



CHAPTER 14

KAYENTA TOWNSHIP SEX OFFENDER REGISTRATION AND REPORTING ORDINANCE

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SEX OFFENDER REGISTRATION AND REPORTING ORDINANCE

SECTION 14-101 Title

This Chapter shall be cited as the Kayenta Township Sex Offender Registration and Reporting Ordinance.

History

KTCO-89-11 (Oct. 12, 2011)

SECTION 14-102 Definitions

A. *Convicted* means:

1. An adult sex offender is "convicted" for the purposes of this Ordinance if the sex offender has been found guilty of a sex offense or a finding of guilt has been entered upon a plea of *nolo contendere* or if the sex offender has otherwise been subjected to penal consequences based upon a judgment or finding of guilt of a sex offense, however styled.
2. A juvenile sex offender is "convicted" for the purposes of this Ordinance if the juvenile sex offender is either:
 - a. Prosecuted and found guilty, or a finding of guilt has been entered upon a plea of *nolo contendere*, as an adult for a sex offense; or
 - b. Prosecuted and found guilty, or a finding of guilt has been entered upon a plea of *nolo contendere*, or adjudicated delinquent as a juvenile for a sex offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse as described in either subsection (a) or (b) of section 2241 of title 18, United States Code, or was an attempt or conspiracy to commit such offense.

B. *Dru Sjodin National Sex Offender Public Website* ("NSOPW") means the public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. § 16945.

C. *Employee* means any person who is self-employed or works for any other person or entity, regardless of compensation, including, for registration purposes hereunder, volunteers of a Navajo Nation agency or organization.

D. *Foreign Conviction* means a conviction, or finding of guilt upon a plea of *nolo contendere*, obtained or entered outside of the United States of America.

E. *Immediate* or *Immediately* means within three (3) business days.

- F. *Imprisonment* means incarceration in a federal, state, local or tribal prison, reformatory, correctional institution, jail, Bureau of Indian Affairs or military holding or punitive or correctional facility, whether any such facility or institution is publicly operated or is operated under contract with any such federal, state, local or tribal government or agency thereof, including without limitation, for registration purposes, house arrest following conviction of a covered sex offense during the period of such house arrest.
- G. *Jurisdiction* means the Navajo Nation; any federally recognized Indian tribe, nation or Pueblo; any of the fifty states; the District of Columbia; the Commonwealth of Puerto Rico; Guam; American Samoa; the Commonwealth of the Northern Mariana Islands; and the United States Virgin Islands.
- H. *Minor* means a person under the age of 18 years.
- I. *National Sex Offender Registry* means the national database maintained by the Federal Bureau of Investigation pursuant to 42 U.S.C. § 16919.
- J. *Residence* means the location of a person's home or any other place where the person typically or periodically lives or sleeps.
- K. *Sex Offender* means a person convicted of a sex offense.
- L. *Sex Offense* means any offense set forth in Section 14-201, any offense contained in 42 U.S.C. § 16911(5), as amended; and any offense listed in Section 14-104 of this Ordinance;
- M. *Sex Offender Registry* means the registry of sex offenders, and a notification program, maintained by the Kayenta Township.
- O. *SMART Office* means the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which was established within the United States Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C. § 16945.
- P. *Sexual Act* means:
1. contact between the penis and the vulva or the penis and the anus, where, for purposes of this definition, contact involving the penis occurs upon penetration, however slight;
 2. contact between the lips or mouth and the penis, the mouth and the vulva, or the mouth and the anus;
 3. the penetration, however slight, of the anal or genital opening of another by a hand or finger or other appendage or by any object with an intent to abuse, humiliate, harass,

degrade, or arouse or gratify the sexual desire of a person; or

4. the intentional touching, either directly or through the clothing, of the genitalia of another person that has not attained the age of 18 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of a person.

Q. *Sexual Contact* means the intentional touching, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any other person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of another person.

R. *SORNA* means the Sex Offender Registration and Notification Act, Title I of the Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248, codified at 42 U.S.C. § 16911, *et seq.*, as amended.

S. *Student* means a person enrolled or otherwise attending either a private or public education institution, including a secondary school, trade or professional school, or college or university or other institution of higher education.

SECTION 14-103 Applicability

Any person who resides or whose domicile is located within, or who attends or is employed by any school or child care facility within, Navajo Indian country, the Navajo Nation, and/or fee lands owned by the Navajo Nation regardless of the location of such fee lands and who has been convicted of any of the following offenses, or who has entered a plea of *nolo contendere* to a charge that the person committed any sex offense as set forth in Section 14-102 is subject to the requirements of this Ordinance; provided, however, that an offense involving consensual sexual conduct is not a sex offense for the purposes of this Ordinance if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than four (4) years older than the victim.

SECTION 14-104 Sex Offenses

Sex offenses include the following:

A. *Navajo Nation offenses.* Any offense described in 17 N.N.C. §§ 401, 402, 442, 443, 443A, 444 (provided, however, that for purposes of this Ordinance, a violation of such section 444 shall not be deemed to occur unless the sexual conduct was consensual and the victim was at least thirteen (13) years of age and the offender was not more than four (4) years older than the victim), and 453 (2005), as those sections may be amended from time to time, and any other sex offense required to be reported under 17 N.N.C. § 220(D) (2005) or other applicable Navajo law.

B. *Federal offenses.* Any offense included in the definition of "sex offense" at 42 U.S.C. §

16911(5), and including any offenses which may be prosecuted under the federal Assimilative Crimes Act, 18 U.S.C. § 1152 or § 1153; and any offense under the following sections of the United States criminal code (18 U.S.C.): 1591 (sex trafficking of children), 1801 (video voyeurism of a minor), 2241 (aggravated sexual abuse), 2242 (sexual abuse), 2243 (sexual abuse of a minor or ward), 2244 (abusive sexual contact), 2245 (offenses resulting in death), 2251 (sexual exploitation of children), 2251A (selling or buying of children), 2252 (material involving the sexual exploitation of a minor), 2252A (material containing child pornography), 2252B (misleading domain names on the internet), 2252C (misleading words or digital images on the internet), 2260 (production of sexually explicit depictions of a minor for importation into the United States), 2421 (transportation of a minor for illegal sexual activity), 2422 (coercion and enticement of a minor for illegal sexual activity), 2423 (transportation of a minor for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, engaging in illicit sexual conduct in foreign places), 2424 (failure to file factual statement about an alien individual), and 2425 (transmitting information about a minor to further criminal sexual conduct).

C. *State and other Tribal offenses.* Any criminal offense committed in any State or other tribal jurisdiction that involves a sexual act or sexual contact, and any such offense involving:

1. Any conduct that by its nature is a sex offense against a minor;
2. Physical contact with a minor or the use of the internet to facilitate or attempt such contact, including offenses whose elements involve the use of persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense;
3. False imprisonment;
4. Kidnapping;
5. Possession, production or distribution of child pornography;
6. Solicitation of a minor to engage in a sexual act or sexual contact, including any direction, request, enticement, persuasion, or encouragement of a minor to engage in a sexual act or sexual conduct;
7. Use of a minor in a sexual performance; or
8. Any offense comparable to that proscribed in 18 U.S.C. §§ 1591, 1801, 2241, 2242, 2244, 2422(b), and/or 2423(a).

D. *Military offenses.* Any offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Pub. L. 105-119, *codified at* 10 U.S.C. § 951 note.

- E. *Juvenile offenses.* Any criminal offense, or attempt or conspiracy to commit any criminal offense comparable to or more severe than the federal crime of aggravated sexual abuse as provided in 18 U.S.C. § 2241(a) and/or (b) and committed by a minor who is 14 years of age or older at the time of the offense, including engaging in a sexual act by force or threat of violence, or by rendering a person unconscious or drugging the victim.
- F. *Foreign offenses.* Any offense involving any conduct listed in this Section where the offender was convicted under the laws of and in the courts of Canada, the United Kingdom, Australia, New Zealand or other country which the United States State Department, in its Country Reports on Human Rights Practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

SECTION 14-105 Required Registration and Information

- A. A sex offender who is required to register with the Township hereunder shall provide all of the information described in this Section to the Kayenta Town Manager or his or her authorized delegate (the "Town Manager"). The Township shall strive to maintain all information obtained hereunder in a digitized form and in an electronic database in a form capable of electronic transmission. The Town Manager may promulgate regulations under this Ordinance for its administration for the approval of the Kayenta Township Commission.
- B. Such sex offender shall provide to the Town Manager and update as required:
 - 1. The sex offender's criminal history, including without limitation (a) the date of all arrests, (b) the date of all convictions or determinations of guilt on a plea of *nolo contendere*, (c) his or her status of parole, probation or supervised release, (d) his or her registration status, (e) the text of each provision of law defining each criminal offense for which the sex offender is registered or is being registered, and (f) any outstanding arrest warrants.
 - 2. The sex offender's actual date of birth and any other date of birth used by the sex offender.
 - 3. Unless the sex offender demonstrates that his or her DNA is already contained in the Combined DNA Index System (CODIS), a sample of his or her DNA, which the Town Manager shall submit to an appropriate Navajo Nation, state or federal agency under policies and procedures to be adopted by the Town Manager.
 - 4. All of the sex offender's driver's licenses issued by any jurisdiction, including any invalid licenses, to be copied by the Town Manager for the sex offender's file.
 - 5. All of the sex offender's identification cards including without limitation tribal

enrollment card or papers, passports, Social Security card, and any immigration documents used by the sex offender, to be copied by the Town Manager for the sex offender's file.

6. The name and address of the sex offender's employer or similar information related to any transient or day labor employment.
7. Finger and palm prints. to be submitted to an appropriate Navajo Nation, state, and/or federal agency under policies and procedures to be adopted by the Town Manager.
8. All email addresses. Instant Message addresses and identifiers, all other designations and monikers used for self-identification in internet communications or postings. and all designations used by the sex offender for the purpose of routing or self-identification in internet communications or postings, including without limitation to social network identifications, twitter accounts, video posting site identifications, such as You Tube. and similar accounts or uses.
9. The sex offender's full given name, all nicknames, aliases, and pseudonyms regardless of the context in which used, and all ethnic or tribal names by which the sex offender is commonly known, not including sacred names not commonly known.
10. All land line telephone numbers, cellular telephone numbers, and Voice Over IP (VOIP) telephone numbers used by or in the name of the sex offender.
11. His or her photograph acceptable in likeness and clarity to the Town Manager in his or her sole discretion, which shall be updated each six calendar months by the sex offender. The Town Manager may also take a photograph of the sex offender for the Township's files under policies and procedures to be adopted by the Town Manager.
12. Information identifying all professional licenses to engage in an occupation or to carry out a trade or business.
13. The address of each residence at which the sex offender resides or is domiciled or will or plans to reside or be domiciled and a description identifying each location where the sex offender resides or is domiciled or will or plans to reside or be domiciled regardless of whether such location is also identifiable by a street address.
14. If the sex offender is or will be attending school, the name and address of each school where the sex offender is or will be a student.
15. A written physical description, including unusual characteristics, scars, moles, birthmarks, and/or tattoos.
16. The sex offender's valid Social Security Number and any other purported Social Security Number the sex offender has used.

17. When the sex offender is or will be absent from his or her primary residence or domicile for more than seven consecutive days, all appropriate information regarding temporary lodging including location, address, and name of establishment or owner or lessee or renter; and the dates the sex offender will be staying at each such location, such information to be provided in person by the sex offender at least five days before the scheduled absence
18. Any intent to engage in international travel and all appropriate information regarding such intended or planned travel, such information to be provided in person by the sex offender at least twenty-one (21) days in advance of the travel, and such information to be provided by the Town Manager to all appropriate federal agencies and databases under policies and procedures to be adopted by the Town Manager.
19. License plate numbers, registration numbers or identifiers, and general description (e.g., make model, color and year) of each vehicle owned or operated by the sex offender for work or personal use or otherwise, and the location where any vehicle is parked or otherwise maintained, including land vehicles, aircraft, and watercraft.

The Town Manager may adopt such forms as he or she deems appropriate in his or her sole discretion to facilitate compliance with the above requirements.

- C. A sex offender required to register under this Ordinance shall appear in person at the Township for purposes of verification and maintaining current information at least once each year for the rest of his or her life. At each such in-person verification, the sex offender shall permit the Township to take a photograph of the sex offender, and the sex offender shall cooperate with the Town Manager in assuring that all information in the sex offender's file is updated and accurate. The Town Manager shall immediately notify all other appropriate jurisdictions of any change in the information or status regarding the sex offender and shall similarly update the Township's public website, if applicable, and other appropriate databases, including without limitation the NCIC/NSOR. The Town Manager may require more frequent appearances and registrations depending on the severity of the sex offense and other relevant factors under policies and procedures that the Town Manager may adopt in his or her sole discretion.
- D. The sex offender shall read, or have read to them, and date and sign a form stating that the duty to register hereunder has been explained to him or her by the Town Manager and that the sex offender understands the registration requirement. The Town Manager shall countersign and date such form and upload such signed form into the Township's sex offender registry.

SECTION 14-106 Timing and Updating of Registrations of Persons Subject to Ordinance; Failure to Appear

- A. The sex offender must register with the Township within three (3) business days of

establishing a residence or domicile, commencing employment, or becoming a student at a school within the Kayenta Township.

- B. The requirements for registration hereunder apply to all persons who have been convicted of a sex offense, whether prior to the date of the enactment of this Ordinance or not. Sex offenders subject to this Ordinance (e.g., those who reside or are domiciled or are employed or go to school within the Township) shall register in person and supply the information required hereunder to the Town Manager within ninety (90) days of the enactment of this Ordinance.
- C. All sex offenders subject to this Ordinance shall appear immediately in person to update any changes to his or her name, residence (including termination of residence), employment, or school attendance; changes to temporary lodging information, changes to vehicle information, identifiers, contact information, and telephone number. In the event of a change in temporary lodging of over seven days, the sex offender shall also immediately notify the Town Manager of the intended new place of residence as well as the registry official of such location. The Town Manager may notify the jurisdiction in which the sex offender will be temporarily staying or the appropriate Navajo Nation official.
- D. Any sex offender who is a student in any capacity within the Township who changes his or her school or terminates schooling within the Township shall immediately appear in person at the Township to update that information. The Town Manager may notify any jurisdiction in which the sex offender will be continuing his or her education or to which the offender will move, or the appropriate Navajo Nation official.
- E. Any sex offender who is employed by the Township in any capacity or otherwise employed within the Township whose employment status changes shall immediately appear in person at the Township to update his or her employment information. The Town Manager may notify any jurisdiction where the offender may or will seek or obtain employment, or the appropriate Navajo Nation official.
- F. If a sex offender fails to register with and provide information to and/or appear personally before the Township as required by this Ordinance, the Town Manager shall immediately inform the appropriate official of the Navajo Nation of that fact.
- G. If the Town Manager receives information that a sex offender subject to this Ordinance has absconded, the Town Manager shall make an effort to determine if the sex offender has actually absconded. If no determination can be made and if the sex offender cannot be located, the Town Manager shall notify the appropriate official of the Navajo Nation of those circumstances.

SECTION 14-107 Public Sex Offender Registry Website

- A. The Township shall maintain a public sex offender registry website (the "Website").

subject to any budgetary or manpower constraints.

- B. The Website shall (1) include links to sex offender safety and education resources, (2) include instructions on how a person may seek correction of information that the person believes is erroneous, (3) include a warning that the information contained on the Website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working or going to school at any reported addresses and that any such action could result in civil or criminal penalties, (4) have the capability of conducting searches by geographic radius, and (5) shall include in the design all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as may be required by the Attorney General of the United States.

SECTION 14-108 Required and Prohibited Information

- A. Subject to any budgetary or manpower constraints, the following information shall be made available to the public on the Website:

1. Notice that an offender is in violation of his or her registration requirements or cannot be located if the sex offender may have absconded;
2. All sex offenses for which the sex offender has been convicted;
3. The sex offenses(s) for which the offender is currently registered;
4. The address of the sex offender's employer(s);
5. The name of the sex offender including all aliases;
6. A current photograph of the sex offender;
7. A physical description of the sex offender;
8. The sex offender's residential address and description of the place of abode;
9. Addresses of all schools being attended by the sex offender; and
10. The sex offender's vehicle license plate number and description of vehicles.

- B. The following information shall not be made available to the public on the Website:

1. Any arrest which did not result in the conviction of the sex offender;
2. The sex offender's Social Security Number;

3. Any travel and immigration documents;
4. The identity of any victim; and
5. Internet identifiers.

SECTION 14-109 Notifications

- A. Whenever a sex offender registers or updates his or her information with the Township, the Town Manager shall inform the appropriate official of the Navajo Nation and enter or update the information posted on the Website.
- B. Subject to budgetary or manpower constraints, the Township shall ensure that there is an automated community notification process in place that:
 1. Upon a sex offender's registration or update of information with the Township, the Website is immediately updated, and
 2. The Township's registry has a function that enables the general public to request an email notice that will notify it when a sex offender commences residence, employment or schooling within the Township, and identifies the sex offender by name.

SECTION 14-110 Immunity

- A. Nothing in this Ordinance shall be construed to waive the sovereign immunity of the Township, its departments, agencies, employees, Commissioners, agents, or officials.
- B. Any person acting in good faith in matters relating to this Ordinance shall be immune from any civil or criminal liability arising out of such action.

SECTION 14-111 Crimes and Civil Sanctions

- A. Each violation of a provision of this Ordinance by a sex offender who is a member of a federally recognized Indian tribe shall be a crime and subject to a period of incarceration of up to 3 years and/or a fine of \$5,000.00.
- B. Each violation of a provision of this Ordinance by a sex offender who is not a member of a federally recognized Indian tribe shall be a civil violation subject to enforcement by any means not prohibited by federal or Navajo Nation law, including without limitation civil fines or penalties of up to \$5,000.00 per violation, forfeiture of any property used by the sex offender in effecting the violation, and exclusion from the Township for all purposes, as deemed appropriate by the appropriate court of the Navajo Nation.
- C. Any person who knowingly harbors, attempts to harbor, assists another in harboring or

attempting to harbor a sex offender who is in violation of this Ordinance, provides false information to law enforcement agency regarding a sex offender, or assists a sex offender in eluding a law enforcement agency that is seeking to find, question or arrest the sex offender for noncompliance with the requirements of this Ordinance is guilty of a civil offense subject to enforcement by any means not prohibited by federal or Navajo Nation law, including without limitation civil fines or penalties of up to \$1,000.00 per violation, forfeiture of any property used to effect such violation, and exclusion from the Township for all purposes, as deemed appropriate by the appropriate court of the Navajo Nation.

D. In any civil or criminal action to enforce the above, the Township shall be the plaintiff.