

**SEX OFFENDER NOTIFICATION (MEGAN'S LAWS)
ANNUAL REPORT EXECUTIVE SUMMARY
October 2004**

Overview

"Megan's Laws" date from 1996, when federal legislation directed state legislatures to adopt statutes that would (1) require convicted sex offenders to register with local law enforcement after release, and (2) provide some public access to information about such offenders. Accordingly, sex offender notification became an active legislative area. This trend continues to the present day: every surveyed jurisdiction had amended, updated, or enacted provisions in the field since 2000. Fifty-five percent had done so during 2003, and another 55 percent have made changes to relevant statutes during the past 12 months. Although many of the recent amendments were minor, three states (Iowa, Tennessee and Vermont) significantly revised or rewrote their sex offender notification statutes. Real estate-related rules have been rare, but this survey indicated that the area may be experiencing increased legislative focus.

Real Estate Licensee's Responsibilities Regarding Sex Offender Disclosures

In almost 80 percent of cases (40 jurisdictions), there was no explicit responsibility on real estate licensees to reveal sex offender proximity. Some states, including Arizona, Michigan, and Texas, provided that licensees face no liability for failure to disclose information about sex offenders. Others, including South Carolina, imposed liability for intentional misrepresentations. Approximately 14 percent of surveyed jurisdictions required that real estate disclosure forms or other documents include a statement regarding the local Megan's Law, but this requirement did not necessarily impose a duty on licensees. Although during the past 12 months approximately 12 percent of the jurisdictions revised their statutes regarding real estate licensees' obligations, most of those changes were minor, technical, or not relevant to this survey.

Sex Offender Categories

The majority of jurisdictions (67 percent) mandated some type of categorization of sex offenders based on the risk or danger posed to the public by their presence. Of these, 36 percent required a board, government department, or prosecutor to categorize offenders, and 21 percent allowed categorization by type of conviction in cases of sexual predators or sexually violent offenders. The remainder of the jurisdictions requiring categorization did not specify a procedure, and approximately 35 percent of total jurisdictions did not establish any categorization system. Approximately 25 percent of the jurisdictions revised their statutes involving sex offender categories over the past year.

Government's Disclosure Format

Disclosure formats varied considerably. Twenty-nine percent of jurisdictions did not specify the type of disclosure that must be provided, while over 21 percent provided for any "reasonable" or "necessary" means. Over 40 percent allowed Internet or electronic notification or publication, while about 12 percent required written notice. The remainder of jurisdictions mandated disclosures including telephone systems, publication, and posting. Over the past year, one-third of the jurisdictions revised their statutes involving disclosure formats, many fine-tuning the details of their Internet notification systems.

Sex Offender Registry Location and Access

Every jurisdiction required maintenance of a sex offender register by a governmental entity. Access to those registers varied across the surveyed jurisdictions. Fourteen percent did not allow public access to sex offender registers, retaining that information for law enforcement and related personnel. These seven states included: Alabama, Maine, Nebraska, Nevada, Rhode Island, South Dakota, and Wyoming.

The remaining jurisdictions allowed public access to sex offender registries. Some, including Arkansas, Florida, and Minnesota, provided for free access via the Internet. Others, such as Maryland, New Hampshire, and Vermont, required a specific request prior to release of information. Although 33 percent of the jurisdictions revised their statutes regarding sex offender registry locations over the most recent 12 months, many of those changes were minor, technical or not relevant to this survey.

Notification Triggers

On the issue of legislative or regulatory triggers for notification, almost half of surveyed jurisdictions (24 states) required authorities to make some sort of notification under specific circumstances. Common triggers included geographic distance from the offender, the level of the offender, and the type of residents or businesses. Thirty-five percent of jurisdictions possessed no notification trigger mechanism, generally because no active notification was mandated elsewhere in the law. The remaining jurisdictions allowed notification in the discretion of the local police or authority, or required notification upon specific request. Seven jurisdictions amended their statutes involving notification triggers over the past 12 months, many clarifying previously existing provisions.

SUMMARY OF TENNESSEE LAW

Real Estate Licensee's Responsibilities Regarding Sex Offender Disclosures

Research located no state statutes or regulations specifically addressing whether a real estate licensee must disclose the proximity of a sex offender. However, Tennessee statutes generally provide that a licensee must disclose adverse facts of which the licensee has actual knowledge, and limit the definition of "adverse facts" to conditions or occurrences that significantly reduce the structural integrity of improvements or present a significant health risk to occupants.

Statutory section enacted 1994.

Registry Access

The public offender information is available

- in the same manner as other public records;
- on the state's Internet homepage; and
- by use of the toll-free telephone number known as the "Tennessee Internet Criminal Information Center Hotline."

Statutory section enacted 2004; regulation effective 2002.

Tenn. Code Ann. § 40-39-206 (as added by 2004 Tenn. Pub. Acts 921); Tenn. Comp. R. & Regs. 1395-1-5-.06 (2003)

Notification Triggers

Although Tennessee statutes provide that a local law enforcement agency or a law enforcement agency of any institution of higher education must release relevant information deemed necessary to protect the public concerning a specific sex offender, no provision specifies when notice must be given or when passive registration provisions are adequate.

Statutory section enacted 2004; regulation effective 2002.

See Tenn. Code Ann. § 40-39-206 (as added by 2004 Tenn. Pub. Acts 921); Tenn. Comp. R. & Regs. 1395-1-5-.06 (2003)