

I Object!

– James Eckert, Esq.

The Effect of SORA Classification Levels

Tell your clients to revel in their freedom to sell frozen treats from moving vehicles. Say "selling frozen treats from a moving vehicle is a privilege, not a right; don't risk it!"

We know that the Sex Offender Registration Act is not punitive because, even though the legislators who voted on it said it was, the courts have said it wasn't *primarily* punitive. Leaving aside the possibility of a Civil Death Penalty which is also not *primarily* punitive, or perhaps non-punitive Hard Labor, the impact of SORA depends largely on what level the defendant receives when classified.

Level one is the lowest classification possible, and is the only one of the three which is not on the internet. Level one permits the police to notify the community that a sex offender lives in their neighborhood through the use of flyers, which list the defendant's approximate address "based on sex offender's zip code", which has generally meant revealing the zip code he lives in. While there are limitations on police dissemination of information about the defendant, the statute specifically provides that there is no limit to the re-dissemination of information by the public (Correction Law 168-1[6][a] "Any entity receiving information on a sex offender may disclose or further disseminate such information at its discretion"). Level one must register annually by mail. Currently, level ones must register for twenty years from the initial classification, with exceptions I'll discuss below. However, when the first sex offenders were about to be removed from the registry in 2006 the law was changed to prevent that from happening, and I would be surprised if the same thing didn't happen again in 2016.

All sex offenders must register their address, internet accounts, and screen names used, as well as enrollment, employment [sic] or residence "at any institution of higher learning" (CL 168-g[4]). Failure to register screen names or email accounts could be treated as a failure to register and result in a felony prosecution.

Level twos were originally treated the way level ones are now in terms of community notification - flyers only - and the applicable statute still talks about approximate address based on zip code. However, another subdivision was changed so that level twos are on the internet database, which reveals the defendant's exact address. So a defendant classified level two will have his exact address on the internet at all times. Level twos must register annually by mail. Level twos must register for life, but can petition after thirty years to be taken off the list, with exceptions which I'll discuss below.

Level threes are on the internet, and must register in person every ninety days. They must register for life.

There are sub-classifications which can affect the duration of registration. Sexually violent

offenders are those who have committed specified offenses - basically VFOs (CL 168-a[3]). Predicate sex offenders are those with a designated sex offense prior (see CL 168-a[7][c]). These two classifications require that someone register for life, regardless of the classification level of the defendant. This is important, because defendants can petition for modification no more than once per year under CL 168-o, and so a defendant could eventually become level one even if he had a serious initial offense. If he has one of these subclassifications, his level may be reduced, but he is never getting off the registry. Finally there is the sub-classification sexual predator, which requires a great deal of work to prove mental abnormality, and so you'll probably never see it (CL 168-a[7][a]). If designated, the defendant, no matter what level, must register in person every ninety days.

Being a registered sex offender may add additional restrictions as part of probation or parole. Contrary to repeated statements of police, there is no SORA requirement that defendants stay home and not answer their door on Halloween.

There are many other ramifications of being classified, or even relating to the specific levels, such as whether someone can live in a particular apartment complex, get into a counseling program, etc. These are not part of the actual Sex Offender Registration Act. These are separate decisions by the other authorities regarding how to treat those on the registry. The only workplace or residence prohibition that is part of the Correction Law is CL 168-v: no person on the registry "shall operate, be employed on or dispense good for sale at retail on a motor vehicle engaged in retail sales of frozen desserts as defined in subdivision thirty-seven of section three hundred seventy-five of the vehicle and traffic law." Oh the humanity. Weirdly, this provision may well violate *ex post facto*.

Remember, selling frozen treats from a moving vehicle is the highest expression of man's artistic nature, though sphenopalatine ganglioneuralgia is a serious danger.