

**RESOLUTION OF THE
NAVAJO NATION COUNCIL**

22ND NAVAJO NATION COUNCIL - Fourth Year, 2014

AN ACT

**RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' AND THE
NAVAJO NATION COUNCIL; AMENDING NAVAJO NATION SEX OFFENDER
REGISTRATION AND NOTIFICATION ACT OF 2012 AT 17 N.N.C. §§ 2102,
2104, 2105, 2109, 2111, 2112, 2113, 2117 AND 2118**

BE IT ENACTED:

Section One. Purpose

The Navajo Police Department has implemented the Nation's sex offender registration and notification program for approximately one and one-half years under the previously amended Navajo Nation Sex Offender Registration and Notification Act of 2012. In that time, the Navajo Nation Police Department has discovered that certain amendments to the Act of 2012 are necessary so that it can better protect the public, particularly children, from known sex offenders residing, working, or going to school in Navajo Indian Country.

Section Two. Findings

1. The Navajo Nation Sex Offender Registration and Notification Act of 2012 ("Act of 2012") does not allow for timely apprehension of sex offenders who fail to register or who abscond.
2. The proposed amendments in Section 2113 would enable the Navajo Nation Police Department to more timely apprehend sex offenders who fail to register or who abscond.
3. The Act of 2012 does not require the registration of sex offenders who were convicted of sex offenses prior to July 2006 provided such sex offenders meet the criteria set out in Section 2117.
4. Pursuant to 42 U.S.C. § 16913(b) and 72 C.F.R. §§ 72.1- 72.3, the U.S. Attorney General specified that the sex offender registration requirements apply to all convicted sex offenders regardless of when they were convicted.

5. The Federal Register declares that the U.S. Congressional intent to safeguard the public from sex offenders is met by requiring the registration of as much of the sex offender population as possible. 75 Federal Register 81850.

Section Three. Amendments to the Navajo Nation Sex Offender Registration and Notification Act of 2012

The Navajo Nation hereby amends the Navajo Nation Sex Offender Registration and Notification Act of 2012 at sections 2102, 2104, 2105, 2109, 2111, 2112, 2113, 2117 and 2118 as follows:

Title 17. Law and Order

Chapter 5. Procedures

Subchapter 10. Sex Offender Registration and Notification Act of 2012

§ 2102. Definitions

F. Failure to register. When a sex offender is required to initially register with the Navajo Police Department and he or she does not register within the required time period.

FG. Goes to school. Means an individual is enrolled in and attends a private or public secondary school, a vocational or professional school or an institution of higher education.

GH. Incarceration. Refers to being lawfully detained, pursuant to a conviction, in a tribal or local detention facility, a federal, state, military, foreign, private or contract facility or those under "house arrest" for a sex offense for which registration is required.

I. Initial registration. When a sex offender registers for the first time with Navajo Police Department within required time lines.

HJ. Jurisdiction. Means an Indian tribe, a state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands and the United States Virgin Islands.

IK. Maintains registration. Means a convicted sex offender coming in person to register according to the time line of the tier level of his or her sex offense; for example, registering in person every year if the person is convicted of a tier 1 sex offense.

JL. Minor. An individual who has not attained the age of 18 years.

KM. Navajo Indian Country. The territory of the Navajo Nation as defined by 7 N.N.C. § 254.

LN. Navajo Nation Sex Offender Registry for the Public ("NNSORP"). A public website that contains information for the public about convicted sex offenders who reside, work, or go to school within Navajo Indian Country.

MO. Registers. Means the initial registration of a convicted sex offender who is convicted by a Navajo district court or who comes into Navajo Indian Country to reside, work or go to school.

NP. Resides, Means living in a place which one considers "home" or where one habitually lives or sleeps.

Q. Retroactivity or retroactive. Sex offender registration requirements apply to individuals who were convicted of sex offenses prior to 2006 provided they meet the criteria set out in Section 2117.

OR. Sex Offender. A person convicted of any sex offense that requires registration as a convicted sex offender under this Act or under Title I as defined herein.

PS. Navajo Police Department Registry of Sex Offenders ("NPDR"). A website registry of convicted sex offenders who reside, work, or go to school within Navajo Indian Country and which is maintained by the Navajo Police Department. NPDR is restricted solely to the Navajo Police Department and to other law enforcement agencies as required by law.

QT. Sex offense for which one is required to register. A sex offense which, if convicted of, requires the sex offender to register under this Act or under Title I as defined herein.

RU. Title I. Title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248, 42 U.S.C. § 16901 et seq., is a federal statute that requires the registration of all sex offenders who are convicted of a sex offense(s) for which Title I

requires registration and requires notification of the presence of sex offenders in a community.

SV. Tier classification. Title I classifies sex offenses into three tiers: Tier 1, Tier 2, and Tier 3. The tier classifications are based on the nature of the sex offense, the length of incarceration, and whether an individual has been previously convicted of a sex offense that requires registration.

TW. Updates registration. Means a convicted sex offender comes in person within three (3) business days to inform the Navajo Police Department that a change has occurred in one or more of his or her required registration information.

UX. Works. Means an individual is employed full time, part time, seasonally or temporarily for compensation by an employer; is self-employed; or is a volunteer, intern, extern or in some like capacity for which no compensation is paid.

§ 2104. Classification of sex offenses by tier

A. The Navajo Nation shall apply the tiering classification adopted by Title I to the sex offenses enumerated at 17 N.N.C. §§ 436-449, 541, 557, and 558.

§ 2105. Sex offenses by Tiers 1, 2, and 3

A. Tier 1 sex offense

1. Any sex offense under 17 N.N.C. §§ 435-449 and 541 shall be considered a Tier 1 sex offense. Sections 557-558 of Title 17 are also Tier 1 sex offenses if the unlawful conduct convicted involved a sex offense.

§ 2109. Initial registration of a convicted sex offender and notice to register

A. Every sex offender convicted of a sex offense by a Navajo district court shall initially register with the Navajo Police Department within the following time lines:

1. Within three (3) business days prior to his or her release from a Navajo corrections facility and shall be so informed by Navajo corrections officers; or

2. Within three (3) business days of having been sentenced by a Navajo district court and which sentence includes or does not include incarceration and shall be so informed as follows.

a. When an individual is charged with a sex offense that, if convicted of, would require sex offender registration, the individual will be so informed at arraignment by a Navajo district court judge.

b. When an individual has been convicted of a sex offense that would require sex offender registration, a Navajo district court judge shall so inform the individual at the time of conviction and the sex offender registration requirement shall be included in the judgment and sentence.

C. Every convicted sex offender shall appear in person to register in the Navajo police district wherein he or she resides, works or goes to school. When a sex offender comes to register and the Navajo police officer who would conduct the registration is not available to do so, other Navajo Police Department personnel will obtain the sex offender's name, physical address, mailing address, and telephone number on a sign-in sheet. Registration by one police district will automatically make the sex offender's information available to all Navajo police districts.

G. The Navajo Police Department:

4. Shall immediately notify the U.S. Marshals Service and any other jurisdiction where the sex offender is registered or is required to register of necessary information including failure to register, absconding and a convicted sex offender's international travel.

5. Shall designate for full time duty two (2) Navajo police officers in each police district to implement the sex offender registration program, shall train these police officers in sex

offender registration, and shall designate dedicated office space, equipment, and police vehicles for use by the sex offender registration program. The full time duty will be at least three consecutive days of the work week.

§ 2111. Reduction of period to register

A. A sex offender who was convicted of a Tier 1 sex offense may have his or her registration period reduced from fifteen (15) years to ten (10) years if he or she has complied with registration requirements and has maintained a clean record for ten (10) consecutive years beginning from date of release from incarceration or from the date of sentencing if no imposed incarceration.

§ 2112. ~~Penalty and civil sanction for failure to register or for absconding~~

A. Offense. A convicted Indian sex offender who is required to register under this Act and who:

1. Does not initially register with the Navajo Police Department within statutory time lines shall be found guilty of failure to register, or
2. Initially registered with the Navajo Police Department but subsequently has failed to maintain or update registration shall be found guilty of absconding.

B. Sentence. Any convicted Indian sex offender found guilty of failure to register or of absconding shall be sentenced to incarceration for a term not to exceed 365 days, shall register with the Navajo Police Department within three (3) business days prior to release from ~~upon commencement~~ of incarceration, and thereafter shall maintain registration in accordance with the tier level of the sex offense for which he or she was convicted.

C. A non-Indian convicted sex offender who fails to register or who absconds will be arrested and placed into federal custody for consideration for federal prosecution.

~~Civil Sanction. Any non-Indian convicted sex offender who is required to register under this Act will be in civil violation of the Act if he or she fails to register or absconds. Upon a determination by a Navajo district court that he or she failed to register or absconded, the non-Indian convicted sex offender shall be ordered to pay a fine not to exceed five thousand dollars (\$5,000) and shall be ordered to register within three (3) business days of the district court's determination and may be subject to exclusion.~~

§ 2113. Procedures when a convicted sex offender does not register within statutory time lines

A. When a sex offender fails to initially register with the Navajo Police Department, the Navajo Police Department will immediately:

1. notify U.S. Marshals Service, the FBI, and the NCIC Wanted Person File and appropriate state authorities; and
2. attempt to locate the sex offender within Navajo Indian Country.

B. When a sex offender absconds, the Navajo Police Department will immediately:

1. update the NNSORP and NPDR registries to show that the sex offender has absconded; and
2. notify U.S. Marshals Service, the FBI, and the NCIC Wanted Person File and appropriate state authorities; and
3. attempt to locate the sex offender within Navajo Indian Country.

C. If the sex offender is located and is:

1. Indian, the Navajo police officer will arrest and book him or her into a Navajo corrections facility and will file a complaint in a Navajo district court for failure to register or for absconding. The Navajo police officer may request, through the Office of the Prosecutor, that the sex offender be denied bail pending arraignment.
2. Non-Indian, a Navajo police officer who is federally-commissioned will arrest him or her and place him or her in federal custody for consideration for federal prosecution. If

the Navajo police officer is not federally-commissioned, the officer will coordinate with U.S. Marshals Service to arrest and place the non-Indian sex offender into federal custody for consideration for federal prosecution.

D. If the sex offender is not located and is:

1. Indian, the Navajo police officer will immediately request that the Office of the Prosecutor file an application for an arrest warrant. Upon transmittal of the arrest warrant to police dispatch, the Navajo Police Department will attempt to locate the sex offender. When apprehended, the sex offender will be arrested and booked in a Navajo corrections facility. The Navajo police officer may request, through the Office of the Prosecutor, that the sex offender be denied bail pending arraignment.

2. Non-Indian, the Navajo police officer will immediately notify U.S. Marshals Service which will assist in locating him or her. When the non-Indian sex offender is located, a Navajo police officer who is federally-commissioned or a U.S. marshal will arrest the sex offender and place him or her in federal custody for consideration for federal prosecution.

~~A. When a convicted sex offender who is required to initially register with the Navajo Police Department does not register within the statutory time line, the Navajo Police Department shall:~~

~~1. If the sex offender was referred from another jurisdiction, immediately notify that jurisdiction.~~

~~2. Immediately update the NNSORP and NPDR registries to show that the sex offender has not registered with the Navajo Police Department.~~

~~3. Locate or attempt to locate the convicted sex offender within Navajo Indian Country and notify him or her that he or she must immediately register as a convicted sex offender.~~

~~4. Seek a Navajo district court arrest warrant for an Indian convicted sex offender:~~

~~a. If he or she cannot be located within five (5) business days of commencing a search; or~~

~~b. Who has not immediately registered after having been given notice to register.~~

~~5. Notify the U.S. Marshals Service, the FBI, and the NCIC Wanted Person File if the Navajo Police Department cannot locate the convicted sex offender within five (5) business days of commencing a search.~~

~~B. If the NPDR registry indicates that a sex offender has not maintained or updated registration within statutory time lines, the Navajo Police Department shall:~~

~~1. If the convicted sex offender was referred from another jurisdiction, immediately notify that jurisdiction, if necessary.~~

~~2. Locate or attempt to locate the sex offender within Navajo Indian Country and notify him or her that he or she must immediately maintain or update his or her registration as a convicted sex offender.~~

~~3. If the sex offender cannot be located within five (5) business days of commencing a search, notify local and state law enforcement agencies and update the NNSORP and NPDR registries that the sex offender has not maintained or updated his registration.~~

~~4. Seek a Navajo district court arrest warrant for an Indian sex offender:~~

~~a. If he or she cannot be located within five (5) business days of commencing a search or~~

~~b. Who has not immediately maintained or updated his or her registration after having been given notice to register.~~

~~5. Notify the U.S. Marshals Service, the FBI, and the NCIC Wanted Person File if the Navajo Police Department cannot locate the sex offender within five (5) business days of commencing a search.~~

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~~§ 2117. Sovereign Immunity and good faith immunity.~~

~~A. Nothing under this Act shall be construed as a waiver, implied or express, of the sovereign immunity of the Navajo Nation, its departments, agencies, employees or agents.~~

~~B. Any person acting under good faith of this Act shall be immune from any civil liability arising out of such actions.~~

§ 2117. Retroactivity

A. A sex offender who was convicted of a sex offense by any jurisdiction prior to July 2006 shall be required to register if he or she resides, works, or goes to school within Navajo Indian Country, and is either:

1. On probation or parole for a sex offense conviction prior to July 2006; or

2. Re-enters any criminal justice system through a non-sex offense felony conviction after July 2006.

B. For sex offenders who meet the criteria set out in Subsection A, the Navajo Police Department will rely only on the normal method of background checks and available criminal history for information on any prior sex offense conviction(s).

C. A sex offender who meets the criteria set out in Subsection A may be credited time toward his or her required registration period based on the date of his or her sentence imposed without incarceration or the date of his or her release from incarceration for the prior to July 2006 sex offense conviction.

§ 2118. Sovereign immunity and good faith immunity

A. Nothing under this Act shall be construed as a waiver, implied or express, of the sovereign immunity of the Navajo Nation, its departments, agencies, employees or agents.

B. Any Navajo Nation agency, official, employee, or agent acting under good faith of this Act shall be immune from any liability arising out of such actions.

Section Four. Codification

The provisions of these amendments shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate these amendments into the next codification or supplement of the Navajo Nation Code

Section Five. Savings Clause

Should any provision of these amendments be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation without appeal to the Navajo Nation Supreme Court, those provisions of the amendments which are not determined invalid shall remain the law of the Nation.

Section Six. Effective Date

These amendments approved and enacted herein shall become effective in accord with 2 N.N.C. § 221(B).

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 15 in favor and 0 opposed, this 6th day of June 2014.



LoRenzo Bates, Pro Tem Speaker
Navajo Nation Council

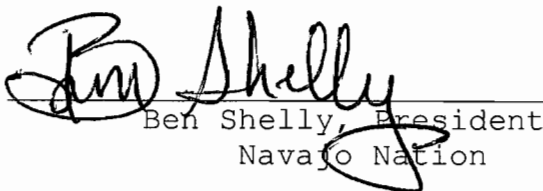
6-10-14

Date

Motion: Honorable Katherine Benally
Second: Honorable Kenneth Maryboy

ACTION BY THE NAVAJO NATION PRESIDENT:

- 1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), on this _____ day of JUN 12 2014 2014.



Ben Shelly, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2014 for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President
Navajo Nation