

ARTICLE 12: SEXUAL OFFENDERS

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PART 1: SEXUAL OFFENDER EMPLOYER NOTIFICATION

§ 11-12-1-1 FINDINGS AND INTENT.

(A) The Council finds that many sex offenders pose a significant risk to the health and safety of inhabitants of the City of Albuquerque. The Council finds that public safety will be improved if employers know that current employees or prospective employees are probationary convicted sex offenders. The Council finds that approximately half of the convicted sex offenders who will re-offend will do so during the first five years after they have been released from incarceration or convicted and that five years is a typical probationary period. The Council further finds that this article is a remedial article designed to protect occupants of the City of Albuquerque. The Council further finds this article is the most narrowly tailored means of furthering compelling governmental interests.

(B) The Council finds that the protection of the victims and potential victims of sex offenders in Albuquerque is a matter of unique local concern not fully and adequately addressed by state law. The Council finds that statewide offenders move to Albuquerque from smaller towns and rural areas in New Mexico to seek the relative anonymity and employment opportunities available in a larger city. The Council finds that there is an influx of sex offenders into the City of Albuquerque which in part, may result from the fact that treatment opportunities are available in Albuquerque which may not be available in other parts of the state. The Council finds that the disclosure required hereunder provides the employer with information not currently available pursuant to registration under state law and information that will assist the employer in protecting children who may be in the proximity of a sex offender in the scope of employment.

(C) The Council finds that probation is a privilege and not a right, and that the State of New Mexico exercises continuing jurisdiction over probationers and requires probationers to comply with any and all existing laws including municipal ordinances. The Council finds that probationers have adequate existing opportunities to challenge conditions of probation imposed by courts or probation officers, and that the State of New Mexico provides adequate due process before a sex offender probationer is tasked with or ordered to obey any condition pertaining to that probationer's access to children.

(D) The Council's decision to require sex offenders to notify employers as required under this article is based on the enhanced public safety that will result if employers know that a probationary sex offender is not supposed to have access to children at work and otherwise. The City of Albuquerque has not assessed the specific risk of reoffense of 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 City Council does not intend for any person to use

the information required by this article to harm any sex offender and recognizes the value of employment to the reintegration of sex offenders into society.

(Ord. 36-2003)

§ 11-12-1-2 SHORT TITLE.

This article shall be referred to as "Marissa's Sunshine Law" or the "Employer Notification Ordinance."

(Ord. 36-2003)

§ 11-12-1-3 DEFINED TERMS.

For the purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADULT. Any person 18 years of age or older.

CHILD or CHILDREN. Persons under 18 years of age unless the applicable criminal statute defining the criminal offense applies to children younger than 18 in which case the younger age shall control. The singular and plural shall include one another.

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. The term EMPLOYER shall include but not be limited to any place of business under the Business Registration Ordinance, §§ 13-1-1 et seq. ROA 1994.

HE. He or she.

HIS. His or her.

NMSA. The most current version of a statute compiled in New Mexico Statutes Annotated.

PROBATIONARY SEX OFFENDER. A sex offender who has been convicted of a sex offense against a child and is on probation.

ROA 1994. The Revised Ordinances of Albuquerque, New Mexico 1994.

SEX OFFENDER. Shall have the same meaning the term has under § 29-11A-3(A) NMSA 1978 (Repl. Pamp. 2001).

SEX OFFENSE. Shall have the same meaning the term has under § 29-11A-3(B) NMSA 1978 (Repl. Pamp. 2001).

(Ord. 36-2003)

§ 11-12-1-4 EMPLOYER NOTIFICATION REQUIREMENTS.

Within twenty-four hours from the effective date of this article, a probationary sex offender shall notify his current employer that he is a probationary sex offender. At the time a probationary sex offender applies for or receives an offer of employment, the probationary sex offender shall notify the prospective employer that he is a probationary sex offender. All probationary sex offenders shall provide the employer or prospective employer with the current conditions of probation in writing in a form issued or approved by the Department of Probation and Parole or District Court including, if applicable, any conditions of probation that require the probationary sex offender to stay away from children or contain any reference to children.

(Ord. 36-2003)

§ 11-12-1-99 PENALTY.

Each violation of this article is a separate violation of § 1-1-99 ROA 1994. Without limitation on the foregoing, each day that passes when a probationary sex offender should have notified but failed to notify the employer, as required hereunder, is a separate offense.

(Ord. 36-2003)

PART 2: ALBUQUERQUE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT

§ 11-12-2-1 FINDINGS AND INTENT.

(A) The City Council finds that many sex offenders pose a significant risk to the health and safety of inhabitants of the City of Albuquerque. The Council further finds that these offenders will likely re-offend and that treatment and rehabilitation efforts are largely ineffective. The City Council finds that a more comprehensive local counterpart of the New Mexico Sex Offender Registration and Notification Act which includes regulations and requirements in addition to registration will help prevent offender exploitation of exceptions in existing laws and provide additional safety for Albuquerque inhabitants. The City Council further finds that §§ 11-12-2-1 et seq. are remedial sections designed to protect occupants of the City of Albuquerque. The City Council further finds §§ 11-12-2-1 et seq. to be the most narrowly tailored means of furthering compelling governmental interests. Sections 11-12-2-1 et seq. hereby conform to a memorandum opinion entered on January 30, 2004 in American Civil Liberties Union of New Mexico and John Does 1-4 v. City of Albuquerque, No. CV-2003-8803.

(B) The City Council finds that the protection of the victims and potential victims of sex offenders in Albuquerque is a matter of unique local concern not fully and adequately addressed by the New Mexico Sex Offender Registration and Notification Act. The City Council finds that statewide offenders move to Albuquerque from smaller towns and rural areas in New Mexico to seek treatment, housing, employment and the solace of anonymity available in a larger population. The City Council finds that the evidence on sex offender recidivism and victim impact which was heard by the City Council on March 17, 2003 and April 7, 2003 pertaining to the Sex Offender Alert Program, Bill No. F/S O-03-92, Enactment No. 19-2003, and in the hearings pertaining to F/S O-03-125, Enactment No. 43-2003, is pertinent herein and therefore incorporated by reference. The City Council finds that statewide registration laws do not entirely occupy the field of sex offender registration and further finds precedent for local versions of registration laws and measures based on the unique local concerns reflected in local laws passed by other local governments.

(Ord. 43-2003; Am. Ord. 17-2004)

§ 11-12-2-2 SHORT TITLE.

Sections 11-12-2-1 et seq. shall be referred to as the Albuquerque Sex Offender Registration and Notification Act or "ASORNA."

(Ord. 43-2003; Am. Ord. 17-2004)

§ 11-12-2-3 DEFINITIONS.

For the purposes of §§ 11-12-2-1 et seq., the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADULT. Any person 18 years of age or older.

APD. The Albuquerque Police Department.

ASORNA VIOLATIONS. Violations of §§ 11-12-2-1 et seq..

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.

CITY. The geographical limits of the City of Albuquerque and the City of Albuquerque municipal corporation.

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 ASORNA.

HIS. His or her.

HOMELESS ADULT. Any adult who has been in the city for more than 24 hours or intends to be in the city 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 City Internet shall mean any Internet site made available by the city to the public.

NMSA. The most current version of a statute compiled in New Mexico Statutes Annotated.

OUTSIDE NEW MEXICO. Anywhere outside the geographical borders of New Mexico or any federal enclave, Indian trust lands or reservations located inside the geographical borders of New Mexico.

REGISTRANT. Any person required to register under ASORNA.

REGISTRATION YEAR. One year from the date of first registration under ASORNA.

RESIDENT. Any person who (1) lives in the city in any apartment or home, (2) has a usual place of abode in the city, (3) is domiciled in the city or (4) temporarily present in the city 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, private or religious school that offers instruction to students in kindergarten through any grade up to grade twelve.

SEX OFFENDER. An adult who: (1) is a resident of the city who is convicted of a sex offense against a child in New Mexico or, (2) changes his residence to the city after that person has been convicted of a sex offense against a child or offense substantially similar to a sex offense against a child outside New Mexico, (3) is a resident of the city who is convicted of a sex offense against a child or offense substantially similar to a sex offense against a child outside New Mexico or (4) is a sex offender who is convicted of a sex offense against a child or offense substantially similar to a sex offense against a child outside New Mexico and is temporarily in the city for more than three consecutive days at any time or an aggregate of ten or more days in a registration year.

SEX OFFENSE. Shall have the same meaning the term has under § 29-11A-3(B) NMSA 1978 (Repl. Pamph. 2001) except that ASORNA includes only offenses against children and not offenses against adults.

SEX OFFENDER VIOLATION. A violation of any law defined as a sex offense above or a violation of ASORNA.

SORNA. The New Mexico Sex Offender Registration and Notification Act, §§ 29-11A-1 NMSA as amended from time to time.

WARD. A child who has a legal guardian.

(Ord. 43-2003; Am. Ord. 17-2004)

§ 11-12-2-4 REGISTRATION REQUIREMENTS FOR SEX OFFENDERS.

(A) Sex offenders who were convicted after January 1, 1970 must register with APD.

(B) A sex offender must register with APD within ten days after being released from incarceration, or ten days from the date of sentencing if not incarcerated, for a sex offender violation. ASORNA includes only offenses against children and not offenses against adults. A registrant under this section must provide APD 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 ten or more days in a registration year. Homeless shelters and extended stay establishments must be included in the disclosure required pursuant to this paragraph. Pursuant to this paragraph, 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 and ASORNA violations including the date and location of the offenses listed in this paragraph.

(Ord. 43-2003; Am. Ord. 17-2004)

§ 11-12-2-5 REGISTRANT REGULATIONS.

(A) Any sex offender who provides inaccurate information to the city has committed a separate violation of ASORNA.

(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 paragraphs (C) or (D) below, the registrant must notify APD 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 who is required to register under ASORNA 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 APD of the prospective change before the change occurs.

(D) A sex offender who is required to register under ASORNA and changes his place of employment must notify APD ten days before the voluntary change occurs or five days after the change is forced or compelled. Sex offenders must provide the name and telephone number of a new contact person within ten days of the time new work begins.

(E) When a sex offender registers under ASORNA, APD shall take and retain their photograph and a set of fingerprints. Additionally, APD may record and retain the person's shoe size, a DNA sample, dental imprints and a description of tattoos, scars and other identifying features that would assist in identifying the sex offender.

(F) Following the initial registration, ASORNA registrants, 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 must verify registration data in writing every 90 days as long as they are in the city on a form provided by APD. Sex offenders who have been convicted of two or more sex offenses or ASORNA violations must register for life.

(G) If any person receives a deferred sentence from any court for a sex offense that would otherwise trigger ASORNA registration, that person must register as if convicted unless they obtain 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 their 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.

(H) Any sex offender currently incarcerated in a correctional institution and temporarily at large and free to move about in the city is required to register under

ASORNA ten days before each release date. This paragraph 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.

(Ord. 43-2003; Am. Ord. 17-2004)

§ 11-12-2-6 NOTIFICATION.

APD shall maintain a local registry and forward registration information to the Bernalillo County Sheriff's Office and the New Mexico Department of Public Safety no later than 90 consecutive calendar days after receipt of the information by APD. The City of Albuquerque will maintain a data base of sex offenders distinct from SORNA but may share SORNA data. Registration under SORNA does not exempt a sex offender from registration under ASORNA. The City of Albuquerque will make available and disseminate sex offender registration on the City of Albuquerque Megan's Law Website on the Internet. Inclusion of a sex offender in and on the city's data base 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 City'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 City of Albuquerque 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."

(Ord. 43-2003; Am. Ord. 17-2004)

§ 11-12-2-7 GENERAL PROVISIONS AND OFFENSES.

(A) City Contractors. All persons or entities that enter contracts with the city 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 ASORNA registration information. Any failure by the contractor to comply is a material breach of the contract and entitles the city to terminate the contract. This paragraph includes but is not limited to 501(C)(3) entities and charitable entities. Any person or entity this paragraph applies to shall notify APD immediately if that person or entity has or obtains any information about any ASORNA registrant that does not conform with the information the registrant provided to the city pursuant to ASORNA.

(B) Address Verification Checks. APD shall conduct address verification checks to substantiate that registrants are living where they claim to live. The check shall verify

that the claimed address exists and that the registrant in fact lives at the claimed address. If APD is unable to verify the address, the registrant may be contacted by mail or otherwise and ordered to submit a sworn affidavit to APD that the registrant in fact lives at the claimed address. APD may contact and interview any person living or located near the claimed address. The provisions of this paragraph are in addition to any other lawful investigation APD may undertake.

(C) Sex Offender Location. After the effective date of ASORNA, sex offenders shall not newly occupy any real property, acquire any real property by lease or otherwise or establish a place of lodging within 1000 feet of a school.

(Ord. 43-2003; Am. Ord. 17-2004)

§ 11-12-2-8 IMMUNITY.

Nothing in ASORNA creates a cause of action against the city not already authorized under existing law. Without limitation, the city is not liable to any person harmed who claims that ASORNA notice may have prevented the harm.

(Ord. 43-2003; Am. Ord. 17-2004)

§ 11-12-2-99 PENALTY.

Each violation of ASORNA is a separate violation of § 1-1-99 ROA 1994. The city is also entitled to injunctive relief to enforce ASORNA provisions. It is the intent of the City Council that ASORNA violations should not be treated by the Courts as lesser included offenses that merge into a SORNA violation. Each day a registrant should have but failed to register or supplement registration information under ASORNA is a separate violation of ASORNA.

(Ord. 43-2003; Am. Ord. 17-2004)