), "additional residence" shall include, when the person's residence is a trailer or motor home, an address at which the person's trailer or motor home is lawfully located.
- (d) (I) Any person who is a sexually violent predator and any person who is convicted as an adult of any of the offenses specified in subsection (1)(d)(II) of this section has a duty to register for the remainder of his or her natural life; except that, if the person receives a deferred judgment and sentence for one of the offenses specified in subsection (1)(d)(II) of this section, the person's duty to register may discontinue as provided in section 16-22-113(1)(d). In addition to registering as required in subsection (1)(a) of this section, the person shall reregister within five business days before or after the date that is three months after the date on which the person was released from incarceration for commission of the offense requiring registration or, if the person was not incarcerated, after the date on which he or she received notice of the duty to register. The person shall register within five business days before or after that date every three months thereafter until the person's birthday. The person shall reregister within five business days before or after his or her next birthday and shall reregister within five business days before or after that date every

three months thereafter. The person shall reregister pursuant to this subsection (1)(d) with the local law enforcement agency of each jurisdiction in which the person resides or in any jurisdiction if the person lacks a fixed residence on the reregistration date, in the manner provided in subsection (1)(a) of this section.

- (I.5) (A) A person convicted of an offense in another state or jurisdiction, including but not limited to a military or federal jurisdiction, who, as a result of the conviction, is required to register quarterly as a sex offender in the state or jurisdiction of conviction is required to register as provided in subparagraph (I) of this paragraph (d) so long as the person is a temporary or permanent resident of Colorado.
 - (B) A person convicted of an offense in another state or jurisdiction, including but not limited to a military or federal jurisdiction, which conviction would require the person to register as provided in subparagraph (I) of this paragraph (d) if the conviction occurred in Colorado, is required to register as provided in said subparagraph (I) so long as the person is a temporary or permanent resident of Colorado.
- (II) The provisions of this paragraph (d) shall apply to persons convicted of one or more of the following offenses:
- (A) Felony sexual assault, in violation of section 18-3-402, C.R.S., or sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000, or felony sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000; or
 - (B) Sexual assault on a child in violation of section 18-3-405, C.R.S.; or
 - (C) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.; or
 - (D) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.; or

(E) Incest, in violation of section 18-6-301, C.R.S.; or

(F) Aggravated incest, in violation of section 18-6-302, C.R.S.

(e) Notwithstanding the time period for registration specified in paragraph (a) of this subsection (1), any person who is discharged from the department of corrections of this state or another state without supervision shall register in the manner provided in paragraph (a) of this subsection (1) no later than the next business day following discharge.

(2) Persons who reside within the corporate limits of any city, town, or city and county shall register at the office of the chief law enforcement officer of such city, town, or city and county; except that, if there is no chief law enforcement officer of the city, town, or city and county in which a person resides, the person shall register at the office of the county sheriff of the county in which the person resides. Persons who reside outside of the corporate limits of any city, town, or city and county shall register at the office of the county sheriff of the county where such person resides.

(2.5) (a) Any person who is required to register pursuant to section 16-22-103 and who has been convicted of a child sex crime shall be required to register all e-mail addresses, instant-messaging identities, or chat room identities prior to using the address or identity. The entity that accepts the registration of a person required to register all e-mail addresses shall make a reasonable effort to verify all e-mail addresses provided by the person.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2.5), a person shall not be required to register an employment e-mail address if:

(I) The person's employer provided the e-mail address for use primarily in the course of the person's employment;

(II) The e-mail address identifies the employer by name, initials, or other commonly recognized identifier; and

(III) The person required to register is not an owner or operator of the employing entity that provided the e-mail address.

(c) For purposes of this section, "child sex crime" means sexual assault on a child, as described in section 18-3-405, C.R.S.; sexual assault on a child

by one in a position of trust, as described in section 18-3-405.3, C.R.S.; unlawful sexual contact, as described in section 18-3-404 (1.5), C.R.S.; enticement of a child, as described in section 18-3-305, C.R.S.; aggravated incest, as described in section 18-6-302(1)(b), C.R.S.; human trafficking of a minor for sexual servitude, as described in section 18-3-504(2), C.R.S.; sexual exploitation of children, as described in section 18-6-403, C.R.S.; procurement of a child for sexual exploitation, as described in section 18-6-404, C.R.S.; soliciting for child prostitution, as described in section 18-7-402, C.R.S.; pandering of a child, as described in section 18-7-403, C.R.S.; procurement of a child, as described in section 18-7-403.5, C.R.S.; keeping a place of child prostitution, as described in section 18-7-404, C.R.S.; pimping of a child, as described in section 18-7-405, C.R.S.; inducement of child prostitution, as described in section 18-7-405.5, C.R.S.; patronizing a prostituted child, as described in section 18-7-406, C.R.S.; internet luring of a child, as described in section 18-3-306, C.R.S.; internet sexual exploitation of a child, as described in section 18-3-405.4, C.R.S.; wholesale promotion of obscenity to a minor, as described in section 18-7-102 (1.5), C.R.S.; promotion of obscenity to a minor, as described in section 18-7-102 (2.5), C.R.S.; sexual assault, as described in section 18-3-402(1)(d) and (1)(e), C.R.S.; sexual assault in the second degree as it existed prior to July 1, 2000, as described in section 18-3-403(1)(e) and (1) (e.5), C.R.S.; or criminal attempt, conspiracy, or solicitation to commit any of the acts specified in this paragraph (c).

- (d) The entity that accepts the registration of a person required to register all e-mail addresses, instant-messaging identities, or chat room identities pursuant to paragraph (a) of this subsection (2.5) shall require the person to sign a statement that the e-mail addresses, instant-messaging identities, or chat room identities provided on the registration form are e-mail addresses, instant-messaging identities, or chat room identities that the person has the authority to use. The statement shall also state that providing false information related to the person's e-mail addresses, instant-messaging identities, or chat room identities may constitute a misdemeanor or felony criminal offense. This signed statement constitutes a reasonable effort to verify all e-mail addresses provided by the person as required by paragraph (a) of this subsection (2.5), but does not preclude additional verification efforts.
- (3) Any person who is required to register pursuant to section 16-22-103 shall be required to register within five business days before or after each time the person:

- (a) Changes such person's address, regardless of whether such person has moved to a new address within the jurisdiction of the law enforcement agency with which such person previously registered;
 - (a.5) Changes the address at which a vehicle, trailer, or motor home is located, if the vehicle, trailer, or motor home is the person's place of residence, regardless of whether the new address is within the jurisdiction of the law enforcement agency with which such person previously registered;
 - (b) Legally changes such person's name;
 - (c) Establishes an additional residence in another jurisdiction or an additional residence in the same jurisdiction;
 - (d) Becomes employed or changes employment or employment location, if employed at an institution of postsecondary education;
 - (e) Becomes enrolled or changes enrollment in an institution of postsecondary education, or changes the location of enrollment;
 - (f) Becomes a volunteer or changes the volunteer work location, if volunteering at an institution of postsecondary education;
 - (g) Changes his or her e-mail address, instant-messaging identity, or chat room identity, if the person is required to register that information pursuant to subsection (2.5) of this section. The person shall register the e-mail address, instant-messaging identity, or chat room identity prior to using it.
 - (h) Ceases to lack a fixed residence and establishes a residence; or
 - (i) Ceases to reside at an address and lacks a fixed residence.
- (4) (a) (I) Any time a person who is required to register pursuant to section 16-22-103 ceases to reside at an address, the person shall register with the local law enforcement agency for his or her new address and include the address at which the person will no longer reside and all addresses at which the person will reside. The person shall file the new registration form within five business days after ceasing to reside at an address. The local law enforcement agency that receives the new registration form shall inform the previous

jurisdiction of the cancellation of that registration and shall electronically notify the CBI of the registration cancellation.

- (II) Any time a person who is required to register pursuant to section 16-22-103 ceases to reside at an address and moves to another state, the person shall notify the local law enforcement agency of the jurisdiction in which said address is located by completing a written registration cancellation form, available from the local law enforcement agency. At a minimum, the registration cancellation form shall indicate the address at which the person will no longer reside and all addresses at which the person will reside. The person shall file the registration cancellation form within five business days after ceasing to reside at an address. A local law enforcement agency that receives a registration cancellation form shall electronically notify the CBI of the registration cancellation. If the person moves to another state, the CBI shall promptly notify the agency responsible for registration in the other state.

- (b) If a person fails to submit the new registration form or registration cancellation form as required in paragraph (a) of this subsection (4) and the address at which the person is no longer residing is a group facility, officials at such facility may provide information concerning the person's cessation of residency to the local law enforcement agency of the jurisdiction in which the address is located. If the person is a juvenile or developmentally disabled and fails to submit the registration cancellation form as required in paragraph (a) of this subsection (4) and the address at which the person is no longer residing is the residence of his or her parent or legal guardian, the person's parent or legal guardian may provide information concerning the person's cessation of residency to the local law enforcement agency of the jurisdiction in which the address is located. Any law enforcement agency that receives such information shall reflect in its records that the person no longer resides at said group facility or the parent's or legal guardian's residence and shall transmit such information to the CBI. Provision of information by a group facility or a person's parent or legal guardian pursuant to this paragraph (b) shall not constitute a defense to a charge of failure to register as a sex offender.

- (5) During the initial registration process for a temporary resident, the local law enforcement agency with which the temporary resident is registering shall provide the temporary resident with the registration information specified in section 16-22-105. A temporary resident who is required to register pursuant to

the provisions of section 16-22-103 shall, within five business days after arrival in Colorado, register with the local law enforcement agency of each jurisdiction in which the temporary resident resides.

- (6) Any person required to register pursuant to section 16-22-103, at the time the person registers with any local law enforcement agency in this state, and thereafter when annually reregistering on the person's birthday or the first business day following the birthday as required in paragraph (b) of subsection (1) of this section, shall sit for a current photograph or image of himself or herself and shall supply a set of fingerprints to verify the person's identity. The person shall bear the cost of the photograph or image and fingerprints.
- (7)
 - (a) A local law enforcement agency may establish a registration fee to be paid by persons registering and reregistering annually or quarterly with the local law enforcement agency pursuant to the provisions of this section. The amount of the fee shall reflect the actual direct costs incurred by the local law enforcement agency in implementing the provisions of this article but shall not exceed seventy-five dollars for the initial registration with the local law enforcement agency and twenty-five dollars for any subsequent annual or quarterly registration.
 - (b) The local law enforcement agency may waive the fee for an indigent person. For all other persons, the local law enforcement agency may pursue payment of the fee through a civil collection process or any other lawful means if the person is unable to pay at the time of registration. A local law enforcement agency shall accept a timely registration in all circumstances even if the person is unable to pay the fee at the time of registration.
 - (c) A local law enforcement agency may not charge a fee to a person who provides an update to his or her information pursuant to subsection (3) of this section.

Cite as C.R.S. § 16-22-108

History. Amended by 2018 Ch. 143, §2, eff. 8/8/2018.

Amended by 2014 Ch. 282, §14, eff. 7/1/2014.

L. 2002: Entire article added, p. 1167, § 1, effective July 1; (3) amended, p. 1201, § 3, effective July 1. L. 2004: (1)(a), (1)(b), (1)(d)(I), (1)(d)(II)(A), (1)(e), (3)(d), (5), and

(6) amended and (1)(d)(I.5) and (7) added, pp. 1112, 1114, §§ 8, 9, effective May 27. L. 2007: (1)(c) amended and (3)(a.5) added, p. 211, §§ 2, 3, effective March 26; (2.5) and (3)(g) added and (3)(e) and (3)(f) amended, pp. 1680, 1681, §§ 1, 2, effective July 1. L. 2010: (2.5)(c) amended, (SB 10-140), ch. 156, p. 537, §7, effective April 21. L. 2011: (1)(b), IP(3), (3)(a.5), (4), and (7) amended, (HB 11-1278), ch. 224, p. 961, §6, effective May 27. L. 2012: (1)(a), (1)(d)(I), IP(3), and (3)(f) amended and (3)(h) and (3)(i) added, (HB12-1346), ch. 220, p. 942, § 4, effective July 1. L. 2014: (2.5)(c) amended, (HB 14-1273), ch. 282, p. 1153, § 14, effective July 1. L. 2018: (1)(a)(II) and (1)(d)(I) amended, (SB 18-026), ch. 143, p. 921, § 2, effective August 8.

Case Notes:

ANNOTATION

Residency of sex offenders. A municipal ordinance that effectively bans all felony and many misdemeanor sex offenders from living within its boundaries, but draws no distinctions based upon the nature of the offense, the treatment the offender has received, the risk that he or she will reoffend against children, and the evaluation and recommendations of qualified state officials, is preempted by state law. *Ryals v. City of Englewood*, 962 F. Supp. 2d 1236 (D. Colo. 2013). But see *Ryals v. City of Englewood*, 2016 CO 8, 364 P.3d 900.

City ordinance that effectively bars certain sex offenders from residing within the city is not preempted by state law. *Ryals v. City of Englewood*, 2016 CO 8, 364 P.3d 900.

The regulation of sex offender residency is, under the present pattern of state laws, a matter of mixed state and local concern. *Ryals v. City of Englewood*, 962 F. Supp. 2d 1236 (D. Colo. 2013); *Ryals v. City of Englewood*, 2016 CO 8, 364 P.3d 900.

The operational effect of the municipal ordinance impermissibly conflicts with the application and effectuation of the state interest in the uniform treatment, management, rehabilitation, and reintegration of sex offenders during and after state supervision. The ordinance not only undermines the underlying policy interests that envelop the existing state regulations, but it also operationally forbids what the state scheme allows. *Ryals v. City of Englewood*, 962 F. Supp. 2d 1236 (D. Colo. 2013). But see *Ryals v. City of Englewood*, 2016 CO 8, 364 P.3d 900, annotated above.

Eviction, homelessness, or lack of a fixed residence do not negate requirement to register within five days of release into community. The requirement for initial registration as a sex offender is based on number of days following release into the community and is not tied to where an individual is living or whether that location changed during the five-day period. *People v. Wilson*, 2017 COA 89, ___ P.3d ___.

Defendant charged under former version of registration statute is properly registered if he or she registers either on his or her birthday or the first business day thereafter.

Court may not infer the intent of the general assembly by review of a subsequent amendment to the statute, and plain meaning of prior statute allowed for registration on either day. *People v. Duncan*, 109 P.3d 1044 (Colo. App. 2004) (decided under former § 18-3-412.5(3)(a)(I)).

A violation of subsection (3)(i) of this section must be charged under the catchall provision of § 18-3-412.5(1), and not under § 18-3-412.5(1)(g). If, in 2012, the general assembly had intended to broaden the meaning of § 18-3-412.5(1)(g), it could have amended that provision to explicitly include the situation of a sex offender who lacks a fixed residence. *People v. Jones*, 2017 COA 116, 405 P.3d 504.

§ 16-22-109. Registration forms - local law enforcement agencies - duties

- (1) The director of the CBI shall prescribe standardized forms to be used to comply with this article, and the CBI shall provide copies of the standardized forms to the courts, probation departments, community corrections programs, the department of corrections, the department of human services, and local law enforcement agencies. The standardized forms may be provided in electronic form. The standardized forms shall be used to register persons pursuant to this article and to enable persons to cancel registration, as necessary. The standardized forms shall provide that the persons required to register pursuant to section 16-22-103 disclose such information as is required on the standardized forms. The information required on the standardized forms shall include, but need not be limited to:
 - (a) The name, date of birth, address, and place of employment of the person required to register, and, if the place of employment is at an institution of postsecondary education, all addresses and locations of the institution of postsecondary education at which the person may be physically located;
 - (a.3) If the person's place of residence is a trailer or motor home, the address at which the trailer or motor home is lawfully located and the vehicle identification number, license tag number, registration number, and description, including color scheme, of the trailer or motor home;
 - (a.5) If the person is volunteering at an institution of postsecondary education, all addresses and locations of the institution of postsecondary education at which the person may be physically located;
 - (a.7) If the person enrolls or is enrolled in an institution of a postsecondary education, all addresses and locations of the institution of

postsecondary education at which the person attends classes or otherwise participates in required activities;

- (a.9) If a person lacks a fixed residence, any public or private locations where the person may be found or habitually sleeps, which information may include, but need not be limited to, cross-streets, intersections, directions to or identifiable landmarks of the locations, or any other information necessary to accurately identify the locations;
 - (b) All names used at any time by the person required to register, including both aliases and legal names;
 - (c) For any person who is a temporary resident of the state, the person's address in his or her state of permanent residence and the person's place of employment in this state or the educational institution in which he or she is enrolled in this state and, if the temporary resident of the state is enrolled in, employed by, or volunteers at an institution of postsecondary education, all addresses and locations of the institution of postsecondary education at which the temporary resident attends classes or otherwise participates in required activities or works or performs volunteer activities;
 - (d) The name, address, and location of any institution of postsecondary education where the person required to register is enrolled;
 - (e) The name, address, and location of any institution of postsecondary education where the person required to register volunteers;
 - (f) The vehicle identification number, license tag number, registration number, and description, including color scheme, of any motor vehicle owned or leased by the person;
 - (g) All e-mail addresses, instant-messaging identities, and chat room identities to be used by the person if the person is required to register that information pursuant to section 16-22-108 (2.5).
- (2) The standardized forms prepared by the CBI pursuant to this section, including electronic versions of said forms, shall be admissible in court without exclusion on hearsay or other evidentiary grounds and shall be self-authenticating as a public record pursuant to the Colorado rules of evidence.
- (3) Upon receipt of any completed registration form pursuant to this article, the local law enforcement agency shall retain a copy of such form and shall report the registration to the CBI in the manner and on the standardized form prescribed by the director of the CBI. The local law enforcement agency shall, within three

business days after the date on which a person is required to register, report to the CBI such registration and, if it is the registrant's first registration with the local law enforcement agency, transmit the registrant's fingerprints to the CBI. The local law enforcement agency shall transfer additional sets of fingerprints only when requesting CBI to conduct a comparison. The local law enforcement agency shall transmit a photograph of a registrant only upon request of the CBI.

- (3.5)
- (a) The local law enforcement agency with which a person registers pursuant to this article shall, as soon as possible following the registrant's first registration with the local law enforcement agency and at least annually thereafter, verify the residential address reported by the registrant on the standardized form; except that, if the registrant is a sexually violent predator, the local law enforcement agency shall verify the registrant's residential address quarterly.
 - (b) If a person registers as "lacks a fixed residence", verification of the location or locations reported by the person shall be accomplished by the self-verification enhanced reporting process as described in paragraph (c) of this subsection (3.5). A local law enforcement agency shall not be required to verify the physical location of a person who is required to comply with the self-verification enhanced reporting process.
 - (c)
 - (I) In addition to any other requirements pursuant to this article, a person who is subject to annual registration and who lacks a fixed residence shall, at least every three months, report to the local law enforcement agency in whose jurisdiction or jurisdictions the person is registered for the self-verification enhancement reporting of the location or locations where the person remains without a fixed residence. The self-verification process shall be accomplished consistent with any time schedule established by the local jurisdiction, which may include a time schedule that is within five business days before or after the person's birthday. The person shall be required to verify his or her location or locations and verify any and all information required to be reported pursuant to this section.
 - (II) In addition to any other requirements pursuant to this article, a person who is subject to quarterly registration or registration every three months and who lacks a fixed residence shall, at least every month, report to each local law enforcement agency in whose jurisdiction the person is registered for the self-

verification enhanced reporting of the location or locations where the person remains without a fixed residence. The self-verification process shall be accomplished consistent with any time schedule established by the local jurisdiction, which may include a time schedule that is within five business days before or after the person's birthday. The person shall be required to verify his or her location or locations and verify any and all information required to be reported pursuant to this section.

(III) A person required to register pursuant to this article who lacks a fixed residence and who fails to comply with the provisions of subparagraphs (I) and (II) of this paragraph (c) is subject to prosecution for the crime of failure to verify location as defined in section 18-3-412.6, C.R.S.

(d) Beginning on July 1, 2012, and ending January 1, 2015, the Colorado bureau of investigation and each local law enforcement agency, subject to available resources, shall report every six months to the department of public safety the number of persons who registered without a fixed residence. The department may require additional information to be reported. By March 31, 2015, the department shall assess the effectiveness of the registration for offenders who lack a fixed residence.

(4) The forms completed by persons required to register pursuant to this article shall be confidential and shall not be open to inspection by the public or any person other than law enforcement personnel, except as provided in sections 16-22-110(6), 16-22-111, and 16-22-112 and section 25-1-124.5, C.R.S.

(5) Notwithstanding any provision of this article to the contrary, a requirement for electronic notification or electronic transmission of information specified in this article shall be effective on and after January 1, 2005. Prior to said date, or if an agency does not have access to electronic means of transmitting information, the notification and information requirements shall be met by providing the required notification or information by a standard means of transmittal.

Cite as C.R.S. § 16-22-109

History. L. 2002: Entire article added, p. 1170, § 1, effective July 1; (1) amended, p. 1201, § 4, effective July 1. L. 2003: (5) RC&RE, p. 760, § 4, effective March 25. L. 2004: (1)(a), (1)(a.5), and (3) amended, (3.5) added, and (5) RC&RE, p. 1115, §§ 10,

11, effective May 27. L. 2006: (1)(a.3) added, p. 1005, § 2, effective July 1. L. 2007: IP(1) and (1)(a.3) amended and (1)(f) added, p. 210, § 1, effective March 26; IP(1) amended and (1)(g) added, p. 1682, § 3, effective July 1. L. 2012: (1)(a.9) added and (3.5) amended, (HB 12-1346), ch. 220, p. 943, § 5, effective July 1.

Editor's Note:

Subsection (5)(b) provided for the repeal of subsection (5), effective January 1, 2003. (See L. 2002, p. 1170.) However, subsection (5) was recreated March 25, 2003. Subsection (5)(b) provided for the repeal of subsection (5) once again, effective January 1, 2004. (See L. 2003, p. 760.) However, subsection (5) was recreated May 27, 2004.

§ 16-22-110. Colorado sex offender registry - creation - maintenance - release of information

- (1) The director of the Colorado bureau of investigation shall establish a statewide central registry of persons required to register pursuant to section 16-8-115 or 16-8-118 or as a condition of parole or pursuant to this article, to be known as the Colorado sex offender registry. The CBI shall create and maintain the sex offender registry as provided in this section. In addition, the CBI shall be the official custodian of all registration forms completed pursuant to this article and other documents associated with sex offender registration created pursuant to this article.
- (2) The sex offender registry shall provide, at a minimum, the following information to all criminal justice agencies with regard to registered persons:
 - (a) Identification of a person's registration status;
 - (b) A person's date of birth;
 - (c) Descriptions of the offenses of unlawful sexual behavior of which a person has been convicted;
 - (d) Identification of persons who are identified as sexually violent predators;
 - (e) Notification to local law enforcement agencies when a person who is required to register pursuant to section 16-22-103 fails to register, when a person is required to reregister as provided in section 16-22-108, or when a person reregisters with another jurisdiction in accordance with the provisions of section 16-22-108;

- (f) Specification of modus operandi information concerning any person who is required to register pursuant to section 16-22-103.
- (3)
- (a) In addition to the sex offender registry, the CBI shall maintain one or more interactive data base systems to provide, at a minimum, cross validation of a registrant's known names and known addresses with information maintained by the department of revenue concerning driver's licenses and identification cards issued under article 2 of title 42, C.R.S. Discrepancies between the known names or known addresses listed in the sex offender registry and information maintained by the department of revenue shall be reported through the Colorado crime information center to each local law enforcement agency that has jurisdiction over the location of the person's last-known residences.
 - (b) The Colorado integrated criminal justice information system established pursuant to article 20.5 of this title shall be used to facilitate the exchange of information among agencies as required in this subsection (3) whenever practicable.
- (3.5) The Colorado bureau of investigation shall develop an interactive database within the sex offender registry to provide, at a minimum, the following information to all criminal justice agencies in whose jurisdictions an institution of postsecondary education is located:
- (a) Identification of all persons required to register pursuant to section 16-22-103 who volunteer or are employed or enrolled at an institution of postsecondary education and the institution at which each such person volunteers, is employed, or is enrolled;
 - (b) Identification of all persons who are sexually violent predators who volunteer or are employed or enrolled at an institution of postsecondary education and the institution at which each such person volunteers, is employed, or is enrolled.
- (4) Upon development of the interactive databases pursuant to subsection (3) of this section, personnel in the judicial department, the department of corrections, and the department of human services shall be responsible for entering and maintaining in the databases the information specified in subsection (2) of this section for persons in those departments' legal or physical custody. Each local law enforcement agency shall be responsible for entering and maintaining in the databases the information for persons registered with the agency who are not in the physical or legal custody of the judicial department, the department of corrections, or the department of human services.

- (5) The CBI, upon receipt of fingerprints and conviction data concerning a person convicted of unlawful sexual behavior, shall transmit promptly such fingerprints and conviction data to the federal bureau of investigation.
- (6)
- (a) The general assembly hereby recognizes the need to balance the expectations of persons convicted of offenses involving unlawful sexual behavior and the public's need to adequately protect themselves and their children from these persons, as expressed in section 16-22-112(1). The general assembly declares, however, that, in making information concerning persons convicted of offenses involving unlawful sexual behavior available to the public, it is not the general assembly's intent that the information be used to inflict retribution or additional punishment on any person convicted of unlawful sexual behavior or of another offense, the underlying factual basis of which involves unlawful sexual behavior.
 - (b) Pursuant to a request for a criminal history check under the provisions of part 3 of article 72 of title 24, C.R.S., the CBI may inform the requesting party as to whether the person who is the subject of the criminal history check is on the sex offender registry.
 - (c) A person may request from the CBI a list of persons on the sex offender registry.
 - (d) (Deleted by amendment, L. 2005, p. 611, §1, effective May 27, 2005.)
 - (e) Any person requesting information pursuant to paragraph (c) of this subsection (6) shall show proper identification.
 - (f) Information released pursuant to this subsection (6), at a minimum, shall include the name, address or addresses, and aliases of the registrant; the registrant's date of birth; a photograph of the registrant, if requested and readily available; and the conviction resulting in the registrant being required to register pursuant to this article. Information concerning victims shall not be released pursuant to this section.
- (7) The CBI may assess reasonable fees for the search, retrieval, and copying of information requested pursuant to subsection (6) of this section. The amount of such fees shall reflect the actual costs, including but not limited to personnel and equipment, incurred in operating and maintaining the sex offender registry. Any such fees received shall be credited to the sex offender registry fund, which fund is hereby created in the state treasury. The moneys in the sex offender registry fund shall be subject to annual appropriation by the general assembly for the costs, including but not limited to personnel and equipment, incurred in

operating and maintaining the sex offender registry. The sex offender registry fund shall consist of the moneys credited thereto pursuant to this subsection (7) and subsection (9) of this section and any additional moneys that may be appropriated thereto by the general assembly. All interest derived from the deposit and investment of moneys in the sex offender registry fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the sex offender registry fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

- (8) Any information released pursuant to this section shall include in writing the following statement:

The Colorado sex offender registry includes only those persons who have been required by law to register and who are in compliance with the sex offender registration laws. Persons should not rely solely on the sex offender registry as a safeguard against perpetrators of sexual assault in their communities. The crime for which a person is convicted may not accurately reflect the level of risk.

- (9) The CBI shall seek and is hereby authorized to receive and expend any public or private gifts, grants, or donations that may be available to implement the provisions of this article pertaining to establishment and maintenance of the sex offender registry, including but not limited to provisions pertaining to the initial registration of persons pursuant to section 16-22-104 and the transmittal of information between and among local law enforcement agencies, community corrections programs, the judicial department, the department of corrections, the department of human services, and the CBI. Any moneys received pursuant to this subsection (9), except federal moneys that are custodial funds, shall be transmitted to the state treasurer for deposit in the sex offender registry fund created in subsection (7) of this section.

Cite as C.R.S. § 16-22-110

History. L. 2002: Entire article added, p. 1171, § 1, effective July 1; (1) amended, p. 500, § 5, effective July 1; (3.5) added, p. 1202, § 5, effective July 1. L. 2004: (2)(c), (3)(a), (6)(d), (6)(f), (7), and (9) amended, p. 1116, § 12, effective May 27. L. 2005: (6) amended, p. 611, § 1, effective May 27.

Case Notes:

ANNOTATION

The intent of the Colorado Sex Offender Registration Act (SORA) registration requirements is nonpunitive. *Millard v. Rankin*, 265 F. Supp. 3d 1211 (D. Colo. 2017).

But the effects of SORA as applied to registered sex offenders challenging its constitutionality under the eighth amendment are punitive, negating the legislative intent, because the effect of publication of the information required to be provided by registration exposed those registrants to punishments inflicted not by the state but by their fellow citizens. *Millard v. Rankin*, 265 F. Supp. 3d 1211 (D. Colo. 2017).

The ongoing imposition of a known and uncontrollable risk of public abuse of information from the sex offender registry, in the absence of any link to an objective risk to the public posed by each individual sex offender, has resulted in and continues to threaten these registrants with punishment disproportionate to the offenses they committed. Where the nature of such punishment is by its nature uncertain and unpredictable, the state cannot assure that it will ever be proportionate to the offense. SORA as applied to these registrants therefore violates the eighth amendment. *Millard v. Rankin*, 265 F. Supp. 3d 1211 (D. Colo. 2017).

The punitive aspects of the sex offender registration scheme enter the zone of arbitrariness that violates the due process guarantee of the fourteenth amendment. There is a rational relationship between the registration requirements and the legislative purpose of giving members of the public the opportunity to protect themselves and their children from sex offenses. But the public has been given, commonly exercises, and has exercised against these registrants challenging SORA's constitutionality, the power to inflict punishments beyond those imposed through the courts, and to do so arbitrarily and with no notice, no procedural protections, and no limitations or parameters on their actions other than the potential for prosecution if their actions would be a crime. *Millard v. Rankin*, 265 F. Supp. 3d 1211 (D. Colo. 2017).

Residency of sex offenders. A municipal ordinance that effectively bans all felony and many misdemeanor sex offenders from living within its boundaries, but draws no distinctions based upon the nature of the offense, the treatment the offender has received, the risk that he or she will reoffend against children, and the evaluation and recommendations of qualified state officials, is preempted by state law. *Ryals v. City of Englewood*, 962 F. Supp. 2d 1236 (D. Colo. 2013). But see *Ryals v. City of Englewood*, 2016 CO 8, 364 P.3d 900.

City ordinance that effectively bars certain sex offenders from residing within the city is not preempted by state law. *Ryals v. City of Englewood*, 2016 CO 8, 364 P.3d 900.

The regulation of sex offender residency is, under the present pattern of state laws, a matter of mixed state and local concern. *Ryals v. City of Englewood*, 962 F. Supp. 2d 1236 (D. Colo. 2013); *Ryals v. City of Englewood*, 2016 CO 8, 364 P.3d 900.

The operational effect of the municipal ordinance impermissibly conflicts with the application and effectuation of the state interest in the uniform treatment, management, rehabilitation, and reintegration of sex offenders during and after state supervision. The ordinance not only undermines the underlying policy interests that envelop the existing state regulations, but it also operationally forbids what the state scheme allows. *Ryals v. City of Englewood*, 962 F. Supp. 2d 1236 (D. Colo. 2013). But see *Ryals v. City of Englewood*, 2016 CO 8, 364 P.3d 900, annotated above.

§ 16-22-111. Internet posting of sex offenders - procedure

- (1) The CBI shall post a link on the state of Colorado home page on the internet to a list containing the names, addresses, and physical descriptions of certain persons and descriptions of the offenses committed by said persons. A person's physical description shall include, but need not be limited to, the person's sex, height, and weight, any identifying characteristics of the person, and a digitized photograph or image of the person. The list shall specifically exclude any reference to any victims of the offenses. The list shall include the following persons:
 - (a) Any person who is a sexually violent predator;
 - (b) Any person sentenced as or found to be a sexually violent predator under the laws of another state or jurisdiction;
 - (c) Any person who is required to register pursuant to section 16-22-103 and who has been convicted as an adult of two or more of the following offenses:
 - (I) A felony offense involving unlawful sexual behavior; or
 - (II) A crime of violence as defined in section 18-1.3-406, C.R.S.; and
 - (d) Any person who is required to register pursuant to section 16-22-103 because the person was convicted of a felony as an adult and who fails to register as required by section 16-22-108.
- (1.5) In addition to the posting required by subsection (1) of this section, the CBI may post a link on the state of Colorado home page on the internet to a list, including but not limited to the names, addresses, and physical descriptions of any person required to register pursuant to section 16-22-103, as a result of a conviction for a felony. A person's physical description shall include, but need not be limited to, the person's sex, height, weight, and any other identifying

characteristics of the person. The list shall specifically exclude any reference to any victims of the offenses.

- (2)
 - (a) For purposes of paragraph (d) of subsection (1) of this section, a person's failure to register shall be determined by the CBI. Whenever the CBI's records show that a person has failed to register as required by this article, the CBI shall forward to each law enforcement agency with which the person is required to register notice of the person's failure to register by the required date. Each law enforcement agency, within three business days after receiving the notice, shall submit to the CBI written confirmation of the person's failure to register. Upon receipt of the written confirmation from the law enforcement agency, the CBI shall post the information concerning the person on the internet as required in this section.
 - (b) If a local law enforcement agency files criminal charges against a person for failure to register as a sex offender, as described in section 18-3-412.5, C.R.S., the local law enforcement agency shall notify the CBI. On receipt of the notification, the CBI shall post the information concerning the person on the internet, as specified in subsection (1) of this section.
- (3) The internet posting required by this section shall be in addition to any other release of information authorized pursuant to this article or pursuant to part 9 of article 13 of this title, or any other provision of law.

Cite as C.R.S. § 16-22-111

History. L. 2002: Entire article added, p. 1174, § 1, effective July 1; (1)(c)(II) amended, p. 1567, § 394, effective October 1. L. 2004: (1)(b) and (2) amended, p. 1117, § 13, effective May 27. L. 2005: (1.5) added, p. 615, § 3, effective May 27.

Case Notes:

ANNOTATION

Posting of defendant's personal information on the internet does not constitute additional punishment. *People v. Stead*, 66 P.3d 117 (Colo. App. 2002) (decided under § 18-3-412.5).

Cross References:

For the legislative declaration contained in the 2002 act amending subsection (1)(c)(II), see section 1 of chapter 318, Session Laws of Colorado 2002.

§ 16-22-112. Release of information - law enforcement agencies

- (1) The general assembly finds that persons convicted of offenses involving unlawful sexual behavior have a reduced expectation of privacy because of the public's interest in public safety. The general assembly further finds that the public must have access to information concerning persons convicted of offenses involving unlawful sexual behavior that is collected pursuant to this article to allow them to adequately protect themselves and their children from these persons. The general assembly declares, however, that, in making this information available to the public, as provided in this section and section 16-22-110(6), it is not the general assembly's intent that the information be used to inflict retribution or additional punishment on any person convicted of unlawful sexual behavior or of another offense, the underlying factual basis of which involves unlawful sexual behavior.

- (2)
 - (a) A local law enforcement agency shall release information regarding any person registered with the local law enforcement agency pursuant to this article to any person residing within the local law enforcement agency's jurisdiction. In addition, the local law enforcement agency may post the information specified in paragraph (b) of this subsection (2) on the law enforcement agency's website.

 - (b) A local law enforcement agency may post on its website sex offender registration information of a person from its registration list only if the person is:
 - (I) An adult convicted of a felony requiring the adult to register pursuant to section 16-22-103 ;

 - (II) An adult convicted of a second or subsequent offense of any of the following misdemeanors:
 - (A) Sexual assault as described in section 18-3-402(1)(e), C.R.S.;

 - (B) Unlawful sexual contact as described in section 18-3-404, C.R.S.;

- (C) Sexual assault on a client as described in section 18-3-405.5(2), C.R.S.;
 - (D) Sexual exploitation of a child by possession of sexually exploitive material as described in section 18-6-403, C.R.S.;
 - (E) Indecent exposure as described in section 18-7-302, C.R.S.;
or
 - (F) Sexual conduct in a correctional institution as described in section 18-7-701, C.R.S.;
- (III) A juvenile with a second or subsequent adjudication involving unlawful sexual behavior or for a crime of violence as defined in section 18-1.3-406, C.R.S.; or
 - (IV) A juvenile who is required to register pursuant to section 16-22-103 because he or she was adjudicated for an offense that would have been a felony if committed by an adult and has failed to register as required by section 16-22-103.
- (3)
- (a) (Deleted by amendment, L. 2005, p. 612, §2, effective May 27, 2005.)
 - (b) At its discretion, a local law enforcement agency may release information regarding any person registered with the local law enforcement agency pursuant to this article to any person who does not reside within the local law enforcement agency's jurisdiction or may post the information specified in paragraph (b) of subsection (2) of this section on the law enforcement agency's website. If a local law enforcement agency does not elect to release information regarding any person registered with the local law enforcement agency to a person not residing within the local law enforcement agency's jurisdiction, the local law enforcement agency may submit a request from the person to the CBI.
 - (c) (Deleted by amendment, L. 2005, p. 612, §2, effective May 27, 2005.)
 - (d) Upon receipt of a request for information from a law enforcement agency pursuant to this subsection (3), the CBI shall mail the requested information to the person making the request.
 - (e) (Deleted by amendment, L. 2007, p. 648, §1, effective April 26, 2007.)

- (3.5) To assist members of the public in protecting themselves from persons who commit offenses involving unlawful sexual behavior, a local law enforcement agency that chooses to post sex offender registration information on its website shall either post educational information concerning protection from sex offenders on its website or provide a link to the educational information included on the CBI website maintained pursuant to section 16-22-111. A local law enforcement agency that posts the educational information shall work with the sex offender management board created pursuant to section 16-11.7-103 and sexual assault victims' advocacy groups in preparing the educational information.
- (4) Information released pursuant to this section, at a minimum, shall include the name, address or addresses, and aliases of the registrant; the registrant's date of birth; a photograph of the registrant, if requested and readily available; and a history of the convictions of unlawful sexual behavior resulting in the registrant being required to register pursuant to this article. Information concerning victims shall not be released pursuant to this section.
- (5) Any information released pursuant to this section shall include in writing the following statement:

The Colorado sex offender registry includes only those persons who have been required by law to register and who are in compliance with the sex offender registration laws. Persons should not rely solely on the sex offender registry as a safeguard against perpetrators of sexual assault in their communities. The crime for which a person is convicted may not accurately reflect the level of risk.

Cite as C.R.S. § 16-22-112

History. L. 2002: Entire article added, p. 1174, § 1, effective July 1. L. 2004: (4) amended, p. 1118, § 14, effective May 27. L. 2005: Entire section amended, p. 612, § 2, effective May 27. L. 2006: (2)(b)(III) and (3)(e)(III) amended, p. 421, § 2, effective April 13; (2)(b)(II)(D) amended, p. 2043, § 2, effective July 1. L. 2007: (3)(b) and (3)(e) amended and (3.5) added, p. 648, § 1, effective April 26. L. 2010: (2)(b)(II)(F) amended, (HB 10-1277), ch. 262, p. 1190, §3, effective July 1.

Case Notes:

ANNOTATION

The intent of the Colorado Sex Offender Registration Act (SORA) registration requirements is nonpunitive. *Millard v. Rankin*, 265 F. Supp. 3d 1211 (D. Colo. 2017).

But the effects of the SORA as applied to registered sex offenders challenging its constitutionality under the eighth amendment are punitive, negating the legislative intent, because the effect of publication of the information required to be provided by registration exposed those registrants to punishments inflicted not by the state but by their fellow citizens. *Millard v. Rankin*, 265 F. Supp. 3d 1211 (D. Colo. 2017).

The ongoing imposition of a known and uncontrollable risk of public abuse of information from the sex offender registry, in the absence of any link to an objective risk to the public posed by each individual sex offender, has resulted in and continues to threaten these registrants with punishment disproportionate to the offenses they committed. Where the nature of such punishment is by its nature uncertain and unpredictable, the state cannot assure that it will ever be proportionate to the offense. SORA as applied to these registrants therefore violates the eighth amendment. *Millard v. Rankin*, 265 F. Supp. 3d 1211 (D. Colo. 2017).

The punitive aspects of the sex offender registration scheme enter the zone of arbitrariness that violates the due process guarantee of the fourteenth amendment. There is a rational relationship between the registration requirements and the legislative purpose of giving members of the public the opportunity to protect themselves and their children from sex offenses. But the public has been given, commonly exercises, and has exercised against these registrants challenging SORA's constitutionality, the power to inflict punishments beyond those imposed through the courts, and to do so arbitrarily and with no notice, no procedural protections, and no limitations or parameters on their actions other than the potential for prosecution if their actions would be a crime. *Millard v. Rankin*, 265 F. Supp. 3d 1211 (D. Colo. 2017).

§ 16-22-113. Petition for removal from registry

- (1) Except as otherwise provided in subsection (3) of this section, any person required to register pursuant to section 16-22-103 or whose information is required to be posted on the internet pursuant to section 16-22-111 may file a petition with the court that issued the order of judgment for the conviction that requires the person to register for an order to discontinue the requirement for such registration or internet posting, or both, as follows:
 - (a) Except as otherwise provided in paragraphs (d), (e), and (f) of this subsection (1), if the offense that required such person to register constituted or would constitute a class 1, 2, or 3 felony, after a period of twenty years from the date of such person's discharge from the department of corrections, if such person was sentenced to incarceration, or discharge from the department of human services, if such person was committed, or final release from the jurisdiction of the court for such

offense, if such person has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior;

- (a.5) Except as otherwise provided in subsections (1)(d), (1)(e), and (1)(f) of this section, if the offense that required the person to register constituted human trafficking for sexual servitude pursuant to section 18-3-504(1)(a), upon completion of the person's sentence and his or her discharge from the department of corrections, if he or she was sentenced to incarceration, or discharge from the department of human services, if he or she was committed to such department, or final release from the jurisdiction of the court for the offense, if the person has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior, the person may file a petition with the court pursuant to subsection (2) of this section. Notwithstanding any other information obtained by the court during the hearing of the petition, a court shall not issue an order discontinuing the petitioner's duty to register unless the petitioner has at least established by a preponderance of the evidence that at the time he or she committed the offense of human trafficking for sexual servitude, he or she had been trafficked by another person, as described in section 18-3-503 or 18-3-504 , for the purpose of committing the offense. Failure to make the required showing pursuant to this subsection (1)(a.5) requires the person to comply with the provisions of subsection (1)(a) of this section for any subsequent petition to discontinue the person's duty to register.
- (b) Except as otherwise provided in paragraphs (d), (e), and (f) of this subsection (1), if the offense that required such person to register constituted or would constitute a class 4, 5, or 6 felony or the class 1 misdemeanor of unlawful sexual contact, as described in section 18-3-404, C.R.S., or sexual assault in the third degree as described in section 18-3-404, C.R.S., as it existed prior to July 1, 2000, after a period of ten years from the date of such person's discharge from the department of corrections, if such person was sentenced to incarceration, or discharge from the department of human services, if such person was committed, or final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior;
- (c) Except as otherwise provided in paragraphs (d), (e), and (f) of this subsection (1), if the offense that required such person to register

constituted or would constitute a misdemeanor other than the class 1 misdemeanor of unlawful sexual contact, as described in section 18-3-404, C.R.S., or sexual assault in the third degree as described in section 18-3-404, C.R.S., as it existed prior to July 1, 2000, after a period of five years from the date of such person's final release from the jurisdiction of the court for such offense, if such person has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior;

- (d) If the person was required to register due to being placed on a deferred judgment and sentence or a deferred adjudication for an offense involving unlawful sexual behavior, after the successful completion of the deferred judgment and sentence or deferred adjudication and dismissal of the case, if the person prior to such time has not been subsequently convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior and the court did not issue an order either continuing the duty to register or discontinuing the duty to register pursuant to paragraph (a) of subsection (1.3) of this section;
- (e) Except as otherwise provided in subparagraph (II) of paragraph (b) of subsection (1.3) of this section, if the person was younger than eighteen years of age at the time of commission of the offense, after the successful completion of and discharge from a juvenile sentence or disposition, and if the person prior to such time has not been subsequently convicted or has a pending prosecution for unlawful sexual behavior or for any other offense, the underlying factual basis of which involved unlawful sexual behavior and the court did not issue an order either continuing the duty to register or discontinuing the duty to register pursuant to paragraph (b) of subsection (1.3) of this section. Any person petitioning pursuant to this paragraph (e) may also petition for an order removing his or her name from the sex offender registry. In determining whether to grant the order, the court shall consider whether the person is likely to commit a subsequent offense of or involving unlawful sexual behavior. The court shall base its determination on recommendations from the person's probation or community parole officer, the person's treatment provider, and the prosecuting attorney for the jurisdiction in which the person was tried and on the recommendations included in the person's presentence investigation report. In addition, the court shall consider any written or oral testimony submitted by the victim of the offense for which the petitioner was required to register. Notwithstanding the provisions of this subsection (1), a juvenile who files a petition pursuant to this section may

file the petition with the court to which venue is transferred pursuant to section 19-2-105, C.R.S., if any.

- (f) If the information about the person was required to be posted on the internet pursuant to section 16-22-111(1)(d) only for failure to register, if the person has fully complied with all registration requirements for a period of not less than one year and if the person, prior to such time, has not been subsequently convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior; except that the provisions of this paragraph (f) shall apply only to a petition to discontinue the requirement for internet posting.
- (1.3)
- (a) If a person is eligible to petition to discontinue his or her duty to register pursuant to paragraph (d) of subsection (1) of this section, the court, at least sixty-three days before dismissing the case, shall notify each of the parties described in paragraph (a) of subsection (2) of this section, the person, and the victim of the offense for which the person was required to register, if the victim has requested notice and has provided current contact information, that the court will consider whether to order that the person may discontinue his or her duty to register when the court dismisses the case as a result of the person's successful completion of the deferred judgment and sentence or deferred adjudication. The court shall set the matter for hearing if any of the parties described in paragraph (a) of subsection (2) of this section or the victim of the offense objects or if the person requests a hearing. If the court enters an order discontinuing the person's duty to register, the person shall send a copy of the order to each local law enforcement agency with which the person is registered and to the CBI. If the victim of the offense has requested notice, the court shall notify the victim of its decision either to continue or discontinue the person's duty to register.
 - (b) (I) If a juvenile is eligible to petition to discontinue his or her duty to register pursuant to paragraph (e) of subsection (1) of this section, the court, at least sixty-three days before discharging the juvenile's sentence, shall notify each of the parties described in paragraph (a) of subsection (2) of this section, the juvenile, and the victim of the offense for which the juvenile was required to register, if the victim has requested notice and has provided current contact information, that the court shall consider whether

to order that the juvenile may discontinue his or her duty to register when the court discharges the juvenile's sentence. The court shall set the matter for hearing if any of the parties described in paragraph (a) of subsection (2) of this section or the victim of the offense objects, or if the juvenile requests a hearing, and shall consider the criteria in paragraph (e) of subsection (1) of this section in determining whether to continue or discontinue the duty to register. If the court enters an order discontinuing the juvenile's duty to register, the department of human services shall send a copy of the order to each local law enforcement agency with which the juvenile is registered, the juvenile parole board, and to the CBI. If the victim of the offense has requested notice, the court shall notify the victim of its decision either to continue or discontinue the juvenile's duty to register.

- (II) If a juvenile is eligible to petition to discontinue his or her registration pursuant to paragraph (e) of subsection (1) of this section and is under the custody of the department of human services and yet to be released on parole by the juvenile parole board, the department of human services may petition the court to set a hearing pursuant to paragraph (e) of subsection (1) of this section at least sixty-three days before the juvenile is scheduled to appear before the juvenile parole board.
- (III) If a juvenile is eligible to petition to discontinue his or her registration pursuant to paragraph (e) of subsection (1) of this section and is under the custody of the department of human services and yet to be released on parole by the juvenile parole board, the department of human services, prior to setting the matter for hearing, shall modify the juvenile's parole plan or parole hearing to acknowledge the court order or petition unless it is already incorporated in the parole plan.

(1.5) If the conviction that requires a person to register pursuant to the provisions of section 16-22-103 was not obtained from a Colorado court, the person seeking to discontinue registration or internet posting or both may file a civil case with the district court of the judicial district in which the person resides and seek a civil order to discontinue the requirement to register or internet posting or both under the circumstances specified in subsection (1) of this section.

- (2) (a) A registrant who is eligible to petition to discontinue registration pursuant to the provisions of subsection (1) of this section must file a petition with the court of proper jurisdiction and shall provide a copy of the petition by certified mail to each of the following parties:
- (I) Each law enforcement agency with which the registrant is required to register;
 - (II) The district attorney for the jurisdiction in which the petition to discontinue registration has been filed; and
 - (III) The prosecuting attorney who obtained the conviction of the registrant.
- (b) Within twenty-one days after filing the petition, the petitioner shall file with the court copies of the return receipts received from each party notified and any documents supporting his or her eligibility to petition to discontinue registration. The supporting documents must include records documenting the completion of treatment if ordered by the court, when such records are available.
- (c) Upon receipt of the petition, the court shall set a date for a hearing and shall notify the petitioner and the district attorney for that jurisdiction of the hearing date. The court shall also notify the victim of the offense for which the petitioner was required to register, if the victim of the offense has requested notice and provided contact information.
- (d) If the district attorney or the victim objects to the registrant's petition, the district attorney shall file the objection with the court within sixty-three days after receiving the notice of the petition.
- (e) If no objection is filed by the district attorney or made by the victim, the court may consider the petition without a hearing and shall grant the petition if the court finds that the petitioner has completed the sentence for which he or she was required to register; the petitioner has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying basis of which involved unlawful sexual behavior; the waiting time period described in subsection (1) of this section has expired; and the petitioner is not likely to commit a subsequent offense of or involving unlawful sexual behavior. In determining whether to grant the petition, the court shall consider any treatment records provided pursuant to subsection (2)(b) of this section, any written or oral statement of the victim of the offense for which the petitioner was

required to register, and any other relevant information presented by the petitioner or district attorney.

- (f) If there is objection to the petition by the district attorney or victim, the court shall conduct a hearing on the petition. The court may grant the petition if the court finds the petitioner has completed the sentence for which he or she was required to register; the petitioner has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying basis of which involved unlawful sexual behavior; the waiting time period described in subsection (1) of this section has expired; and the petitioner is not likely to commit a subsequent offense of or involving unlawful sexual behavior. In determining whether to grant the petition, the court shall consider any treatment records provided pursuant to subsection (2)(b) of this section, any written or oral statement of the victim of the offense for which the petitioner was required to register, and any other relevant information presented by the petitioner or district attorney.
 - (g) If the court enters an order discontinuing registration, the petitioner shall provide a copy of the order to each local law enforcement agency with which the petitioner is registered and the CBI. The court shall also notify the victim, if the victim of the offense has requested notice and provided current contact information.
 - (h) On receipt of a copy of an order discontinuing a petitioner's duty to register:
 - (I) The CBI shall remove the petitioner's sex offender registration information from the state sex offender registry; and
 - (II) The local law enforcement agency shall remove the petitioner's sex offender registration information from the local sex offender registry.
- (2.5) (a) Notwithstanding any provision of this section to the contrary, a registrant or his or her legal representative may file a petition to discontinue registration if the registrant suffers from a severe physical or intellectual disability to the extent that he or she is permanently incapacitated and does not present an unreasonable risk to public safety.

- (b) The registrant or his or her legal representative must file a petition with the court of proper jurisdiction and shall provide a copy of the petition by certified mail to each of the following parties:
 - (I) Each law enforcement agency with which the registrant is required to register;
 - (II) The district attorney for the jurisdiction in which the petition to discontinue registration has been filed; and
 - (III) The prosecuting attorney who obtained the conviction of the registrant.
- (c) Within twenty-one days after filing the petition, the petitioner shall file with the court copies of the return receipts received from each party notified and any documents supporting his or her eligibility to petition to discontinue registration. The supporting documents must include records documenting the completion of treatment if ordered by the court, when such records are available.
- (d) Upon receipt of the petition, the court shall set a date for a hearing and shall notify the petitioner and the district attorney for that jurisdiction of the hearing date. The court shall also notify the victim of the offense for which the petitioner was required to register, if the victim of the offense has requested notice and provided contact information.
- (e) If the district attorney or the victim objects to the registrant's petition, the district attorney shall file the objection with the court within sixty-three days of receiving the notice of the petition.
- (f) If no objection is filed by the district attorney or made by the victim, the court may consider the petition without a hearing and shall grant the petition if the court finds the petitioner suffers from a severe physical or intellectual disability to the extent that the petitioner is permanently incapacitated, does not present an unreasonable risk to public safety, and is not likely to commit a subsequent offense of or involving unlawful sexual behavior. In determining whether to grant the petition, the court shall consider any treatment records provided pursuant to subsection (2.5)(c) of this section, any written or oral statement of the victim of the offense for which the petitioner was required to register, and any other relevant information presented by the petitioner or district attorney.
- (g) If there is objection to the petition by the district attorney or victim, the court shall conduct a hearing on the petition. The court may grant the

petition if the court finds the petitioner suffers from a severe physical or intellectual disability to the extent that the petitioner is permanently incapacitated, does not present an unreasonable risk to public safety, and is not likely to commit a subsequent offense of or involving unlawful sexual behavior. In determining whether to grant the petition, the court shall consider any treatment records provided pursuant to subsection (2.5)(c) of this section, any written or oral statement of the victim of the offense for which the petitioner was required to register, and any other relevant information presented by the petitioner or district attorney.

- (h) If the court enters an order discontinuing registration, the petitioner shall provide a copy of the order to each local law enforcement agency with which the petitioner is registered and the CBI. The court shall also notify the victim, if the victim of the offense has requested notice and provided contact information.
 - (i) On receipt of a copy of an order discontinuing a petitioner's duty to register:
 - (I) The CBI shall remove the petitioner's sex offender registration information from the state sex offender registry; and
 - (II) The local law enforcement agency shall remove the petitioner's sex offender registration information from the local sex offender registry.
- (3) The following persons are not eligible for relief pursuant to this section, but shall be subject for the remainder of their natural lives to the registration requirements specified in this article 22 or to the comparable requirements of any other jurisdictions in which they may reside:
- (a) Any person who is a sexually violent predator;
 - (b) Any person who is convicted as an adult of:
 - (I) Sexual assault, in violation of section 18-3-402 ; or sexual assault in the first degree, in violation of section 18-3-402 , as it existed prior to July 1, 2000; or sexual assault in the second degree, in violation of section 18-3-403, as it existed prior to July 1, 2000; or
 - (II) Sexual assault on a child, in violation of section 18-3-405, C.R.S.; or

- (III) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.; or
 - (IV) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.; or
 - (V) Incest, in violation of section 18-6-301, C.R.S.; or
 - (VI) Aggravated incest, in violation of section 18-6-302, C.R.S.;
- (c) Any adult who has more than one conviction or adjudication for unlawful sexual behavior in this state or any other jurisdiction.

Cite as C.R.S. § 16-22-113

History. Amended by 2018 Ch. 143, §3, eff. 8/8/2018.

Amended by 2017 Ch. 250, §4, eff. 9/1/2017.

Amended by 2013 Ch. 272, §5, eff. 7/1/2013.

L. 2002: Entire article added, p. 1176, § 1, effective July 1. L. 2004: IP(1) and (2)(c) amended and (1.5) and (2)(d) added, p. 1118, §§ 15, 16, effective May 27. L. 2008: (1)(e) amended, p. 654, § 2, effective April 25; (1)(e) amended, p. 1755, § 2, effective July 1. L. 2011: IP(1), (1)(d), (1)(e), and IP(2)(d) amended and (1.3) added, (HB 11-1278), ch. 224, p. 962, §7, effective May 27. L. 2012: (1.3)(a), (1.3)(b)(I), and (1.3)(b)(II) amended, (SB 12-175), ch. 208, p. 861, § 100, effective July 1. L. 2013: (1)(e) amended, (SB 13-229), ch. 272, p. 1428, § 5, effective July 1. L. 2017: (1)(a.5) added, (HB 17-1072), ch. 250, p. 1050, § 4, effective September 1. L. 2018: (2) R&RE, (2.5) added, and IP(3) and (3)(b)(I) amended, (SB 18-026), ch. 143, p. 923, § 3, effective August 8.

Editor's Note:

Amendments to subsection (1)(e) by Senate Bill 08-172 and House Bill 08-1382 were harmonized.

Case Notes:

ANNOTATION

Individual who successfully completes a deferred judgment and sentence for sexual assault on a child is eligible to petition the court for removal from the sex offender registry. *People v. Perry*, 252 P.3d 45 (Colo. App. 2010).

For the purposes of subsection (3)(c) only, "conviction" includes a successfully completed deferred judgment. *People v. McCulley*, 2018 COA 90, ___ P.3d ___.

Conviction on more than one charge of unlawful sexual behavior, whether adjudicated in the same case or in separate cases, renders defendant ineligible for relief from status as a sex offender and for removal from sex offender registry. Statute contains no explicit limiting language that would require "multiple convictions" to be the result of more than one proceeding. *People v. Atencio*, 219 P.3d 1080 (Colo. App. 2009).

A person with an out-of-state conviction for an offense comparable to sexual assault on a child in this state is not eligible to discontinue registration with this state's sex offender registry because a person who is convicted in this state of the same offense is not eligible to discontinue registration. *Curtiss v. People*, 2014 COA 107, 410 P.3d 539.

A person convicted of an offense outside this state that is comparable to the offenses listed in subsection (3) is not eligible to petition for discontinuation of sex offender registration. Because defendant was convicted in another state of an offense comparable to § 18-3-402(1)(e), he is not eligible to discontinue his registration requirement. *Stanley v. Dist. Attorney*, 2017 COA 33, 395 P.3d 1198.

The language "or to the comparable requirements of any other jurisdictions in which they may reside" in subsection (3) does not allow a person required to register here as a sex offender because of an out-of-state conviction to discontinue registration if the person is no longer required to register in the state of the conviction. *Stanley v. Dist. Attorney*, 2017 COA 33, 395 P.3d 1198.

No exception to 10-year waiting period in subsection (1)(b). The fact that the court made sex offender registration part of defendant's probation sentence does not change the fact that defendant was also statutorily required to register as a sex offender and thus is subject to the statutory waiting period before seeking to discontinue his registration duties. *People v. Sheth*, 2013 COA 33, 318 P.3d 533.

§ 16-22-114. Immunity

State agencies and their employees and local law enforcement agencies and their employees are immune from civil or criminal liability for the good faith implementation of this article.

Cite as C.R.S. § 16-22-114

History. L. 2002: Entire article added, p. 1178, § 1, effective July 1.

§ 16-22-115. CBI assistance in apprehending sex offenders who fail to register

In an effort to ensure that a sexual offender who fails to respond to address-verification attempts or who otherwise absconds from registration is located in a timely manner, the Colorado bureau of investigation shall share information with local law enforcement agencies. The Colorado bureau of investigation shall use analytical resources to assist local law enforcement agencies to determine the potential whereabouts of sex offenders who fail to respond to address-verification attempts or who otherwise abscond from registration. The Colorado bureau of investigation shall review and analyze all available information concerning a sex offender who fails to respond to address-verification attempts or otherwise absconds from registration and provide the information to local law enforcement agencies in order to assist in locating and apprehending the sex offender.

Cite as C.R.S. § 16-22-115

History. L. 2006: Entire section added, p. 1005, § 1, effective July 1.