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Adam Walsh Act: The Federal Sex Offender Registry & So Much More

Introduction

- An overview of the Adam Walsh Act
- Federal Civil Commitment
- Implementation
- Issues affecting juvenile (and adult) clients

Important Resource

http://www.fd.org/odstb_AdamWalsh.htm

Adam Walsh Act

- 42 U.S.C. sec. 16902 *et seq.*
- Signed into law on July 27, 2006
- State compliance tied to federal funding
- Implementation deadline of July 27, 2009
- Retroactive

No Bad Idea Left Behind

- Expanded federal criminal offenses
- New federal criminal offenses
- New penalties (mandatory minimums)
- Statutes of limitations (abrogated in sex cases)

No Bad Idea Left Behind

- Bail
- DNA collection
- Discovery
- Federal sex offender registry
- Civil commitment

No Bad Idea Left Behind

- Victim rights
- Forfeiture
- Rules of evidence

Adam Walsh Act

I've heard about this new law, but I don't think that it applies to my cases.

Adam Walsh Act

- Whether you practice in state or federal court,
- If your clients are adjudicated of sex offense,
- If your clients have ever been adjudicated of a sex offense,
- Even if your clients are juveniles

**THE ADAM WALSH ACT
APPLIES TO YOUR CLIENTS**

SORNA

- Sex Offender Registration & Notification Act
 - A federal sex offender registry
 - Internet based
 - Effective no later than 7/29/2009

SORNA - Who Does It Apply To?

- Anyone who has been convicted of a qualifying offense.
 - 42 U.S.C. sec. 16911(1)
 - Offense has an “element involving a sexual act or sexual contact with another.” 42 U.S.C. sec. 16911(5)(A)(I)
 - Offense is a “specified offense against a minor.” 42 U.S.C. sec. 16911(5)(A)(ii)(14)

SORNA – Who Does It Apply To?

- Retroactive
- Many details delegated to Attorney General to work out
 - February 28, 2007 Interim Rule
 - Re-affirms retroactivity, but provides no procedure for notice and registration of those the Act affects

SORNA – Who Does It Apply To?

- Even 4th degree sexual assault?
- Unsatisfactory answers:
 - Yes:
 - offense has an “element involving a sexual act or sexual contact with another.” 42 U.S.C. sec. 16911(5)(A)(I)
 - No:
 - an offense requiring registration is defined (in part) by a term of incarceration of one year or more

SORNA – Who Does It Apply To?

■ Juveniles

- Delinquency adjudications are *not* subject to SORNA if:
 - The juvenile was less than 14 years old at the time of the offense; *and*
 - The offense was comparable to or more severe than aggravated sexual abuse (18 U.S.C. sec. 2241)
 - 42 U.S.C. sec. 16911(8)

SORNA – Who Does It Apply To?

■ Exceptions

■ *But not consensual conduct if*

- Victim was an adult and not under the offender's custodial authority
- The victim was at least 13 years old and offender was not more than 4 years older

So, Every Sex Offense Applies?

Almost, yes

Then What?

- Qualifying offense will result in sex offender reporting requirements
- Failure to report (or update information)(or show up) is a crime

How Long Does Obligation Last?

- Depends on qualifying offense
 - 3 tiers
 - Tier 3
 - Any offense punishable up to one year of imprisonment
 - 15 years; annual in-person show up
 - May be reduced by 5 years if record is clean for 10 years
 - Tier 2
 - Any offense punishable by more than one year of imprisonment
 - 25 years; semi-annual in-person show up
 - Tier 1
 - Lifetime; 25 if record is clean for that long and offense was a delinquency adjudication; quarterly in-person show up

National Sex Offender Registry

- Like Wisconsin's registry, sort of.
- Web-based system to allow public to obtain relevant information for each sex offender by a single query for any given zip code or geographical radius.

National Sex Offender Registry

- Information available (not all publicly) includes: name(s), DOB, internet identifiers and addresses, telephone numbers (land and cell), social security number(s), residence address, residence information (i.e., homeless), temporary lodging information, employer's name and address, professional licenses, vehicle information, criminal history, photos, fingerprints and DNA information

National Sex Offender Registry

- SORNA requires offender to register and keep information current in each jurisdiction they reside, are employed or attend school
- Updated within 3 days of each change of name, residence, employment, or student status
- Provide notice if offender is leaving prior to move

National Sex Offender Registry

- According to U.S. DOJ:

An offender who does not have fixed place of work (*e.g.*, a OTR trucker or handyman) is required to provide information concerning the places the offender works with whatever definiteness is possible under the circumstances

National Sex Offender Registry

- According to U.S. DOJ:

Registered offenders must also provide information about any place the offender is staying for 7 or more days, including identifying the place and the period of time the offender is staying there.

Community Notification Program

- Requires states to notify federal program “immediately after sex offender registers or updates a registration about the offender”
- Information provided to Nat’l Sex Offender Registry; law enforcement; school and public housing (if registrant either resides or is employed by same); social service agencies; and anyone who asks

But There's More ...

- Restrictions on discovery in federal cases.

Act effectively abrogates Rule 16, Fed. R. Crim. P. (analog of Wis. Stat. sec. 971.23(1)(g)) in prosecutions of possession or distribution of child pornography

Expect a similar response in state court cases

And More ...

- Government may obtain DNA and fingerprints from those who have not been convicted; an arrest is good enough
- Also allows obtaining DNA and fingerprints of illegal immigrants

What Was That Website Again?

http://www.fd.org/odstb_AdamWalsh.htm

What About Juveniles?

Registration under federal law for state juvenile delinquency adjudications?

Juvenile Registration

- “Convicted” includes adjudicated delinquent, but only if:
 - Offender is 14 years old at time of offense; and
 - Offense is comparable or more severe than 18 U.S.C. sec. 2241 (or an attempt or conspiracy to commit the same)

18 U.S.C. 2241

- Causes another to engage in a sex act
 - By force, threat of force, or placing person in fear of death, serious bodily injury or kidnap
 - Renders a person unconscious
 - Administers drug or intoxicant that substantially impairs ability to appraise or control conduct
 - With person under age 12
 - With person under age 16 and 4 years older
 - Includes all attempts and conspiracy

What We Don't Know

- Who will decide if adjudication meets 18 U.S.C. 2241 criteria?
- Will anyone decide? Or will all juveniles on state registry be on federal registry?
- Will state pass legislation limiting juvenile to those meeting 2241 criteria?
- Will *Cesar G.* discretionary decisions be honored?

State Registry

- Adam Walsh requires every state to maintain a registry complying with the Act and make public via internet “all information about each sex offender in the registry.”
- Every state must implement registry by 7/27/2009 or lose 10% of federal law enforcement funding

Unless ...

- AG determines that state has “a demonstrated inability to implement certain provisions that would place the jurisdiction in violation of its constitution, as determined by a ruling of the jurisdiction’s highest court”
- Must consult with State AG and Governor

Exemption for Juveniles?

- *In re Hezzie R.*
 - No jury trial is OK – not criminal code – registration is not mandatory, discretionary on case-by-case basis.
- *In re Cesar G.*
 - *Unlike criminal code, public policy favors case-by-case determinations in juvenile court.*

Crossing State Lines?

- If registration is stayed, will client violate federal law by crossing state lines?
- “Whoever is required to register under SORNA”
- Travels in interstate commerce or foreign commerce or enters Indian Country
- Two federal cases: Person from OK (no registration) living in AR: guilty

The Federal Sexually Dangerous Person Commitment Act

- Most far reaching procedures yet contrived by which to address the pandemic outbreak of sexual abuse.
- Unconstrained by constitutional niceties which have troubled state SVP programs in past.

What The Act Does

- Lifetime commitment for federal inmates, probationers, individuals on supervised release for treatment
- Commitment to state or federal “suitable facility”
- Permits AG or BOP to initial civil proceedings
- Permits the court to order psychiatric/psychological exam
- Requires respondent to be represented by counsel at commitment hearing

What The Act Does

- Permits the appointment of counsel for indigent respondents
- Permits the right to testify, present evidence, subpoena witnesses and confront and cross examine witnesses
- Burden of proof: “clear and convincing”
- Discharge from commitment if after hearing court finds by preponderance of evidence that respondent is no longer an SVP

What The Act Does

- Permits institution of civil proceedings against anyone who is a “sexually dangerous person”
- Defines “sexually dangerous person” as one who has engaged in or attempted to engage in sexually violent conduct or child molestation *and* who is sexually dangerous to others

What The Act Does

- “Sexually dangerous to others” is defined as one who suffers from a mental illness, abnormality, or disorder, as a result of which he would have serious difficulty refraining from sexually violent conduct of child molestation if released

What The Act Does NOT Do

- Does not discuss
 - Right to appointment of defense experts
 - Establish standard or burden of proof for risk to reoffend
 - Permit a jury trial
 - Discuss discovery procedures
 - What is sexually violent conduct
 - Establish a time by which to initiate proceedings
 - Whether respondent has right to remain silent

What The Act Does NOT Do

Does not describe

- Requirements for the certification that person is sexually violent

- Whether respondent has right not to participate in court ordered evaluation

- Whether a probable cause determination exists

- Limit previous sexually violent conduct to that which occurred while in federal custody

- Requirement of proof of a recent overt act

What The Act Does NOT Do

- Does not
 - Define serious mental illness, abnormality or disorder
 - Provide for periodic reviews
 - Require commitment to a hospital (only to a “facility”)
 - Require appointment of mental health expert before conducting commitment hearing
 - Limit duration of the commitment

What The Act Does NOT Do

- Does not
 - Define what must be achieved before discharge or release is permitted
 - Permit a release or discharge petition by respondent
 - Indicate whether Rules of Evidence apply at hearing
 - Delineate post-commitment procedure
 - Require periodic reexaminations

What The Act Does NOT Do

ARE YOU SCARED YET?

What The Act Does NOT Do

- Does not
 - Establish pretrial motion procedure
 - Establish whether Fed. R. Crim. P. apply
 - Require proof of least restrictive alternative
 - Establish whether collateral attacks on underlying convictions are permitted
 - Required the prior sexual misconduct result in conviction
 - Establish basis for release/bond pending resolution of hearing
 - Establish means to challenge competency

Issues In SVP Litigation

- Discovery
- Pretrial Motions
- Expert Witnesses
- Defenses
- Trial Issues