

Alaska Statutes Annotated - 2007

AS § 11.56.835

West's Alaska Statutes Annotated Currentness

Title 11. Criminal Law

Chapter 56. Offenses Against Public Administration

Article 5. Obstruction of Public Administration

§ 11.56.835. Failure to register as a sex offender or child kidnapper in the first degree

(a) A person commits the crime of failure to register as a sex offender or child kidnapper in the first degree if the person violates AS 11.56.840

(1) and the person has been previously convicted of a crime under this section or AS 11.56.840 or a law or ordinance of this or another jurisdiction with elements similar to a crime under this section or AS 11.56.840; or

(2) with intent to escape detection or identification and, by escaping detection or identification, to facilitate the person's commission of a sex offense or child kidnapping.

(b) In a prosecution under (a)(2) of this section, the fact that the defendant, for a period of at least one year, failed to register as a sex offender or child kidnapper, failed to file the annual or quarterly written verification, or changed the sex offender's or child kidnapper's address and did not file the required notice of change of address, is prima facie evidence that the defendant intended to escape detection or identification and, by escaping detection or identification, to facilitate the person's commission of a sex offense or child kidnapping.

(c) In this section, "child kidnapping" and "sex offense" have the meanings given in AS 12.63.100.

(d) Failure to register as a sex offender or child kidnapper in the first degree is a class C felony.

SLA 1998, ch. 106, § 1.

CROSS REFERENCES

Attempt, classification of offenses, see § 11.31.100.

Blood tests for sex offenders, see § 18.15.300 et seq.

Central registry, sex offenders, see § 18.65.087.

Civil claims based upon sexual abuse, see § 09.55.650.

Classification of offenses, see § 11.81.250.

DNA identification of sex offenders, see § 44.41.035.

Felonies, sentence of imprisonment, see § 12.55.125.

Fines, see § 12.55.035.

Legal accountability based upon the conduct of another, see §§ 11.16.110 and 11.16.120.

Offenses defined by statute, see § 11.81.220.

Prior convictions, effect on sentencing, see § 12.55.145.

Registration, sex offenders, see § 12.63.010 et seq.

Restitution and compensation, see § 12.55.045.

Victims and witnesses, sex offenses, see § 12.61.125.

Victims of crimes, rights, see § 12.61.010 et seq.

LIBRARY REFERENCES

Mental Health § 469(7).

Westlaw Key Number Search: 257Ak469(7).

NOTES OF DECISIONS

In general 1

1. In general

District Court improperly rejected plea agreement under which defendant would plead guilty to second-degree failure to register as a sex offender as a lesser charge of first-degree failure to register; ruling was based on premise that state was barred from reducing the charge because defendant had a prior conviction for failing to register, but state had discretion to charge defendant with a less serious crime than the undisputed facts would support. AS 11.56.835(a)(1), 11.56.840(a); Rules Crim.Proc., Rule 11(e). State v. District Court (2002) Alaska App., 53 P.3d 629. Constitutional Law § 2545(1); Criminal Law § 273.1(2)

Current through the 2007 First Regular and First and Second Special Sessions of the 25th Legislature

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Alaska Statutes Annotated - 2007

AS § 11.56.840

West's Alaska Statutes Annotated Currentness

Title 11. Criminal Law

Chapter 56. Offenses Against Public Administration

Article 5. Obstruction of Public Administration

§ 11.56.840. Failure to register as a sex offender or child kidnapper in the second degree

(a) A person commits the crime of failure to register as a sex offender or child kidnapper in the second degree if the person knowingly fails to (1) register, (2) file the written notice of change of address, (3) file the annual or quarterly written verification, or (4) supply all of the information required to be submitted under (1)—(3) of this subsection, as required in AS 12.63.010.

(b) Failure to register as a sex offender or child kidnapper in the second degree is a class A misdemeanor.

SLA 1994, ch. 41, § 2; SLA 1998, ch. 106, § 2.

CROSS REFERENCES

Attempt, classification of offenses, see § 11.31.100.

Blood tests for sex offenders, see § 18.15.300 et seq.

Central registry, sex offenders, see § 18.65.087.

Civil claims based upon sexual abuse, see § 09.55.650.

Classification of offenses, see § 11.81.250.

DNA identification of sex offenders, see § 44.41.035.

Fines, see § 12.55.035.

Gangs, additional penalties for activities punishable as misdemeanors, see § 12.55.137.

Legal accountability based upon the conduct of another, see §§ 11.16.110 and 11.16.120.

Misdemeanors, sentences of imprisonment, see § 12.55.135.

Offenses defined by statute, see § 11.81.220.

Prior convictions, effect on sentencing, see § 12.55.145.

Registration, sex offenders, see § 12.63.010 et seq.

Restitution and compensation, see § 12.55.045.

Victims and witnesses, sex offenses, see § 12.61.125.

Victims of crimes, rights, see § 12.61.010 et seq.

LIBRARY REFERENCES

Mental Health 469(7).

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1. Retrospective and ex post facto laws

Mere fact that Alaska Registration Act required convicted sex offenders to present themselves to law enforcement authorities as part of registration process could not alone support finding of affirmative disability or restraint suggesting punitive effect for purposes of ex post facto challenge; restraint imposed on offenders' liberty was de minimis. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 12.63.010(a). *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Constitutional Law 2821; Mental Health 433(2)

For purposes of convicted sex offenders' ex post facto challenge to Alaska Registration Act, act of registration could not be viewed historically as carrying punitive connotation, notwithstanding offenders' attempt to characterize registration as similar to conditions of parole or supervised release. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 18.65.087(b); Alaska Laws 1994, c. 41, § 1 et seq. *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Constitutional Law 2821; Mental Health 433(2)

Mere fact that Alaska Registration Act was within title of Alaska statutes entitled "Criminal Procedure" did not establish that Act was punitive in design for purposes of convicted offenders' ex post facto challenge. U.S.C.A. Const. Art. 1, § 10, cl. 1; Alaska Laws 1994, c. 41, § 1 et seq. *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Constitutional Law 2810; Mental Health 433(2)

Although prosecuting sex offender for failure to register by July 1, 1994 deadline of Alaska Sex Offender Registration Act (ASORA), which was over a month before the law was enacted, would violate the ex post facto clause, ASORA imposed on sex offenders a continuing registration requirement, and thus state could prosecute defendant for failing to register by January 28, 1998. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 11.56.840 (1997). *State v. Hawkins* (2002) Alaska App., 39 P.3d 1126. Mental Health 469(7)

2. Registration requirements

Under statute governing registration of sex offenders, defendant was required to provide sworn quarterly verification form of his sex offender registration or risk committing offense of failure to register as a sex offender in the second degree; statute defining offense required defendant to file quarterly written verifications as required in registration statute, and registration statute required sworn quarterly verifications. AS 11.56.840(a), 12.63.010. *Dailey v. State* (2003) Alaska App., 65 P.3d 891. Mental Health 469(7)

District Court improperly rejected plea agreement under which defendant would plead guilty to second-degree failure to register as a sex offender as a lesser charge of first-degree failure to register; ruling was based on premise that state was barred from reducing the charge because defendant had a prior conviction for failing to register, but state had discretion to charge defendant with a less serious crime than the undisputed facts would support. AS 11.56.835(a)(1), 11.56.840(a); Rules Crim.Proc., Rule 11(e). *State v. District Court* (2002) Alaska App., 53 P.3d 629. Constitutional Law 2545(1); Criminal Law 273.1(2)

Department of Public Safety had authority to promulgate regulation that extended registration deadline for certain sex offenders; regulation ensured that legislature's intent to regulate sex offenders, and to prosecute those who failed to register, would be implemented, and by extending initial registration deadline Department's regulation was consistent with purposes and policies of Alaska Sex Offender Registration Act (ASORA). AS 11.56.840 (1997); Alaska Admin. Code title 13, § 09.010(d). *State v. Hawkins* (2002) Alaska App., 39 P.3d 1126. Mental Health 469(2); Mental Health 469(7)

Sex offenders physically present in Alaska, who had been released from probation before the effective date of the Alaska Sex Offender Registration Act (ASORA), could be required to comply with general duty to register set forth in former. AS 12.63.010(a) (1997). *Nunley v. State* (2001) Alaska App., 26 P.3d 1113. Mental Health 469(2)

Former Alaska Sex Offender Registration Act (ASORA) provided defendants with sufficient notice that they were required to register as sex offenders, and thus had duty requiring them to register, although defendants had served prison terms and completed probation prior to effective date of Act; Act made clear that all sex offenders physically present in state should register, defined “sex offender” to include those convicted before, after, or on effective date, and only offenders excused were those with only one conviction who had been unconditionally discharged from that sex offense more than ten years prior to effective date. AS 12.63.010(a) (1997). *Nunley v. State* (2001) Alaska App., 26 P.3d 1113. Mental Health 469(7)

Statute under which all sex offenders who are required to make yearly reports shall make their report on a date set by Department of Public Safety at time of offender's initial registration does not preclude Department from promulgating a general rule to govern the reporting deadline for all sex offenders. AS 12.63.010(d)(1). *Semaken v. State* (2000) Alaska App., 8 P.3d 368. Mental Health 469(5)

Regulation requiring convicted sex offenders subject to registration requirements to make their annual reports within the 30 days preceding their birthday did not exceed authority of Department of Public Safety pursuant to statute requiring sex offenders to make their yearly report on a date set by Department at time of offender's initial registration; statute does not preclude the Department from promulgating a general rule to govern reporting deadline for all sex offenders. AS 12.63.010(d)(1); Alaska Admin. Code title 13, § 09.030(c). *Semaken v. State* (2000) Alaska App., 8 P.3d 368. Mental Health 469(5)

Regulation requiring convicted sex offenders subject to registration requirements to make their annual reports within the 30 days preceding their birthday, which was in effect at time offender had initially registered following his sexual assault conviction, sufficiently established date for yearly report at time of initial registration, as required by statute. AS 12.63.010(d)(1); Alaska Admin. Code title 13, § 09.030(c). *Semaken v. State* (2000) Alaska App., 8 P.3d 368. Mental Health 469(5)

Definition of “conviction” adopted by Department of Public Safety in regulations implementing sex offender registration statute, as including even convictions that were set aside after a defendant successfully completed probation from a suspended imposition of sentence (SIS), was a reasonable construction consistent with legislature's public safety concerns in adopting statute and would therefore be upheld in prosecutions for second-degree failure to register as sex offenders. (Per Stewart, J., with one Judge concurring.) AS 11.56.840, 12.63.010 et seq., 18.65.087; Alaska Admin. Code title 13, § 09.900(a)(2). *State v. Otness* (1999) Alaska App., 986 P.2d 890. Mental Health 469(2); Mental Health 469(7)

3. Federal courts

Federal district court could not override dictates of Eleventh Amendment and exercise pendent jurisdiction to pass on constitutionality of Alaska Registration Act under Alaska Constitution. U.S.C.A. Const.Amend. 11; Alaska Laws 1994, c. 41, § 1 et seq. *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Federal Courts 265


Convicted sex offenders challenging Alaska Registration Act would not be allowed to prosecute action under fictitious names; although offenders sought to keep private their pleas concerning sex offenses, such information was already public, and offenders had pursued early termination of parole for their offenses; moreover, offenders had presented no evidence to establish that they faced threat of physical harm. Alaska Laws 1994, c. 41, § 1 et seq. *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Federal Civil Procedure 101


Wife of convicted sex offender would not be allowed to prosecute action challenging Alaska Registration Act under fictitious name, despite her fear of stigmatization; although wife claimed that she would be stigmatized if her husband was required to disclose his true identity, parties' marriage was a matter of public record, and there was no fact that was not already known to public that would be protected by granting wife's request. *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Federal Civil Procedure 101


Convicted sex offenders challenging Alaska Registration Act were not entitled to prosecute action under pseudonyms on grounds that disclosing their names would result in injury they sought to avoid by bringing action; rather than seeking to keep facts private, offenders were seeking to limit dissemination of facts already public, i.e., that they had pled no contest to sex offenses,


and there would be no disclosure of intensely private fact. Alaska Laws 1994, c. 41, § 1 et seq. *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Federal Civil Procedure  101


4. Injunctions

Convicted sex offenders were likely to prevail on merits of their ex post facto challenge to Alaska Registration Act to extent that Act provided for public dissemination of information concerning offenders whose convictions antedated Act; therefore, offenders would have to comply with Act's registration requirements but were entitled to preliminary injunction prohibiting such dissemination. U.S.C.A. Const. Art 1, § 10, cl. 1; AS 18.65.087(b). *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Injunction  138.48


Sex offenders whose convictions antedated Alaska Registration Act were likely to succeed on merits of their claim that Act would violate not only constitutional prohibition against ex post facto laws but terms of plea bargains to extent that Act allowed for public dissemination of information. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 18.65.087(b); Alaska Laws 1994, c. 41, § 1 et seq. *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Injunction  138.48

Convicted sex offenders failed to establish likelihood of success on merits of their claim that requirement under Alaska Registration Act that they submit to law enforcement authorities for photographs and fingerprinting violated Fourth Amendment; photographs and fingerprinting alone were nontestimonial in nature and were not likely to be considered search and, although involuntary surrender would likely be considered seizure under Fourth Amendment, it would not likely be considered unreasonable in light of society's interest in preventing sex crimes and minimal intrusion on offenders' rights. U.S.C.A. Const. Amend. 4; AS 12.63.010(b)(2). *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Injunction  138.48

Convicted sex offenders failed to establish likelihood of success on merits of claim that Alaska Registration Act violated their right to privacy under United States Constitution; offenders' residences, job locations, driver's license numbers, dates of convictions, and nature of convictions are generally considered public information, and such information did not reveal intimate facts traditionally protected from disclosure by federal right to privacy. Alaska Laws 1994, c. 41, § 1 et seq. *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Injunction  138.48

For purposes of request for preliminary injunction, balance of hardship tipped in favor of convicted sex offenders challenging Alaska Registration Act only so long as there was to be public dissemination of registration information under Act. AS 18.65.087(b). *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Injunction  138.48

5. Admissibility of evidence

Evidence of defendant's subsequent compliance with Alaska Sex Offender Registration Act (ASORA) was not admissible in prosecution for failing to comply with ASORA by knowingly failing to file quarterly written verification of sex offender registration; evidence that he began to file verified registration forms after charged with offenses was at best only marginally relevant to show mental state before being charged, and, prior to start of trial, magistrate had ruled marginal evidence was outweighed by risk of confusing or misleading jury. AS 11.56.840(a); Rules of Evid., Rule 403. *Dailey v. State* (2003) Alaska App., 65 P.3d 891. Mental Health  469(7)

6. Instructions

Although jury instructions were incomplete in prosecution for failing to comply with Alaska Sex Offender Registration Act (ASORA) for knowingly failing to file quarterly written verification of sex offender registration because they failed to instruct that state had to prove defendant knew he was obliged to sign and attest to verification forms, error was harmless; defendant never testified he was unaware of duty, defendant had been sent notice that he was required to file complete verification forms, verification forms themselves instructed sex offenders to provide signature and date, and defendant conceded that he had been

told to sign one form, but he refused. AS 11.56.840(a). Dailey v. State (2003) Alaska App., 65 P.3d 891. Criminal Law 1172.1(3); Mental Health 469(7)

In prosecution for failure to comply with Alaska Sex Offender Registration Act (ASORA) by knowingly failing to file quarterly written verification of sex offender registration, although jury instruction defining “knowingly” was proper, jury was not clearly instructed that state had to prove defendant was aware of circumstances giving rise to his duty to file signed and attested verifications. AS 11.56.840(a). Dailey v. State (2003) Alaska App., 65 P.3d 891. Mental Health 469(7)

Magistrate's instruction, that jury not consider police officer's testimony that defendant had said he would refuse to file sworn sex offender verification forms in the future as evidence that defendant did not comply with Alaska Sex Offender Registration Act (ASORA) requirements, was adequate to address defendant's concern about rebutting officer's testimony in prosecution for failing to comply with ASORA by knowingly failing to file quarterly written verification forms. AS 11.56.840(a). Dailey v. State (2003) Alaska App., 65 P.3d 891. Mental Health 469(7)

7. Sufficiency of evidence

Sufficient evidence supported conviction for failing to comply with Alaska Sex Offender Registration Act (ASORA) by knowingly failing to file quarterly written verification of sex offender registration; evidence showed that defendant knew he had duty to register as sex offender, that he was required by statute and by Department of Public Safety, to file sworn written quarterly verification forms, and that he knowingly failed to file them. AS 11.56.840(a). Dailey v. State (2003) Alaska App., 65 P.3d 891. Mental Health 469(7)

Current through the 2007 First Regular and First and Second Special Sessions of the 25th Legislature

Alaska Statutes Annotated - 2007

AS § 12.63.010

West's Alaska Statutes Annotated Currentness

Title 12. Code of Criminal Procedure

Chapter 63. Registration of Sex Offenders (Refs & Annos)

§ 12.63.010. Registration of sex offenders and related requirements

(a) A sex offender or child kidnapper who is physically present in the state shall register as provided in this section. The sex offender or child kidnapper shall register

- (1) within the 30-day period before release from an in-state correctional facility;
- (2) by the next working day following conviction for a sex offense or child kidnapping if the sex offender is not incarcerated at the time of conviction; or
- (3) by the next working day of becoming physically present in the state.

(b) A sex offender or child kidnapper required to register under (a) of this section shall register with the Department of Corrections if the sex offender or child kidnapper is incarcerated or in person at the Alaska state trooper post or municipal police department located nearest to where the sex offender or child kidnapper resides at the time of registration. To fulfill the registration requirement, the sex offender or child kidnapper shall

- (1) complete a registration form that includes, at a minimum,
 - (A) the sex offender's or child kidnapper's name, address, place of employment, date of birth;
 - (B) each conviction for a sex offense or child kidnapping for which the duty to register has not terminated under AS 12.63.020, date of sex offense or child kidnapping convictions, place and court of sex offense or child kidnapping convictions, whether the sex offender or child kidnapper has been unconditionally discharged from the conviction for a sex offense or child kidnapping and the date of the unconditional discharge; if the sex offender or child kidnapper asserts that the offender or kidnapper has been unconditionally discharged, the offender or kidnapper shall supply proof of that discharge acceptable to the department;
 - (C) all aliases used;
 - (D) driver's license number;
 - (E) description, license numbers, and vehicle identification numbers of motor vehicles the sex offender or child kidnapper has access to regardless of whether that access is regular or not;
 - (F) any identifying features of the sex offender or child kidnapper;
 - (G) anticipated changes of address; and
 - (H) a statement concerning whether the offender or kidnapper has had treatment for a mental abnormality or personality disorder since the date of conviction for an offense requiring registration under this chapter;
- (2) allow the Alaska state troopers, Department of Corrections, or municipal police to take a complete set of the sex offender's or child kidnapper's fingerprints and to take the sex offender's or child kidnapper's photograph.

(c) If a sex offender or child kidnapper changes residence after having registered under (a) of this section, the sex offender or child kidnapper shall provide written notice of the change by the next working day following the change to the Alaska state trooper post or municipal police department located nearest to the new residence or, if the residence change is out of state, to the central registry.

(d) A sex offender or child kidnapper required to register

(1) for 15 years under (a) of this section and AS 12.63.020(a)(2) shall, annually, during the term of a duty to register under AS 12.63.020, on a date set by the department at the time of the sex offender's or child kidnapper's initial registration, provide written verification to the department, in the manner required by the department, of the sex offender's or child kidnapper's address and notice of any changes to the information previously provided under (b)(1) of this section;

(2) for life under (a) of this section and AS 12.63.020(a)(1) shall, not less than quarterly, on a date set by the department, provide written verification to the department, in the manner required by the department, of the sex offender's or child kidnapper's address and any changes to the information previously provided under (b)(1) of this section.

(e) The registration form required to be submitted under (b) of this section and the annual or quarterly verifications must be sworn to by the offender or kidnapper and contain an admonition that a false statement shall subject the offender or kidnapper to prosecution for perjury.

(f) In this section, “correctional facility” has the meaning given in AS 33.30.901.

SLA 1994, ch. 41, § 4; SLA 1998, ch. 106, §§ 7—11.

CROSS REFERENCES

Perjury, crimes, see § 11.56.200.

Search and seizure, constitutional provisions, see Const. Art. 1, § 14.

Search and seizure, see § 12.35.010 et seq.

LIBRARY REFERENCES

Mental Health 469.

Westlaw Key Number Search: 257Ak469.

RESEARCH REFERENCES

Encyclopedias

18 Am. Jur. Trials 341, Handling the Defense in a Rape Prosecution.

34 Am. Jur. Trials 1, Representing Sex Offenders and the “Chemical Castration Defense”.

Am. Jur. 2d Criminal Law § 1320, Criminal Registration Acts.

Treatises and Practice Aids

5 NO. 1 Criminal Practice Guide 21, Sex Offender Designation Offers No Ex Post Facto Problems, is Permitted to be Automatic, and is Available on the Internet at Www.

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1. Validity

Alaska Sex Offender Registration Act (ASORA), under which convicted sex offender's biographical data, photograph and finger prints could be disseminated to members of public by local law enforcement without determination as to likelihood that offender would re-offend, was not unconstitutionally overbroad. AS 12.63.010-12.63.100. *Patterson v. State* (1999) Alaska App., 985 P.2d 1007, rehearing denied. Constitutional Law 1145(1); Mental Health 433(2)

2. In general

Because the Sex Offender Registration Act is a regulatory measure, the registration and reporting requirements imposed by the Act are not part of a defendant's sentence. AS 12.63.100. *Herreid v. State* (2003) Alaska App., 69 P.3d 507. Mental Health 469(1)

A sentencing court has no power to exempt a defendant from the requirements of the Sex Offender Registration Act, nor does a sentencing court have the power to impose sex offender registration and reporting on a defendant whose crime does not qualify as a "sex offense" under the Act. AS 12.63.100(1, 6). *Herreid v. State* (2003) Alaska App., 69 P.3d 507. Mental Health 469(2)

Under statute governing registration of sex offenders, defendant was required to provide sworn quarterly verification form of his sex offender registration or risk committing offense of failure to register as a sex offender in the second degree; statute defining offense required defendant to file quarterly written verifications as required in registration statute, and registration statute required sworn quarterly verifications. AS 11.56.840(a), 12.63.010. *Dailey v. State* (2003) Alaska App., 65 P.3d 891. Mental Health 469(7)

Evidence of defendant's subsequent compliance with Alaska Sex Offender Registration Act (ASORA) was not admissible in prosecution for failing to comply with ASORA by knowingly failing to file quarterly written verification of sex offender registration; evidence that he began to file verified registration forms after charged with offenses was at best only marginally relevant to show mental state before being charged, and, prior to start of trial, magistrate had ruled marginal evidence was outweighed by risk of confusing or misleading jury. AS 11.56.840(a); Rules of Evid., Rule 403. *Dailey v. State* (2003) Alaska App., 65 P.3d 891. Mental Health 469(7)

Convicted sex offender, who was unconditionally discharged after July 1984 but prior to August 1994, had duty to register under the Alaska Sex Offender Registration Act (ASORA), even though statute setting forth time period for registration did not by its explicit terms include him. AS 12.63.010(a) (1997). *State v. Hawkins* (2002) Alaska App., 39 P.3d 1126. Mental Health 469(2)

Sex offenders physically present in Alaska, who had been released from probation before the effective date of the Alaska Sex Offender Registration Act (ASORA), could be required to comply with general duty to register set forth in former. AS 12.63.010(a) (1997). *Nunley v. State* (2001) Alaska App., 26 P.3d 1113. Mental Health 469(2)

Former Alaska Sex Offender Registration Act (ASORA) provided defendants with sufficient notice that they were required to register as sex offenders, and thus had duty requiring them to register, although defendants had served prison terms and completed probation prior to effective date of Act; Act made clear that all sex offenders physically present in state should

register, defined “sex offender” to include those convicted before, after, or on effective date, and only offenders excused were those with only one conviction who had been unconditionally discharged from that sex offense more than ten years prior to effective date. AS 12.63.010(a) (1997). *Nunley v. State* (2001) Alaska App., 26 P.3d 1113. Mental Health 469(7)

Sex Offender Registration Act applies to defendants whose convictions have been set aside. AS 12.63.010 et seq. *State v. Martin* (2001) Alaska App., 17 P.3d 72, vacated 98 P.3d 206. Mental Health 469(2)

Coercion is not a “sex offense” within meaning of Sex Offender Registration Act and therefore judge did not have authority to impose a special condition of probation requiring defendant, convicted of coercion, to register as a sex offender. AS 12.63.010-12.63.100. *Whitehead v. State* (1999) Alaska App., 985 P.2d 1019. Sentencing And Punishment 1969(2)

3. Equal protection

Sex Offender Registration Act did not violate offender's equal protection rights by including transitional provision that limited retroactive effect of Act on single-conviction sex offenders; legislature could reasonably conclude that it was not worth the effort to include, in the initial registration and reporting requirements, sex offenders who had been convicted of a single offense and who had been discharged more than ten years before. U.S.C.A. Const.Amend. 14; Laws 1994, c. 41, § 12. *State v. Martin* (2001) Alaska App., 17 P.3d 72, vacated 98 P.3d 206. Constitutional Law 3176; Mental Health 433(2)

Alaska Sex Offender Registration Act (ASORA), under which convicted sex offender must supply local law enforcement officials with biographical data and submit to being photographed and finger printed, does not violate sex offender's equal protection rights under either federal or state constitution; sex offenders are not treated differently than similarly situated group of persons, and statute creates no suspect classification. U.S.C.A. Const.Amend. 14; Const. Art. 1, § 1; AS 12.63.010-12.63.100. *Patterson v. State* (1999) Alaska App., 985 P.2d 1007, rehearing denied. Constitutional Law 3176; Mental Health 433(2)

4. Double jeopardy

Prosecution of defendant for failure to comply with Alaska Sex Offender Registration Act (ASORA) did not constitute renewed jeopardy for underlying sex offense, but rather prosecution for separate crime of failing to perform duty required of all convicted sex offenders, and thus did not constitute double jeopardy violation. U.S.C.A. Const.Amend. 5; AS 12.63.010-12.63.100. *Patterson v. State* (1999) Alaska App., 985 P.2d 1007, rehearing denied. Double Jeopardy 148

5. Due process

Application of Alaska Sex Offender Registration Act (ASORA), which required persons convicted of sex offenses to register with state, to defendant, whose conviction for sex offense was set aside before ASORA became effective, violated state constitution's guarantee of due process; ASORA compelled affirmative post-discharge conduct under threat of prosecution, conviction, since set aside, was event that triggered duties, requirement impaired defendant's post-set-aside freedom to be let alone, and thus, it violated defendant's liberty interests to require him to register under ASORA. Const. Art. 1, § 6; AS 12.55.085(e). *Doe v. State, Dept. of Public Safety* (2004) Alaska, 92 P.3d 398. Constitutional Law 4343; Mental Health 433(2)

State failed to demonstrate compelling governmental interest as required to justify restriction of fundamental liberty and procedural interests of defendant, whose conviction for sex offense was set aside, by requiring defendant to comply with Alaska Sex Offender Registration Act (ASORA), which became effective after defendant's conviction was set aside; absent likelihood defendant would commit new sex offenses, there was no compelling government interest in requiring defendant to comply with ASORA, and given ASORA's burden on defendant's liberty interests and its interference with his settled expectations, guarantee of due process prevented state from requiring defendant to satisfy ASORA; overruling *Patterson v. State*, 985 P.2d 1007. Const. Art. 1, § 6; AS 12.55.085. *Doe v. State, Dept. of Public Safety* (2004) Alaska, 92 P.3d 398. Constitutional Law 4343; Mental Health 433(2)

Sex Offender Registration Act did not violate offender's right to liberty by requiring him to go to office of local police agency to register. U.S.C.A. Const.Amend. 14; AS 12.63.010(b). State v. Martin (2001) Alaska App., 17 P.3d 72, vacated 98 P.3d 206. Constitutional Law 4343; Mental Health 433(2)

State's later imposition of sex offender registration and reporting requirements on offender did not constitute an unlawful modification of his plea agreement in violation of due process clause, even though such requirements did not exist at time of his plea. U.S.C.A. Const.Amend. 14; AS 12.63.010(b). State v. Martin (2001) Alaska App., 17 P.3d 72, vacated 98 P.3d 206. Constitutional Law 4590; Criminal Law 273.1(2)

A plea remains constitutionally valid, for due process purposes, even though the court may fail to comply with one or more provisions of rule requiring the court, before accepting a plea to a sex offense, to warn the defendant of requirements of sex offender registration act. AS 12.63.010-12.63.100; Rules Crim.Proc., Rule 11(c). Peterson v. State (1999) Alaska App., 988 P.2d 109, rehearing denied. Constitutional Law 4586

Defendant knowingly and voluntarily pled no contest to sexual assault, for due process purposes, even if trial court failed to inform him at the time he entered his plea that he would be required to register as sex offender under sex offender registration act. U.S.C.A. Const.Amend. 14; AS 12.63.010-12.63.100; Rules Crim.Proc., Rule 11(c). Peterson v. State (1999) Alaska App., 988 P.2d 109, rehearing denied. Constitutional Law 4588; Criminal Law 275.4(1)

Alaska Sex Offender Registration Act (ASORA), under which convicted sex offender must supply local law enforcement officials with biographical data and submit to being photographed and finger printed, does not violate sex offender's substantive due process rights; statute is rationally related to legislature's legitimate concern with public safety threat posed by sex offenders. U.S.C.A. Const.Amend. 5, 14; AS 12.63.010-12.63.100. Patterson v. State (1999) Alaska App., 985 P.2d 1007, rehearing denied. Constitutional Law 4343; Mental Health 433(2)

Alaska Sex Offender Registration Act (ASORA), under which convicted sex offender's biographical data, photograph and finger prints could be disseminated to members of public by local law enforcement without determination as to likelihood that offender would re-offend, neither deprived sex offender of liberty interest without procedural due process nor was fundamentally unfair; legislature's conclusion that prior sex offense conviction was sufficient reason to include offender in registry was reasonable response to potential for recidivism that sex offenders have as a group. U.S.C.A. Const.Amend. 5, 14; AS 12.63.010-12.63.100. Patterson v. State (1999) Alaska App., 985 P.2d 1007, rehearing denied. Constitutional Law 4343; Mental Health 433(2)

6. Cruel and unusual punishment

Purpose of Alaska Sex Offender Registration Act (ASORA) is regulatory rather than punitive, and thus, statute does not constitute cruel and unusual punishment. U.S.C.A. Const.Amend. 8; AS 12.63.010-12.63.100. Patterson v. State (1999) Alaska App., 985 P.2d 1007, rehearing denied. Sentencing And Punishment 1601; Mental Health 433(2)

7. Retrospective and ex post facto laws

Mere fact that Alaska Registration Act required convicted sex offenders to present themselves to law enforcement authorities as part of registration process could not alone support finding of affirmative disability or restraint suggesting punitive effect for purposes of ex post facto challenge; restraint imposed on offenders' liberty was de minimis. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 12.63.010(a). Rowe v. Burton, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Constitutional Law 2821; Mental Health 433(2)

For purpose of determining whether the Alaska Sex Offender Registration Act (ASORA) violates the state and federal constitutional prohibitions against ex post facto laws, the legislative intent behind ASORA is regulatory, rather than punitive; ASORA merely requires convicted sex offenders to register with local law enforcement and to maintain and update that registration for minimum of 15 years, and involves no additional supervision, treatment or restriction. U.S.C.A. Const. Art.

1, §§ 9, cl. 3, 10, cl. 1; Const. Art. 1, § 15; AS 12.63.010-12.63.100. *Patterson v. State* (1999) Alaska App., 985 P.2d 1007, rehearing denied. Constitutional Law 2821; Mental Health 433(2)

The effect of the Alaska Sex Offender Registration Act (ASORA), although significant, is not so punitive as to violate the state and federal constitutional prohibitions against ex post facto laws; although law provides for dissemination of substantial personal and biographical information which convicted sex offenders must provide to local law enforcement, statute does not encourage acts of retribution or violence. U.S.C.A. Const. Art. 1, §§ 9, cl. 3, 10, cl. 1; Const. Art. 1, § 15; AS 12.63.010-12.63.100. *Patterson v. State* (1999) Alaska App., 985 P.2d 1007, rehearing denied. Constitutional Law 2821; Mental Health 433(2)

8. Separation of powers

Sex Offender Registration Act, requiring sex offenders to register and to report on regular basis for specified period of time, did not violate separation of powers between legislative and judicial branches of government, as Act was regulatory, not sentencing, measure, and length of time offender was subjected to reporting did not have to be modifiable depending on offender's level of dangerousness. U.S.C.A. Const. Art. 3, § 1 et seq. *Herreid v. State* (2003) Alaska App., 69 P.3d 507. Constitutional Law 2371; Mental Health 433(2)

9. Right to privacy

The Alaska Sex Offender Registration Act (ASORA), under which convicted sex offender must supply local law enforcement officials with biographical data and submit to being photographed and finger printed, does not violate sex offender's federal constitutional right to privacy; biographical data which sex offender is required to provide is already in public domain, and no person has objectively reasonable expectation of privacy in his or her appearance or physical characteristics. AS 12.63.010-12.63.100. *Patterson v. State* (1999) Alaska App., 985 P.2d 1007, rehearing denied. Constitutional Law 1245; Mental Health 433(2)

Convicted sex offender's assumed expectation of privacy was outweighed by society's interest in protecting public safety and welfare, and thus Alaska Sex Offender Registration Act (ASORA), under which sex offender was required to supply local law enforcement officials with biographical data and submit to being photographed and finger printed, does not violate sex offender's state constitutional right to privacy. Const. Art. 1, § 22; AS 12.63.010-12.63.100. *Patterson v. State* (1999) Alaska App., 985 P.2d 1007, rehearing denied. Constitutional Law 1245; Mental Health 433(2)


10. Bills of attainder


The duty to register under the Alaska Sex Offender Registration Act (ASORA) is not punishment, and thus the statute is not a bill of attainder. AS 12.63.010-12.63.100. *Patterson v. State* (1999) Alaska App., 985 P.2d 1007, rehearing denied. Constitutional Law 1100(5); Mental Health 433(2)


11. Criminal prosecutions

Although jury instructions were incomplete in prosecution for failing to comply with Alaska Sex Offender Registration Act (ASORA) for knowingly failing to file quarterly written verification of sex offender registration because they failed to instruct that state had to prove defendant knew he was obliged to sign and attest to verification forms, error was harmless; defendant never testified he was unaware of duty, defendant had been sent notice that he was required to file complete verification forms, verification forms themselves instructed sex offenders to provide signature and date, and defendant conceded that he had been told to sign one form, but he refused. AS 11.56.840(a). *Dailey v. State* (2003) Alaska App., 65 P.3d 891. Criminal Law 1172.1(3); Mental Health 469(7)



In prosecution for failure to comply with Alaska Sex Offender Registration Act (ASORA) by knowingly failing to file quarterly written verification of sex offender registration, although jury instruction defining “knowingly” was proper, jury was not clearly instructed that state had to prove defendant was aware of circumstances giving rise to his duty to file signed and attested verifications. AS 11.56.840(a). *Dailey v. State* (2003) Alaska App., 65 P.3d 891. Mental Health 469(7)


Magistrate's instruction, that jury not consider police officer's testimony that defendant had said he would refuse to file sworn sex offender verification forms in the future as evidence that defendant did not comply with Alaska Sex Offender Registration Act (ASORA) requirements, was adequate to address defendant's concern about rebutting officer's testimony in prosecution for failing to comply with ASORA by knowingly failing to file quarterly written verification forms. AS 11.56.840(a). Dailey v. State (2003) Alaska App., 65 P.3d 891. Mental Health  469(7)

Sufficient evidence supported conviction for failing to comply with Alaska Sex Offender Registration Act (ASORA) by knowingly failing to file quarterly written verification of sex offender registration; evidence showed that defendant knew he had duty to register as sex offender, that he was required by statute and by Department of Public Safety, to file sworn written quarterly verification forms, and that he knowingly failed to file them. AS 11.56.840(a). Dailey v. State (2003) Alaska App., 65 P.3d 891. Mental Health  469(7)



Although prosecuting sex offender for failure to register by July 1, 1994 deadline of Alaska Sex Offender Registration Act (ASORA), which was over a month before the law was enacted, would violate the ex post facto clause, ASORA imposed on sex offenders a continuing registration requirement, and thus state could prosecute defendant for failing to register by January 28, 1998. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 11.56.840 (1997). State v. Hawkins (2002) Alaska App., 39 P.3d 1126. Mental Health  469(7)


12. Pleas


For defendants who pled guilty or no contest to an offense listed in sex offense statute on or after effective date of statute, the court's failure to warn the defendant of sex offender registration is potentially "manifest injustice" permitting withdrawal of plea. AS 12.63.100; Rules Crim.Proc., Rule 11(h)(3). Peterson v. State (1999) Alaska App., 988 P.2d 109, rehearing denied. Criminal Law  274(3.1); Criminal Law  275.5(2)

The duty to register under the Alaska Sex Offender Registration Act (ASORA) constitutes a collateral, rather than a direct, consequence of certain sex offense convictions, and thus imposition of registration requirement on those who have previously pled guilty to one of the enumerated offenses will not violate any plea agreement. AS 12.63.010-12.63.100. Patterson v. State (1999) Alaska App., 985 P.2d 1007, rehearing denied. Criminal Law  273.1(2)


13. Administrative regulations


Department of Public Safety had authority to promulgate regulation that extended registration deadline for certain sex offenders; regulation ensured that legislature's intent to regulate sex offenders, and to prosecute those who failed to register, would be implemented, and by extending initial registration deadline Department's regulation was consistent with purposes and policies of Alaska Sex Offender Registration Act (ASORA). AS 11.56.840 (1997); Alaska Admin. Code title 13, § 09.010(d). State v. Hawkins (2002) Alaska App., 39 P.3d 1126. Mental Health  469(2); Mental Health  469(7)



Statute under which all sex offenders who are required to make yearly reports shall make their report on a date set by Department of Public Safety at time of offender's initial registration does not preclude Department from promulgating a general rule to govern the reporting deadline for all sex offenders. AS 12.63.010(d)(1). Semaken v. State (2000) Alaska App., 8 P.3d 368. Mental Health  469(5)

Regulation requiring convicted sex offenders subject to registration requirements to make their annual reports within the 30 days preceding their birthday did not exceed authority of Department of Public Safety pursuant to statute requiring sex offenders to make their yearly report on a date set by Department at time of offender's initial registration; statute does not preclude the Department from promulgating a general rule to govern reporting deadline for all sex offenders. AS 12.63.010(d)(1); Alaska Admin. Code title 13, § 09.030(c). Semaken v. State (2000) Alaska App., 8 P.3d 368. Mental Health  469(5)


Regulation requiring convicted sex offenders subject to registration requirements to make their annual reports within the 30 days preceding their birthday, which was in effect at time offender had initially registered following his sexual assault conviction,

sufficiently established date for yearly report at time of initial registration, as required by statute. AS 12.63.010(d)(1); Alaska Admin. Code title 13, § 09.030(c). *Semaken v. State* (2000) Alaska App., 8 P.3d 368. Mental Health  469(5)


Department of Public Safety's construction of sex offender registration statute, as reflected in regulations implementing it, would not be overruled except for weighty reasons. (Per Stewart, J., with one Judge concurring.) AS 12.63.010 et seq., 18.65.087. *State v. Otness* (1999) Alaska App., 986 P.2d 890. Statutes  219(9.1)


Definition of "conviction" adopted by Department of Public Safety in regulations implementing sex offender registration statute, as including even convictions that were set aside after a defendant successfully completed probation from a suspended imposition of sentence (SIS), was a reasonable construction consistent with legislature's public safety concerns in adopting statute and would therefore be upheld in prosecutions for second-degree failure to register as sex offenders. (Per Stewart, J., with one Judge concurring.) AS 11.56.840, 12.63.010 et seq., 18.65.087; Alaska Admin. Code title 13, § 09.900(a)(2). *State v. Otness* (1999) Alaska App., 986 P.2d 890. Mental Health  469(2); Mental Health  469(7)


14. Injunctions


Convicted sex offenders failed to establish likelihood of success on merits of their claim that requirement under Alaska Registration Act that they submit to law enforcement authorities for photographs and fingerprinting violated Fourth Amendment; photographs and fingerprinting alone were nontestimonial in nature and were not likely to be considered search and, although involuntary surrender would likely be considered seizure under Fourth Amendment, it would not likely be considered unreasonable in light of society's interest in preventing sex crimes and minimal intrusion on offenders' rights. U.S.C.A. Const. Amend. 4; AS 12.63.010(b)(2). *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Injunction  138.48

15. Review

Application of sexual registration statute to defendant was not plain error, even though defendant alleged that disclosure of sex offender's registration information constituted additional punishment in violation of ex post facto clause. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 12.63.010(a), 12.63.100(2, 3). *Bobby v. State* (1997) Alaska App., 950 P.2d 135. Criminal Law  1030(2)

Issue of whether application of sexual offender registration law to defendant would be unconstitutional under ex post facto clause was not preserved for appeal, even though defendant asserted that he should be allowed to withdraw his no contest pleas to charges of first-degree assault and second-degree sexual assault because he had entered them in ignorance of the sex offender registration law, where defendant failed to argue constitutional claim in superior court. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 12.63.010(a), 12.63.100(2, 3). *Bobby v. State* (1997) Alaska App., 950 P.2d 135. Mental Health  467

Entry of no contest plea to first-degree assault and second-degree sexual assault did not preserve for appeal issue of whether sex offender registration law could constitutionally be applied to defendant under ex post facto clause; constitutionality of application of sex offender registration was not dispositive of defendant's case, since resolution of issue had no effect on authority of state to prosecute defendant, no effect on validity of conviction, and no effect on superior court's authority to sentence defendant. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 12.63.010(a), 12.63.100(2, 3). *Bobby v. State* (1997) Alaska App., 950 P.2d 135. Mental Health  467

Court of Appeals did not have jurisdiction to consider defendant's unpreserved challenge to constitutionality of sex offender registration law as applied to him under ex post facto clause, where defendant was not prosecuted or sentenced for violating provisions of sex offender registration law but rather, defendant was prosecuted and sentenced for second-degree sexual assault. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 11.41.420(a)(1), 12.63.010(a), 12.63.100(2, 3). *Bobby v. State* (1997) Alaska App., 950 P.2d 135. Mental Health  467

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Alaska Statutes Annotated - 2007

AS § 12.63.020

West's Alaska Statutes Annotated Currentness

Title 12. Code of Criminal Procedure

Chapter 63. Registration of Sex Offenders (Refs & Annos)

§ 12.63.020. Duration of sex offender or child kidnapper duty to register

(a) The duty of a sex offender or child kidnapper to comply with the requirements of AS 12.63.010 for each sex offense or child kidnapping

(1) continues for the lifetime of a sex offender or child kidnapper convicted of

(A) one aggravated sex offense; or

(B) two or more sex offenses, two or more child kidnappings, or one sex offense and one child kidnapping; for purposes of this section, a person convicted of indecent exposure before a person under 16 years of age under AS 11.41.460 more than two times has been convicted of two or more sex offenses;

(2) ends 15 years following the sex offender's or child kidnapper's unconditional discharge from a conviction for a single sex offense that is not an aggravated sex offense or for a single child kidnapping if the sex offender or child kidnapper has supplied proof that is acceptable to the department of the unconditional discharge; the registration period under this paragraph

(A) is tolled for each year that a sex offender or child kidnapper

(i) fails to comply with the requirements of this chapter;

(ii) is incarcerated for the offense or kidnapping for which the offender or kidnapper is required to register or for any other offense;

(B) may include the time a sex offender or child kidnapper was absent from this state if the sex offender or child kidnapper has complied with any sex offender or child kidnapper registration requirements of the jurisdiction in which the offender or kidnapper was located and if the sex offender or child kidnapper provides the department with proof of the compliance while the sex offender or child kidnapper was absent from this state; and

(C) continues for a sex offender or child kidnapper who has not supplied proof acceptable to the department of the offender's or kidnapper's unconditional discharge for the sex offense or child kidnapping requiring registration.

(b) The department shall adopt, by regulation, procedures to notify a sex offender or child kidnapper who, on the registration form under AS 12.63.010, lists a conviction for a sex offense or child kidnapping that is a violation of a former law of this state or a law of another jurisdiction, of the duration of the offender's or kidnapper's duty under (a) of this section for that sex offense or child kidnapping. As a part of the regulations, the department shall require the offender or kidnapper to supply proof acceptable to the department of unconditional discharge and the date it occurred.

SLA 1994, ch. 41, § 4; SLA 1998, ch. 81, § 15; SLA 1998, ch. 106, § 12.

LIBRARY REFERENCES

Mental Health  469.

Westlaw Key Number Search: 257Ak469.

NOTES OF DECISIONS

Separation of powers 1

1. Separation of powers

Sex Offender Registration Act, requiring sex offenders to register and to report on regular basis for specified period of time, did not violate separation of powers between legislative and judicial branches of government, as Act was regulatory, not sentencing, measure, and length of time offender was subjected to reporting did not have to be modifiable depending on offender's level of dangerousness. U.S.C.A. Const. Art. 3, § 1 et seq. Herreid v. State (2003) Alaska App., 69 P.3d 507. Constitutional Law § 2371; Mental Health § 433(2)

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AS § 12.63.100

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Title 12. Code of Criminal Procedure

Chapter 63. Registration of Sex Offenders (Refs & Annos)

§ 12.63.100. Definitions

In this chapter,

(1) “aggravated sex offense” means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit a sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph, “sexual offense” has the meaning given in AS 11.41.100(a)(3);

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

(iii) sexual abuse of a minor in the first degree; or

(iv) sexual abuse of a minor in the second degree; or

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under AS 11.41.410, 11.41.434, or a similar law of another jurisdiction or a similar provision under a former law of this state;

(2) “child kidnapping” means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit kidnapping;

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit kidnapping if the victim was under 18 years of age at the time of the offense; or

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under AS 11.41.300, or a similar law of another jurisdiction or a similar provision under a former law of this state, if the victim was under 18 years of age at the time of the offense;

(3) “conviction” means that an adult, or a juvenile charged as an adult under AS 47.12 or a similar procedure in another jurisdiction, has entered a plea of guilty, guilty but mentally ill, or nolo contendere, or has been found guilty or guilty but mentally ill by a court or jury, of a sex offense or child kidnapping regardless of whether the judgment was set aside under AS 12.55.085 or a similar procedure in another jurisdiction or was the subject of a pardon or other executive clemency; “conviction” does not include a judgment that has been reversed or vacated by a court;

(4) “department” means the Department of Public Safety;

(5) “sex offender or child kidnapper” means a person convicted of a sex offense or child kidnapping in this state or another jurisdiction regardless of whether the conviction occurred before, after, or on January 1, 1999;

(6) “sex offense” means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit a sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph, “sexual offense” has the meaning given in AS 11.41.100(a)(3);

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:

- (i) sexual assault in the first degree;
- (ii) sexual assault in the second degree;
- (iii) sexual abuse of a minor in the first degree; or
- (iv) sexual abuse of a minor in the second degree;

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction:

- (i) AS 11.41.410—11.41.438;
- (ii) AS 11.41.440(a)(2);
- (iii) AS 11.41.450—11.41.458;
- (iv) AS 11.41.460 if the indecent exposure is before a person under 16 years of age and the offender has a previous conviction for that offense;
- (v) AS 11.61.125—11.61.128;
- (vi) AS 11.66.110 or 11.66.130(a)(2) if the person who was induced or caused to engage in prostitution was 16 or 17 years of age at the time of the offense; or
- (vii) former AS 11.15.120, former 11.15.134, or assault with the intent to commit rape under former AS 11.15.160, former AS 11.40.110, or former 11.40.200;

(7) “unconditional discharge” has the meaning given in AS 12.55.185.

SLA 1994, ch. 41, § 4; SLA 1998, ch. 81, § 16; SLA 1998, ch. 106, §§ 14—16; SLA 1999, ch. 54, §§ 12—15; SLA 2006, ch. 14, §§ 8, 9, eff. April 28, 2006. Amended by SLA 2007, ch. 24, § 24, eff. July 1, 2007.

HISTORICAL AND STATUTORY NOTES

SLA 2006, ch. 14, §§ 8 and 9, added “or a similar provision under a former law of this state” at the end of par. (1)(C) and in par. (2)(C).

SLA 2007, ch. 24, in par. (6)(C)(v), substituted AS “11.61.125 - 11.61.128” for “11.61.125 - 11.61.127”.


CROSS REFERENCES



Violation by sex offender of condition of probation or parole, see § 11.56.759

NOTES OF DECISIONS

Conviction 1
Sex offense 2

1. Conviction

Sex Offender Registration Act applies to defendants whose convictions have been set aside. AS 12.63.010 et seq. *State v. Martin* (2001) Alaska App., 17 P.3d 72, vacated 98 P.3d 206. Mental Health  469(2)

Definition of “conviction” adopted by Department of Public Safety in regulations implementing sex offender registration statute, as including even convictions that were set aside after a defendant successfully completed probation from a suspended imposition of sentence (SIS), was a reasonable construction consistent with legislature's public safety concerns in adopting statute and would therefore be upheld in prosecutions for second-degree failure to register as sex offenders. (Per Stewart, J., with one Judge concurring.) AS 11.56.840, 12.63.010 et seq., 18.65.087; Alaska Admin. Code title 13, § 09.900(a)(2). *State v. Otness* (1999) Alaska App., 986 P.2d 890. Mental Health  469(2); Mental Health  469(7)

2. Sex offense

A sentencing court has no power to exempt a defendant from the requirements of the Sex Offender Registration Act, nor does a sentencing court have the power to impose sex offender registration and reporting on a defendant whose crime does not qualify as a “sex offense” under the Act. AS 12.63.100(1, 6). *Herreid v. State* (2003) Alaska App., 69 P.3d 507. Mental Health § 469(2)

Coercion is not a “sex offense” within meaning of Sex Offender Registration Act and therefore judge did not have authority to impose a special condition of probation requiring defendant, convicted of coercion, to register as a sex offender. AS 12.63.010-12.63.100. *Whitehead v. State* (1999) Alaska App., 985 P.2d 1019. Sentencing And Punishment § 1969(2)

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Title 12. Code of Criminal Procedure

Chapter 63. Registration of Sex Offenders

UNITED STATES CODE ANNOTATED

Jacob Wetterling crimes against children and sexually violent offender registration program, see 42 U.S.C.A. § 14071 et seq.

Sex offense prevention and control, see 42 U.S.C.A. § 9511 et seq.

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Alaska Statutes Annotated - 2007

AS § 12.63.030

West's Alaska Statutes Annotated Currentness

Title 12. Code of Criminal Procedure

Chapter 63. Registration of Sex Offenders (Refs & Annos)

§ 12.63.030. Notification of other jurisdictions

(a) If a sex offender or child kidnapper notifies the department that the sex offender or child kidnapper is moving from the state, the department shall notify the Federal Bureau of Investigation and the state where the sex offender or child kidnapper is moving of the sex offender's or child kidnapper's intended address.

(b) If a sex offender or child kidnapper fails to register or to verify the sex offender's or child kidnapper's address and registration under this chapter, or the department does not know the location of a sex offender or child kidnapper required to register under this chapter, the department shall immediately notify the Federal Bureau of Investigation.

SLA 1998, ch. 106, § 13.

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Mental Health  469.

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Alaska Statutes Annotated - 2007

AS § 18.65.087

West's Alaska Statutes Annotated Currentness

Title 18. Health, Safety, and Housing

Chapter 65. Police Protection

Article 1. State Troopers

§ 18.65.087. Central registry of sex offenders

(a) The Department of Public Safety shall maintain a central registry of sex offenders and child kidnappers and shall adopt regulations necessary to carry out the purposes of this section and AS 12.63. A post of the Alaska state troopers or a municipal police department that receives registration or change of address information under AS 12.63.010 shall forward the information within five working days of receipt to the central registry of sex offenders and child kidnappers. Unless the sex offender or child kidnapper provides proof satisfactory to the department that the sex offender or child kidnapper is not physically present in the state or that the time limits described in AS 12.63.010 have passed, the Department of Public Safety may enter and maintain in the registry information described in AS 12.63.010 about a sex offender or child kidnapper that the department obtains from

- (1) the sex offender or child kidnapper under AS 12.63;
- (2) a post of the Alaska state troopers or a municipal police department under this subsection;
- (3) a court judgment under AS 12.55.148;
- (4) the Department of Corrections under AS 33.30.012 or 33.30.035;
- (5) the Federal Bureau of Investigation or another sex offender registration agency outside this state if the information indicates that a sex offender or child kidnapper is believed to be residing or planning to reside in the state or cannot be located;
- (6) a criminal justice agency in the state or another jurisdiction;
- (7) the department's central repository under AS 12.62; information entered in the registry from the repository is not subject to the requirements of AS 12.62.160(c)(3) or (4); or
- (8) another reliable source as defined in regulations adopted by the department.

(b) Information about a sex offender or child kidnapper that is contained in the central registry, including sets of fingerprints, is confidential and not subject to public disclosure except as to the sex offender's or child kidnapper's name, aliases, address, photograph, physical description, description of motor vehicles, license numbers of motor vehicles, and vehicle identification numbers of motor vehicles, place of employment, date of birth, crime for which convicted, date of conviction, place and court of conviction, length and conditions of sentence, and a statement as to whether the offender or kidnapper is in compliance with requirements of AS 12.63 or cannot be located.

(c) Notwithstanding (b) of this section, if a sex offender has been convicted in this state or another jurisdiction of a sex offense identified as "incest," that offense may be disclosed under (b) of this section only as a "felony sexual abuse of a minor" conviction.

(d) The Department of Public Safety

- (1) shall adopt regulations to


- (A) allow a sex offender or child kidnapper to review sex offender or child kidnapper registration information that refers to that sex offender or child kidnapper, and if the sex offender or child kidnapper believes the information is inaccurate or incomplete, to request the department to correct the information; if the department finds the information is inaccurate or incomplete, the department shall correct or supplement the information;
 - (B) ensure the appropriate circulation to law enforcement agencies of information contained in the central registry;
 - (C) ensure the anonymity of members of the public who request information under this section;
- (2) shall provide to the Department of Corrections and municipal police departments the forms and directions necessary to allow sex offenders and child kidnappers to comply with AS 12.63.010;
- (3) may adopt regulations to establish fees to be charged for registration under AS 12.63.010 and for information requests; the fee for registration shall be based upon the actual costs of performing the registration and maintaining the central registry but may not be set at a level whereby registration is discouraged; the fee for an information request may not be greater than \$10;
- (4) shall remove from the central registry of sex offenders and child kidnappers under this section information about a sex offender or child kidnapper required to register under AS 12.63.020(a)(2) at the end of the sex offender's or child kidnapper's duty to register if the offender or kidnapper has not been convicted of another sex offense or child kidnapping and the offender or kidnapper has supplied proof of unconditional discharge acceptable to the department; in this paragraph, "sex offense" and "child kidnapping" have the meanings given in AS 12.63.100.
- (e) The name, address, and other identifying information of a member of the public who makes an information request under this section is not a public record under AS 40.25.100—40.25.220.
- (f) When a sex offender or child kidnapper registers under AS 12.63, the Department of Public Safety shall make reasonable attempts to verify that the sex offender or child kidnapper is residing at the registered address. Reasonable attempts at verifying an address include sending certified mail, return receipt requested, to the offender or kidnapper at the registered address. The department shall make reasonable efforts to locate an offender or kidnapper who cannot be located at the registered address.
- (g) The department, at least quarterly, shall compile a list of those persons with a duty to register under AS 12.63.010 who have failed to register, whose addresses cannot be verified under (f) of this section, or who otherwise cannot be located. The department shall post this list on the Internet and request the public's assistance in locating these persons.
- (h) The Department of Public Safety shall provide on the Internet website that the department maintains for the central registry of sex offenders and child kidnappers information as to how members of the public using the website may access or compile the information relating to sex offenders or child kidnappers for a particular geographic area on a map. The information may direct members to mapping programs available on the Internet and to Internet websites where information contained in the registry has already been converted to a map or geographic format.

SLA 1994, ch. 41, § 5; SLA 1998, ch. 106, §§ 17—20; SLA 2006, ch. 14, §12, eff. Apr. 28, 2006.

CROSS REFERENCES

Blood tests for sex offenders, see § 18.15.300 et seq.
 Civil claims based upon sexual abuse, see § 09.55.650.
 Registration, sex offenders, see § 12.63.010 et seq.
 Search and seizure, constitutional provisions, see Const. Art. 1, § 14.
 Search and seizure, see § 12.35.010 et seq.
 Victims and witnesses, sex offenses, see § 12.61.125.

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78 ALR 5th 489, Validity, Construction, and Application of State Statutes Authorizing Community Notification of Release of Convicted Sex Offender.

NOTES OF DECISIONS

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Validity 1

1. Validity

Purpose of Alaska Sex Offender Registration Act (ASORA) is regulatory rather than punitive, and thus, statute does not constitute cruel and unusual punishment. U.S.C.A. Const.Amend. 8; AS 12.63.010-12.63.100. *Patterson v. State* (1999) Alaska App., 985 P.2d 1007, rehearing denied. Sentencing And Punishment 🔑 1601; Mental Health 🔑 433(2)

For purpose of determining whether the Alaska Sex Offender Registration Act (ASORA) violates the state and federal constitutional prohibitions against ex post facto laws, the legislative intent behind ASORA is regulatory, rather than punitive; ASORA merely requires convicted sex offenders to register with local law enforcement and to maintain and update that registration for minimum of 15 years, and involves no additional supervision, treatment or restriction. U.S.C.A. Const. Art. 1, §§ 9, cl. 3, 10, cl. 1; Const. Art. 1, § 15; AS 12.63.010-12.63.100. *Patterson v. State* (1999) Alaska App., 985 P.2d 1007, rehearing denied. Constitutional Law 🔑 2821; Mental Health 🔑 433(2)

The effect of the Alaska Sex Offender Registration Act (ASORA), although significant, is not so punitive as to violate the state and federal constitutional prohibitions against ex post facto laws; although law provides for dissemination of substantial personal and biographical information which convicted sex offenders must provide to local law enforcement, statute does not encourage acts of retribution or violence. U.S.C.A. Const. Art. 1, §§ 9, cl. 3, 10, cl. 1; Const. Art. 1, § 15; AS 12.63.010-12.63.100. *Patterson v. State* (1999) Alaska App., 985 P.2d 1007, rehearing denied. Constitutional Law 🔑 2821; Mental Health 🔑 433(2)

Alaska Sex Offender Registration Act (ASORA), under which convicted sex offender must supply local law enforcement officials with biographical data and submit to being photographed and finger printed, does not violate sex offender's equal protection rights under either federal or state constitution; sex offenders are not treated differently than similarly situated group of persons, and statute creates no suspect classification. U.S.C.A. Const.Amend. 14; Const. Art. 1, § 1; AS 12.63.010-12.63.100. *Patterson v. State* (1999) Alaska App., 985 P.2d 1007, rehearing denied. Constitutional Law 🔑 3176; Mental Health 🔑 433(2)

Alaska Sex Offender Registration Act (ASORA), under which convicted sex offender's biographical data, photograph and finger prints could be disseminated to members of public by local law enforcement without determination as to likelihood that offender would re-offend, neither deprived sex offender of liberty interest without procedural due process nor was fundamentally unfair; legislature's conclusion that prior sex offense conviction was sufficient reason to include offender in registry was reasonable response to potential for recidivism that sex offenders have as a group. U.S.C.A. Const.Amend. 5, 14; AS 12.63.010-12.63.100. *Patterson v. State* (1999) Alaska App., 985 P.2d 1007, rehearing denied. Constitutional Law 🔑 4343; Mental Health 🔑 433(2)

Alaska Sex Offender Registration Act (ASORA), under which convicted sex offender must supply local law enforcement officials with biographical data and submit to being photographed and finger printed, does not violate sex offender's substantive due process rights; statute is rationally related to legislature's legitimate concern with public safety threat posed by sex offenders.

U.S.C.A. Const.Amends. 5, 14; AS 12.63.010-12.63.100. *Patterson v. State* (1999) Alaska App., 985 P.2d 1007, rehearing denied. Constitutional Law 4343; Mental Health 433(2)

The Alaska Sex Offender Registration Act (ASORA), under which convicted sex offender must supply local law enforcement officials with biographical data and submit to being photographed and finger printed, does not violate sex offender's federal constitutional right to privacy; biographical data which sex offender is required to provide is already in public domain, and no person has objectively reasonable expectation of privacy in his or her appearance or physical characteristics. AS 12.63.010-12.63.100. *Patterson v. State* (1999) Alaska App., 985 P.2d 1007, rehearing denied. Constitutional Law 1245; Mental Health 433(2)

Convicted sex offender's assumed expectation of privacy was outweighed by society's interest in protecting public safety and welfare, and thus Alaska Sex Offender Registration Act (ASORA), under which sex offender was required to supply local law enforcement officials with biographical data and submit to being photographed and finger printed, does not violate sex offender's state constitutional right to privacy. Const. Art. 1, § 22; AS 12.63.010-12.63.100. *Patterson v. State* (1999) Alaska App., 985 P.2d 1007, rehearing denied. Constitutional Law 1245; Mental Health 433(2)

Alaska Sex Offender Registration Act (ASORA), under which convicted sex offender's biographical data, photograph and finger prints could be disseminated to members of public by local law enforcement without determination as to likelihood that offender would re-offend, was not unconstitutionally overbroad. AS 12.63.010-12.63.100. *Patterson v. State* (1999) Alaska App., 985 P.2d 1007, rehearing denied. Constitutional Law 1145(1); Mental Health 433(2)

The duty to register under the Alaska Sex Offender Registration Act (ASORA) is not punishment, and thus the statute is not a bill of attainder. AS 12.63.010-12.63.100. *Patterson v. State* (1999) Alaska App., 985 P.2d 1007, rehearing denied. Constitutional Law 1100(5); Mental Health 433(2)

2. Construction and application

Sex offenders physically present in Alaska, who had been released from probation before the effective date of the Alaska Sex Offender Registration Act (ASORA), could be required to comply with general duty to register set forth in former. AS 12.63.010(a) (1997). *Nunley v. State* (2001) Alaska App., 26 P.3d 1113. Mental Health 469(2)


Sex Offender Registration Act applies to defendants whose convictions have been set aside. AS 12.63.010 et seq. *State v. Martin* (2001) Alaska App., 17 P.3d 72, vacated 98 P.3d 206. Mental Health 469(2)


Definition of "conviction" adopted by Department of Public Safety in regulations implementing sex offender registration statute, as including even convictions that were set aside after a defendant successfully completed probation from a suspended imposition of sentence (SIS), was a reasonable construction consistent with legislature's public safety concerns in adopting statute and would therefore be upheld in prosecutions for second-degree failure to register as sex offenders. (Per Stewart, J., with one Judge concurring.) AS 11.56.840, 12.63.010 et seq., 18.65.087; Alaska Admin. Code title 13, § 09.900(a)(2). *State v. Otness* (1999) Alaska App., 986 P.2d 890. Mental Health 469(2); Mental Health 469(7)

3. Confidentiality



Convicted sex offenders were likely to prevail on merits of their ex post facto challenge to Alaska Registration Act to extent that Act provided for public dissemination of information concerning offenders whose convictions antedated Act; therefore, offenders would have to comply with Act's registration requirements but were entitled to preliminary injunction prohibiting such dissemination. U.S.C.A. Const. Art 1, § 10, cl. 1; AS 18.65.087(b). *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Injunction 138.48


Sex offenders whose convictions antedated Alaska Registration Act were likely to succeed on merits of their claim that Act would violate not only constitutional prohibition against ex post facto laws but terms of plea bargains to extent that Act allowed


for public dissemination of information. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 18.65.087(b); Alaska Laws 1994, c. 41, § 1 et seq. *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Injunction  138.48


For purposes of request for preliminary injunction, balance of hardship tipped in favor of convicted sex offenders challenging Alaska Registration Act only so long as there was to be public dissemination of registration information under Act. AS 18.65.087(b). *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Injunction  138.48


4. Registration deadlines

Department of Public Safety had authority to promulgate regulation that extended registration deadline for certain sex offenders; regulation ensured that legislature's intent to regulate sex offenders, and to prosecute those who failed to register, would be implemented, and by extending initial registration deadline Department's regulation was consistent with purposes and policies of Alaska Sex Offender Registration Act (ASORA). AS 11.56.840 (1997); Alaska Admin. Code title 13, § 09.010(d). *State v. Hawkins* (2002) Alaska App., 39 P.3d 1126. Mental Health  469(2); Mental Health  469(7)



Convicted sex offender, who was unconditionally discharged after July 1984 but prior to August 1994, had duty to register under the Alaska Sex Offender Registration Act (ASORA), even though statute setting forth time period for registration did not by its explicit terms include him. AS 12.63.010(a) (1997). *State v. Hawkins* (2002) Alaska App., 39 P.3d 1126. Mental Health  469(2)


Statute under which all sex offenders who are required to make yearly reports shall make their report on a date set by Department of Public Safety at time of offender's initial registration does not preclude Department from promulgating a general rule to govern the reporting deadline for all sex offenders. AS 12.63.010(d)(1). *Semaken v. State* (2000) Alaska App., 8 P.3d 368. Mental Health  469(5)


Regulation requiring convicted sex offenders subject to registration requirements to make their annual reports within the 30 days preceding their birthday did not exceed authority of Department of Public Safety pursuant to statute requiring sex offenders to make their yearly report on a date set by Department at time of offender's initial registration; statute does not preclude the Department from promulgating a general rule to govern reporting deadline for all sex offenders. AS 12.63.010(d)(1); Alaska Admin. Code title 13, § 09.030(c). *Semaken v. State* (2000) Alaska App., 8 P.3d 368. Mental Health  469(5)

Regulation requiring convicted sex offenders subject to registration requirements to make their annual reports within the 30 days preceding their birthday, which was in effect at time offender had initially registered following his sexual assault conviction, sufficiently established date for yearly report at time of initial registration, as required by statute. AS 12.63.010(d)(1); Alaska Admin. Code title 13, § 09.030(c). *Semaken v. State* (2000) Alaska App., 8 P.3d 368. Mental Health  469(5)


5. Sentencing and punishment

For purposes of convicted sex offenders' ex post facto challenge to Alaska Registration Act, act of registration could not be viewed historically as carrying punitive connotation, notwithstanding offenders' attempt to characterize registration as similar to conditions of parole or supervised release. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 18.65.087(b); Alaska Laws 1994, c. 41, § 1 et seq. *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Constitutional Law  2821; Mental Health  433(2)

Because the Sex Offender Registration Act is a regulatory measure, the registration and reporting requirements imposed by the Act are not part of a defendant's sentence. AS 12.63.100. *Herreid v. State* (2003) Alaska App., 69 P.3d 507. Mental Health  469(1)

A sentencing court has no power to exempt a defendant from the requirements of the Sex Offender Registration Act, nor does a sentencing court have the power to impose sex offender registration and reporting on a defendant whose crime does not qualify as a "sex offense" under the Act. AS 12.63.100(1, 6). *Herreid v. State* (2003) Alaska App., 69 P.3d 507. Mental Health  469(2)

6. Review

Department of Public Safety's construction of sex offender registration statute, as reflected in regulations implementing it, would not be overruled except for weighty reasons. (Per Stewart, J., with one Judge concurring.) AS 12.63.010 et seq., 18.65.087. State v. Otness (1999) Alaska App., 986 P.2d 890. Statutes  219(9.1)

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Alaska Statutes Annotated - 2007

AS § 28.05.048

West's Alaska Statutes Annotated Currentness

Title 28. Motor Vehicles

Chapter 05. Administration

Article 1. Powers and Duties of Departments of Public Safety and Administration

§ 28.05.048. Sex offender registration

The department shall display notice of the registration requirements of AS 12.63.010 at a place where the public may apply for a driver's license, identification card, or vehicle registration.

SLA 1994, ch. 41, § 6.

CROSS REFERENCES

Search and seizure, constitutional provisions, see Const. Art. 1, § 14.

Search and seizure, see § 12.35.010 et seq.

LIBRARY REFERENCES

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Alaska Statutes Annotated - 2007

AS § 33.30.035

West's Alaska Statutes Annotated Currentness

Title 33. Probation, Prisons, and Prisoners

Chapter 30. Prison Facilities and Prisoners

Article 1. Establishment, Control, and Management

§ 33.30.035. Notice to sex offenders or child kidnappers of registration and other requirements

The department shall provide written notice to a sex offender or child kidnapper of the registration, verification, and change of address requirements of AS 12.63.010 and shall obtain a written receipt of notice from the sex offender or child kidnapper (1) at the time of the sex offender's or child kidnapper's release from a state correctional facility; (2) immediately after taking supervision of a sex offender or child kidnapper under the Interstate Corrections Compact or AS 33.36.110. The department shall forward the written receipt to the Department of Public Safety, along with a description of any identifying features of the offender or kidnapper, the anticipated address of the offender or kidnapper, and a statement concerning whether the offender or kidnapper has received treatment for the offender's or kidnapper's mental abnormality or personality disorder related to the sex offense or child kidnapping. In this section, "sex offense" and "child kidnapping" have the meanings given in AS 12.63.100.

SLA 1994, ch. 41, § 8; SLA 1998, ch. 106, § 22.

CROSS REFERENCES

Search and seizure, constitutional provisions, see Const. Art. 1, § 14.

Search and seizure, see § 12.35.010 et seq.

LIBRARY REFERENCES

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Westlaw Key Number Search: 257Ak458.



NOTES OF DECISIONS


Ex post facto laws 1

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1. Ex post facto laws

Mere fact that Alaska Registration Act was within title of Alaska statutes entitled "Criminal Procedure" did not establish that Act was punitive in design for purposes of convicted offenders' ex post facto challenge. U.S.C.A. Const. Art. 1, § 10, cl. 1; Alaska Laws 1994, c. 41, § 1 et seq. *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Constitutional Law  2810; Mental Health  433(2)

Convicted sex offenders were likely to prevail on merits of their ex post facto challenge to Alaska Registration Act to extent that Act provided for public dissemination of information concerning offenders whose convictions antedated Act; therefore, offenders would have to comply with Act's registration requirements but were entitled to preliminary injunction prohibiting such dissemination. U.S.C.A. Const. Art 1, § 10, cl. 1; AS 18.65.087(b). *Rowe v. Burton*, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Injunction  138.48

Mere fact that Alaska Registration Act required convicted sex offenders to present themselves to law enforcement authorities as part of registration process could not alone support finding of affirmative disability or restraint suggesting punitive effect for purposes of ex post facto challenge; restraint imposed on offenders' liberty was de minimis. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 12.63.010(a). Rowe v. Burton, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Constitutional Law 2821; Mental Health 433(2)

For purposes of convicted sex offenders' ex post facto challenge to Alaska Registration Act, act of registration could not be viewed historically as carrying punitive connotation, notwithstanding offenders' attempt to characterize registration as similar to conditions of parole or supervised release. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 18.65.087(b); Alaska Laws 1994, c. 41, § 1 et seq. Rowe v. Burton, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Constitutional Law 2821; Mental Health 433(2)

2. Standing to contest validity

Convicted sex offenders challenging Alaska Registration Act would not be allowed to prosecute action under fictitious names; although offenders sought to keep private their pleas concerning sex offenses, such information was already public, and offenders had pursued early termination of parole for their offenses; moreover, offenders had presented no evidence to establish that they faced threat of physical harm. Alaska Laws 1994, c. 41, § 1 et seq. Rowe v. Burton, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Federal Civil Procedure 101

Wife of convicted sex offender would not be allowed to prosecute action challenging Alaska Registration Act under fictitious name, despite her fear of stigmatization; although wife claimed that she would be stigmatized if her husband was required to disclose his true identity, parties' marriage was a matter of public record, and there was no fact that was not already known to public that would be protected by granting wife's request. Rowe v. Burton, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Federal Civil Procedure 101


Convicted sex offenders challenging Alaska Registration Act were not entitled to prosecute action under pseudonyms on grounds that disclosing their names would result in injury they sought to avoid by bringing action; rather than seeking to keep facts private, offenders were seeking to limit dissemination of facts already public, i.e., that they had pled no contest to sex offenses, and there would be no disclosure of intensely private fact. Alaska Laws 1994, c. 41, § 1 et seq. Rowe v. Burton, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Federal Civil Procedure 101


Federal district court could not override dictates of Eleventh Amendment and exercise pendent jurisdiction to pass on constitutionality of Alaska Registration Act under Alaska Constitution. U.S.C.A. Const.Amend. 11; Alaska Laws 1994, c. 41, § 1 et seq. Rowe v. Burton, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Federal Courts 265

3. Injunctive relief

Sex offenders whose convictions antedated Alaska Registration Act were likely to succeed on merits of their claim that Act would violate not only constitutional prohibition against ex post facto laws but terms of plea bargains to extent that Act allowed for public dissemination of information. U.S.C.A. Const. Art. 1, § 10, cl. 1; AS 18.65.087(b); Alaska Laws 1994, c. 41, § 1 et seq. Rowe v. Burton, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Injunction 138.48

Convicted sex offenders failed to establish likelihood of success on merits of their claim that requirement under Alaska Registration Act that they submit to law enforcement authorities for photographs and fingerprinting violated Fourth Amendment; photographs and fingerprinting alone were nontestimonial in nature and were not likely to be considered search and, although involuntary surrender would likely be considered seizure under Fourth Amendment, it would not likely be considered unreasonable in light of society's interest in preventing sex crimes and minimal intrusion on offenders' rights. U.S.C.A. Const.Amend. 4; AS 12.63.010(b)(2). Rowe v. Burton, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Injunction 138.48

Convicted sex offenders failed to establish likelihood of success on merits of claim that Alaska Registration Act violated their right to privacy under United States Constitution; offenders' residences, job locations, driver's license numbers, dates of convictions, and nature of convictions are generally considered public information, and such information did not reveal intimate facts traditionally protected from disclosure by federal right to privacy. Alaska Laws 1994, c. 41, § 1 et seq. Rowe v. Burton, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Injunction  138.48

For purposes of request for preliminary injunction, balance of hardship tipped in favor of convicted sex offenders challenging Alaska Registration Act only so long as there was to be public dissemination of registration information under Act. AS 18.65.087(b). Rowe v. Burton, 1994, 884 F.Supp. 1372, appeal dismissed 85 F.3d 635. Injunction  138.48

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