

Chapter 210

SEX OFFENDER REGISTRATION

[HISTORY: Adopted by the Town Board of the Town of Pendleton 5-2-2006 by L.L. No. 1-2006. Amendments noted where applicable.]

§ 210-1. Title.

The title of this chapter shall be the "Sexual Offenders Registration Act."

§ 210-2. Legislative findings and intent.

The Town Board of the Town of Pendleton finds that one of the highest priorities of local government is the protection of the health and safety of its citizens. This is especially true for children and other vulnerable members of society. The Town Board further finds that convicted sex offenders pose a significant continuing risk to society. Moreover, as the tragic murder of Jessica Lunsford in Florida in spring 2005 and other such events have shown, recidivism among convicted sexual offenders is a continuing problem. It is recognized that the growing population of Pendleton may bring with it the potential for sex offenders to dwell within Town boundaries who will have registered as required by Article 6-C of the Corrections Law of the State of New York, commonly known as Megan's Law. Some of these individuals may in fact be in residence currently. Some of these individuals have been or will be categorized by the State Department of Corrections as Level II sex offenders, who have been determined to be of moderate risk of committing another sex crime. Some of these individuals have been or will be categorized as Level III sex offenders, who have been determined to be of a high risk to commit another sexual crime. However, the Town Board finds that some sex offenders fail to register or fail to update their registration information when they move from one location to another. The Town Board finds that the protection of the victims and potential victims of sexual offenders in Pendleton is a matter of unique local concern not fully and adequately addressed by state law. The Town Board finds that the disclosures required and the limitations contained herein will protect the citizens of Pendleton and will provide to employers who contract with Pendleton and within Pendleton's boundaries information that will assist these employers in protecting children who may come into proximity with a sex offender in the scope of employment. The Town Board finds that the Town of Pendleton has not assessed and cannot assess the risk of recidivism of any particular sex offender or class of sex offenders and has made no determination of dangerousness of any particular sex offender or class of sex offenders. Rather, the Board finds that this chapter is remedial in nature and designed to fill certain gaps in state law as well as to provide protection for residents of the Town who receive certain services from the Town. The Board further finds this chapter to be the most narrowly tailored means of fulfilling its compelling interest in the safety of its citizens. Finally, the Board does not intend for any person to use the information required by this chapter to harm or injure any

registrant under the law.

§ 210-3. Definitions.

For purposes of this chapter, the following shall apply unless the context clearly indicates a different meaning:

ADULT — Any person 18 years of age or older.

CHILD OR CHILDREN — Persons under 18 years of age. The singular and plural shall include one another. If the applicable statute defining a crime against a child refers to a child younger than 18, the younger age shall control.

DEPARTMENT OF CORRECTIONS — The New York State Department of Corrections.

EMPLOYER — Any individual, partnership, association, corporation, business trust, legal representative or organized group of persons paying wages or any form of compensation to any person for services that directly or indirectly benefit the individual, partnership, association, corporation, business trust, legal representative or organized group of persons.

EXTENDED-STAY ESTABLISHMENT — Any hotel, motel, rooming house, inn, rooming unit, bed-and-breakfast, residence inn, country inn, motor court, R-V park or motor lodge that lets or provides any space for occupancy by any person. Any place of business that provides services or utilities to motor homes, recreational vehicles, trucks with campers or any other motor vehicle in which an individual does or may sleep overnight is an EXTENDED-STAY ESTABLISHMENT under this chapter.

HIS — His or her.

HOMELESS ADULT — Any adult who has been in the Town of Pendleton for more than 24 hours or intends to be in town for more than 24 hours without a residence or place of lodging.

HOMELESS SHELTER — Any structure that provides temporary housing to a homeless adult.

INTERNET — An interactive computer service or system or an information service, system or access software provider that provides or enables computer access by multiple users to a computer server and includes, but is not limited to, an information service, system or access software provider that provides access to a network system commonly known as the "Internet," or any comparable system or service and also includes, but is not limited to, a World Wide Web page, newsgroup, message board, mailing list, or chat area on any interactive computer service or system or other on-line service. The NCS D website shall mean any Internet site made available by the NCS D to the public, including any link to the website of the Town of Pendleton.

NCS D — The Niagara County Sheriff's Department.

OUTSIDE NEW YORK — Anywhere outside the geographical borders of the State of

New York or any federal enclave, Indian trust lands or reservations located inside the geographical borders of New York.

REGISTRANT — Any person required to register under this chapter.

REGISTRATION YEAR — One year from the date of first registration under this chapter.

RESIDENT — Any person who lives in the Town of Pendleton in any apartment or home, has a usual place of abode in the Town, is domiciled in the Town or is temporarily present in the Town and staying at a homeless shelter or an extended-stay establishment.

RESPONSIBLE ADULT — An adult who is not a sex offender.

SCHOOL — A licensed or accredited public, charter, private or religious school that offers instruction to students in kindergarten through any grade up to Grade 12.

SEX OFFENDER — Shall have the same meaning as the term is defined in § 168-a(1) of the Corrections Law of the State of New York.

SEX OFFENDER VIOLATION — A violation of any law defined as a sex offense in § 168-a(2) of the Corrections Law of the State of New York.

SEX OFFENSE — Shall have the same meaning as that term is defined in § 168-a(2) of the Corrections Law of the State of New York.

§ 210-4. Registration requirements for sex offenders.

- A. Sex offenders who reside in the Town of Pendleton and who are required to register with the Department of Corrections pursuant to Article 6-C of the Corrections Law of the State of New York must register with NCSO.
- B. A sex offender residing within Pendleton must register with NCSO within 10 days after being released from incarceration, or 10 days from the date of sentencing if not incarcerated, for a sex offender violation. A registrant under this section must provide NCSO with the following information:
 - (1) His legal name, any other names or aliases he has used or is using and any new names he has applied for in the last year.
 - (2) His date of birth.
 - (3) His social security number.
 - (4) His current address, the address of any other residences he owns or the address of any other real property he owns or leases and the address of any other locations or places of lodging where the sex offender intends to stay or does in fact stay for more than three consecutive days at any time or an aggregate of 10 or more days in a registration year. Homeless shelters and extended-stay establishments must be included in the disclosure required pursuant to this subsection. Pursuant to this subsection, the registrant must provide a description and location of any and all rented or owned spaces to

which the registrant claims a right to privacy or a right to exclude others, including but not limited to storage buildings.

- (5) His place of employment and the name and telephone number of a contact person who knows his location at any and all times during employment hours or other times he performs work in the scope of his employment duties.
- (6) His driver's license number and the license plate number, vehicle identification number and description by make and model of all vehicles registered to him, owned by him, driven by him during employment or otherwise available to him with regularity by consent from another.
- (7) A list of any and all sex offense violations of which he has been convicted or to which he has entered a plea of guilty.

§ 210-5. Registrant regulations.

- A. Any sex offender residing within the Town of Pendleton who provides inaccurate information to the NCSO commits a separate violation of this chapter.
- B. In the event of any change in registration information or addition of new information that would have been required in the initial or subsequent registration other than a change of address or employment governed by Subsection C or D below, the registrant must notify NCSO and provide new valid information within three days of the time the new information becomes known or should be known by the registrant.
- C. A sex offender residing in Pendleton who is required to register under this chapter and elects to change the address of any place of lodging, including but not limited to a residence, extended-stay establishment or homeless shelter, must notify NCSO of the prospective change before the change occurs.
- D. A sex offender residing in Pendleton who is required to register under this chapter and changes his place of employment must notify NCSO 10 days before the voluntary change occurs or five days after the change is forced or compelled. Sex offenders residing in Pendleton must provide the name and telephone number of a new contact person within 10 days of the time new work begins.
- E. Following the initial registration, registrants residing in Pendleton, except homeless adults, are required to annually renew the registration before December 31 of each subsequent calendar year for 20 years. Homeless adults residing from time to time in homeless shelters within Pendleton must verify registration data in writing every 90 days as long as they are in town on a form provided by NCSO. Sex offenders who have been convicted of two or more sex offenses must register for life.
- F. If any person residing in Pendleton receives a deferred sentence from any court for a sex offense that would otherwise trigger registration under this chapter, that person must register as if convicted, unless he obtains an order from a court of competent jurisdiction which, after an evidentiary hearing on the issue, rules that registration is not required on the grounds that registration would grossly prejudice

his rights. If the charges are dismissed against the person at the completion of the deferred sentence, the person does not have to renew registration in subsequent registration years.

- G. Any sex offender currently incarcerated in a correctional institution and temporarily at large and free to move about in the Town is required to register under this chapter 10 days before each release date. This subsection includes but is not limited to persons on probation, parole, furlough, work release or any similar program that results in or causes the person to be outside the confines of the institution for any reason.

§ 210-6. Availability of information.

The Town of Pendleton will maintain a database of sex offenders distinct from any registry of sex offenders maintained by the State of New York. Registration under any registration program maintained by the State of New York does not exempt a sex offender from registration under this chapter. The Town of Pendleton will make available and disseminate sex offender registration information as authorized by New York law on the Town's own website on the Internet for any sex offender classified as a Level II or Level III sex offender by the State Department of Corrections. Inclusion of a sex offender in the Town's database and website is based solely on the fact of a prior conviction and not based on any assessment of the current degree of dangerousness posed by any particular sex offender. The website will conspicuously include the following statement: "The Town's decision to post sex offenders on this website is based on the fact that the sex offender was convicted of a sex offense in the past. The Town of Pendleton has not assessed the specific risk posed by any particular individual sex offender or class of sex offenders and has made no determination regarding the current dangerousness or degree of dangerousness of any individual sex offender or class of sex offenders. The main purpose of providing this data on the Internet is to make the information more easily available and accessible, not to warn about any specific individual."

§ 210-7. General provisions and offenses.

- A. Town contractors. All persons or entities that enter into contracts with the Town and employ any person that may be alone with a child within the scope of the performance of the contract shall conduct a background search of any and all such employees and compare the background search to any applicable registration information available on the NCSO's website, the Town's website, and the sex offender hotline maintained by the State of New York. Any failure by the contractor to comply is a material breach of the contract and entitles the Town to terminate the contract. This subsection includes but is not limited to 501(c)(3) entities and charitable entities. Any person or entity to which this subsection applies shall notify NCSO and the Town immediately if that person or entity has or obtains any information about any registrant that does not conform with the information the registrant provided to the Town or NCSO pursuant to this chapter.
- B. Sex offender location. After the effective date of this chapter, sex offenders shall not newly occupy any real property, acquire any real property by lease or otherwise

or establish a place of lodging within 1,000 feet of a school, day-care center, playground or park.

- C. Within five days from the effective date of this chapter, a sex offender employed by an employer located in the Town of Pendleton shall notify his current employer that he is a registered sex offender. At the time a sex offender applies for or receives an offer of employment by an employer where the sex offender will be working substantially within the Town of Pendleton, the sex offender shall notify the employer that he is a registered sex offender. All sex offenders shall provide the employer or prospective employer with the current conditions of probation in writing, including, if applicable, any conditions of probation that require the sex offender to stay away from vulnerable populations or conditions limiting the sex offender's contact with vulnerable populations.

§ 210-8. Immunity of Town.

Nothing in this chapter creates or shall create a cause of action against the Town of Pendleton not already authorized under existing law. Without limitation, the Town is not liable to any person harmed who claims that notice under this chapter may have prevented the harm.

§ 210-9. Penalties for offenses.

Each violation of this chapter shall be punishable by a fine of \$250 and/or 10 days in jail. Each day that a registrant should have registered or supplemented his registration but failed to do so shall constitute a separate offense. It is the intent of this Board that violations of this chapter should not be treated by the courts as lesser included offenses that merge into a violation of Article 6-C of the Corrections Law of the State of New York. The Town shall also be entitled to injunctive relief to enforce the provisions of this chapter.