

CHAPTER 4A  
SEX OFFENDER REGISTRATION AND NOTIFICATION

4A-1 TITLE

This Chapter shall be known as the Kootenai Tribal Sex Offender Registration and Notification Act (KTSORNA).

4A-2 PURPOSE

The intent of this Chapter is to implement the federal Sex Offender Registration and Notification Act (SORNA) (Title I of Public Law 109-248) and shall be interpreted liberally to comply with the terms and conditions of SORNA as presently written or hereafter amended.

4A-3 REGISTRY

The Tribal Council has determined that it is in the best interests of the Tribe to work cooperatively with the State of Idaho to fulfill SORNA responsibilities. Registration of sex offenders within Kootenai jurisdiction shall be implemented in a manner consistent with the SORNA, the Memorandum of Agreement between the State of Idaho and the Kootenai Tribe of Idaho regarding Sex Offender Registration and Notification and Kootenai law. References to Registry in this Chapter shall mean the Idaho Sex Offender Registry Database maintained by the State of Idaho.

4A-4 DEFINITIONS

The Definitions below apply to this Chapter only.

4A-4.01 "Convicted."

(1) An adult sex offender is "convicted" for the purposes of this Chapter if the sex offender has been subjected to penal consequences based on the conviction, however the conviction may be styled.

(2) A juvenile offender is "convicted" for purposes of this Chapter if the juvenile offender is either:

- (a) Prosecuted and found guilty as an adult for a sex offense; or

(b) Is 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 (a) or (b) of section 2241 of title 18, United States Code), or was an attempt or conspiracy to commit such an offense.

4A-4.02 "Foreign Convictions" means one that is obtained outside of the United States.

4A-4.03 "Employee" as used in this Chapter includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation. Volunteers of a tribal agency or organization are included within the definition of employee for registration purposes.

4A-4.04 "Immediate" and "Immediately" mean within three (3) business days.

4A-4.05 "Imprisonment" refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state "prison" as well as in a federal, military, foreign, BIA, private or contract facility, or a local or tribal "jail". Persons under "house arrest" following conviction of a covered sex offense are required to register pursuant to the provisions of this Chapter during their period of "house arrest".

4A-4.06 "Jurisdiction" as used in this Chapter refers to the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and any Indian tribe.

4A-4.07 "Minor" means an individual who has not attained the age of 18 years.

4A-4.08 "Resides" means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives or sleeps.

4A-4.09 "Sex Offense" as used in this Chapter includes those offenses contained in 42 U.S.C. §16911(5) and those offenses enumerated in Section 4A-5 of this Chapter or any other covered offense under Kootenai law.

An offense involving consensual sexual conduct is not a sex offense for the purposes of this Chapter 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 4 years older than the victim.

4A-4.10 "Sex Offender" means a person convicted of a sex offense.

4A-4.11 "Sexual Act" means:

(1) contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;

(2) contact between the 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 by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

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

4A-4.12 "Sexual Contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or

arouse or gratify the sexual desires of another person.

4A-4.13 "Student" means a person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, or an institution of higher education.

4A-4.14 "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), 42 U.S.C. §16911 *et. seq.*, as amended.

4A-4.15 "Sex Offender Registry" means the registry of sex offenders, and a notification program, maintained by the State of Idaho.

4A-4.16 "National Sex Offender Registry (NSOR)" means the national database maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16919.

4A-4.17 "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.

4A-4.18 "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. §16920.

#### 4A-5 COVERED OFFENSES

Individuals who reside within the exterior boundaries of the reservation or otherwise reside on property owned by the Tribe in fee or trust regardless of location, are employed within the exterior boundaries of the reservation or on property owned by the Tribe in fee or trust regardless of location, or who attend school within the exterior boundaries of the reservation or on property owned by the Tribe in fee or trust regardless of location, that have been convicted of any of the following offenses, or convicted of an attempt or conspiracy to commit any of the

following offenses, are subject to the requirements of this Chapter:

4A-5.01 Tribal Offenses. A conviction for any of the following, and any other offense hereafter included in the definition of "sex offense" in this Chapter.

- (1) Kootenai Code § 4-2.05 (rape);
- (2) Kootenai Code § 4-5.11 (indecent liberties).

4A-5.02 Federal Offenses. A conviction for any of the following, and any other offense hereafter included in the definition of "sex offense" at 42 U.S.C. §16911(5):

- (1) 18 U.S.C. §1591 (sex trafficking of children);
- (2) 18 U.S.C. §1801 (video voyeurism of a minor);
- (3) 18 U.S.C. §2241 (aggravated sexual abuse);
- (4) 18 U.S.C. §2242 (sexual abuse);
- (5) 18 U.S.C. §2243 (sexual abuse of a minor or ward);
- (6) 18 U.S.C. §2244 (abusive sexual contact);
- (7) 18 U.S.C. §2245 (offenses resulting in death);
- (8) 18 U.S.C. §2251 (sexual exploitation of children);
- (9) 18 U.S.C. §2251A (selling or buying of children);
- (10) 18 U.S.C. §2252 (material involving the sexual exploitation of a minor);
- (11) 18 U.S.C. §2252A (material containing child pornography);
- (12) 18 U.S.C. §2252B (misleading domain names on the internet);

(13) 18 U.S.C. §2252C (misleading words or digital images on the internet);

(14) 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the U.S.);

(15) 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity);

(16) 18 U.S.C. §2422 (coercion and enticement of a minor for illegal sexual activity);

(17) 18 U.S.C. §2423 (Mann Act);

(18) 18 U.S.C. §2424 (failure to file factual statement about an alien individual);

(19) 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).

4A-5.03 Foreign Offenses. Any conviction for a sex offense involving any conduct listed in this Section that was obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, or under the laws of any foreign country when 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.

4A-5.04 Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. 951 note).

4A-5.05 Juvenile Offenses or Adjudications. Any sex offense, or attempt or conspiracy to commit a sex offense, that is comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in 18 U.S.C. §2241) and committed by a minor who is 14 years of age or older at the time of the offense. This includes engaging in a sexual act with another by force or the threat of serious violence; or engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim.

4A-5.06 Jurisdiction Offenses. Any sex offense committed in any jurisdiction, including this Tribe, that involves:

(1) Any type or degree of genital, oral, or anal penetration;

(2) Any sexual touching of or sexual contact with a person's body, either directly or through the clothing;

(3) Kidnapping of a minor;

(4) False imprisonment of a minor;

(5) Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct;

(6) Use of a minor in a sexual performance;

(7) Solicitation of a minor to practice prostitution;

(8) Possession, production, or distribution of child pornography;

(9) Criminal sexual conduct that involves physical contact with a minor or the use of the internet to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense;

(10) Any conduct that by its nature is a sex offense against a minor, or

(11) Any offense similar to those outlined in:

(a) 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion);

(b) 18 U.S.C. §1801 (video voyeurism of a minor);

(c) 18 U.S.C. §2241 (aggravated sexual abuse);

(d) 18 U.S.C. §2242 (sexual abuse);

(e) 18 U.S.C. §2244 (abusive sexual contact);

(f) 18 U.S.C. §2422(b)(coercing a minor to engage in prostitution), or

(g) 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).

**4A-6 REGISTRATION AND COMMUNITY RIGHT TO KNOW**

4A-6.01 Other Laws. Idaho Code Title 18 Chapters 83 (Sexual Offender Registration Notification and Community Right-to-Know Act) and 84 (Juvenile Sex Offender Registration Notification and Community Right-to-Know Act) are hereby incorporated as Kootenai law to the fullest extent necessary to implement the SORNA and the Memorandum of Agreement between the Kootenai Tribe and the State of Idaho regarding Sex Offender Registration.

4A-6.02 Registration. Registration and notification of sex offenders within Kootenai jurisdiction shall occur in the same manner as if such sex offender was within the jurisdiction of the State of Idaho.

**4A-7 IMMUNITY**

4A-7.01 No Waiver Of Immunity. Nothing under this Chapter shall be construed as a waiver of sovereign immunity for the Tribe, its departments, agencies, employees, or agents.

4A-7.02 Good Faith. Any person acting under good faith of this Chapter shall be immune from any civil liability arising out of such actions.

**4A-8 CRIMES AND CIVIL SANCTIONS**

4A-8.01 Criminal Penalty. Each violation of a provision of this Chapter by a sex offender who is an Indian shall be considered a crime and subject to a period of incarceration of one year and a fine of \$5,000.

4A-8.02 Civil Penalty. Each violation of a provision of this Chapter by a sex offender who is not an Indian shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of fines, forfeitures, and civil contempt.

4A-8.03 Possible Exclusion. Violations of provisions of this Chapter may result in expulsion and/or exclusion under Kootenai Code Chapter 12.

4A-8.04 Hindrance Of Sex Offender Registration.

A person is guilty of an offense if they:

(1) Knowingly harbors or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of this Chapter;

(2) Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this Chapter; or

(3) Provide information to law enforcement agency regarding a sex offender which the person knows to be false.